

COMMISSION
ON
CENTRE-STATE RELATIONS

REPORT

PART II

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REPORT

PART II

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GOVERNMENT OF INDIA

COMMISSION ON CENTRE-STATE RELATIONS

4th Floor, 'B' Wing,

Lok Nayak Bhavan, Khan Market
New Delhi : 110 003.

Dated : 16*th January*, 1984.

Dear Sir,

The Government of India constituted this Commission *vide* the Ministry of Home Affairs Notification No. IV/11017/I/83-CSR, dated the 9th June, 1983 with the following terms of reference :—

"2. The Commission will examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropiate.

3. In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the inde endence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people".

2. The scope of the enquiry to be conducted by the Commission and its parameters are thus governed by these terms of reference.

3. In order to collect basic information (an analytical study of which would have enabled the Commission to identify with greater precision and exactitude the difficulties, problems and issues that might have arisen in the working of the present arrangements between the Union and the States), the Commission had written to all the Ministries of the Government of India, the present and former Chief Ministers of the State Governments, and Lt. Governors/Administrators of Union Territories, requesting them to send their memoranda containing their views on the subject. Barring the brief, tentative replies of about 4 former Chief Ministers and a few others no memoranda have yet been received from the addressees, which might have enabled the Commission to formulate a more specific and comprehensive questionnaire. It is, therefore, not claimed that the questionnaire now being issued, is exhaustive. If necessary, the Commission may issue a supplementary questionnaire, later.

4. The questionnaire has been framed purely with the object of eliciting from all possible sources, views and suggestions on issues gleaned by the Commission from published literature. Those issues have yet to be studied in depth by the Commission, which has no preformed opinion or predilections in respect of them. It will, therefore, be not correct to read, by any stretch of imagination, into this questionnaire an indication or projection of the Commission's own views on any point relating thereto as, at this stage, it has not formulated thereon any view of its own.

5. If some issues which you consider important, do not find place in the questionnaire, you are at liberty to point out the same and add a supplementary note containing your comments in respect thereof.

6. To facilitate the stupendous task of collating and processing the replies to different questions contained in the questionnaire reply to each question may be given on a separate sheet of paper (preferably typewritten and in duplicate).

7. The task assigned to this Commission is of immense national importance. The Commission earnestly hopes that you will kindly extend your unstinted cooperation to it in this national endeavour.

Your replies to the questionnaire may be sent by the end of March, 1984 to the following address:—

Shri K. A. Ramasubramaniam,
Secretary,
Commission on Centre-State Relations,
4th Floor, 'B' Wing, Lok Nayak Bhavan,
Khan Market,
NEW DELHI : 110 003.

Thanking you,

Yours faithfully,
(R. S. SARKARIA)
Chairman

ENC. : Questionnaire,

QUESTIONNAIRE

PART I

INTRODUCTORY

Q.1.1 According to the Study Team of the Administrative Reforms Commission, the Constitution-makers followed up their declaration that "the soundest framework for our Constitution is a Federation with a strong Centre" with "firm consistency in the framing of the Constitution." Can our Constitution be called FEDERAL in the strict sence notwithstanding several unique features not found in other FEDERATIONS?

Q. 1.2 Accepting the "traditional" notion of Federalism, the Rajamannar Committee appointed by the then Tamil Nadu Government, urged for greater autonomy for the States by a redistribution of the legislative powers in the three lists of the Seventh Schedule; deletion, revision or substantial modification of certain provisions (such as Articles 251, 256, 257, 348, 349, 355, 356, 357, 365, etc.), which give the Union a supervisory role over the States; allotment of more tax-resources in List II to the States, abolition of appeals to the Supreme Court except in constitutional matters, etc.

Would you subscribe to this view?

Q. 1.3 It has been suggested that in large and heterogenous country like India, there is a need for subtantial decentralisation, territorial as well as functional, of powers and functions in normal times in the interest of efficiency and equity, although there has to be provision for considerable centralisation in times of emergency.

Do you agree?

What in your view, would be the optimum Constitutional provision from this standpoint?

Q. 1.4 Does a federation of the "traditional" type wherein the National and Regional governments are "coordinate and absolutely independent" within their respective jurisdiction set apart by its Constitution, exist as a functional entity as distinct from an abstract theory anywhere in the present-day world?

Q. 1.5 Some eminent persons having special knowledge, experience and understanding of the Indian polity and its functioning, have expressed the following views :

(a) The Constitution is basically sound and flexible enough to meet the challenge of the changing times;

(b) The difficulties, issues, tensions and problems which have arisen in Union-State relationships are not due to any substantial defect in the scheme and fundamental fabric of the Constitution, but because over the years these relationships have not been worked in conformity with the true spirit and intent of the Constitution;

(c) These difficulties, problems and issues can be resolved and distortions rectified without major constitutional amendments, by

(i) changing the executive procedures, practices and some regulatory laws, impinging upon certain spheres of Union-State relations;

(ii) evolving healthy conventions and procedures with the aid and advice of an effective consultative body (as envisaged by Article 263) composed of the representatives of the Union and the States.

Do you agree? If so, what are your suggestions in this regard?

Q. 1.6 Do you agree that the protection of the independence and ensurance of the Unity and Integrity of the country is of paramount importance? If so, what provisions in the Constitution, in your opinion, have been designed to achieve that end?

Q. 1.7 Are the constitutional provisions regarding the obligations of the Centre and the States in respect of the country as a whole and to one another, reasonable? In this connection, you may, among others, refer to Articles 256, 257, 354, to 357 and 365 of the Constitution.

Q. 1.8 Article 3 of the Constitution provides that Parliament may by law :

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State.

A view has been expressed that this Article requires reconsideration.

Do you agree with this view and, if so, what modification of this provision would you suggest?

PART II

LEGISLATIVE RELATIONS

Q. 2.1 A view has been expressed that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and States, which ensures in normal times a substantial measure of legislative autonomy to the States; but over the years, the Union has, under the cover of a declaration of 'national interest' or 'public interest' encroached on the State legislative field. Can you give concrete instances, if any, of such encroachments?

Q. 2.2 What changes would you suggest—commensurate with the strength of the Centre and the unity and integrity of the country—in the distribution of

powers under the legislative lists of the Seventh Schedule and/or the contents thereof and other provisions of the Constitution?

Q. 2.3 Under the Government of India Act, 1935, the Instrument of Instructions contained a provision that whenever any legislation by the Centre was undertaken on a Concurrent subject, the Provincial Government had to be consulted before-hand.

Do you think the adoption of such a course would be desirable in the interest of ensuring better relations between the Union and the States?

Q. 2.4 Do you consider that declarations enabling Parliament to legislate on certain subjects within the exclusive competence of the States, in 'national interest', or 'public interest', should be of a perpetual nature or for particular durations subject to periodic review?

Q. 2.5 Have you any other change or reform to suggest with regard to Union-State relations in the legislative sphere?

PART III

ROLE OF THE GOVERNOR

Q. 3.1. What are your comments/views in regard to the role of the Governor in the context of Centre-State relations—

(a) as envisaged by the Constitution, and

(b) as practised by them during the last 34 years since the advent of the Constitution?

Q. 3.2 What, in your opinion, should be the role of the Governor in fostering healthy Union-State Relations?

Q. 3.3 What are your views/comments in regard to the performance of the functions/duties by the Governor in the matter of—

(a) making report to the President suggesting action under Article 356 (1),

(b) appointment of Chief Minister under Article 164, and

(c) Prorogation of the House/or dissolution of the Legislative Assembly under Article 174 (2) ?

Q. 3.4 What in your view was the intent and purpose of the Constitution-makers in providing in Article 200 for reservation of Bills by the Governor and, in Article 201, for the consideration of the President? Has the power of reservation by the Governor and consideration of State Bills by the President, been generally exercised in conformity with that intent, spirit and purpose of the provision? Please base your conclusion on concrete instances. Can you give instances if any, of cases where the Governor has withheld assent to a State Bill or reserved it for consideration by the President without any advice from his Council of Ministers?

Q. 3.5 A case study covering 170 Bills during the period 1956-65, conducted under the auspices of the Indian Law Institute reveals that "the Centre does try to dictate its policies to the States in giving Presidential assent, though the fact that the assent has actually been withheld only in a few cases, seems to indicate that, so far, the process of Presidential assent has not acted as a substantial threat to the autonomy of the States".

Do you agree with the above conclusion? In case whether the assent was eventually given, do you think there was undue delay ?

Q. 3.6 There is a view that the Governor is neither an agent of the Centre nor a mere ornamental head of the State but "a close link" between the Centre and the States. Does this represent the correct position? Have the Governors, in practice, generally acted impartially and fairly in accordance with the Constitution and healthy conventions in discharging their dual responsibility? Please support your answer with concrete instances, if any.

Q. 3.7 It has been suggested that to enable the Governor to perform his functions under the Constitution more efficiently and impartially, he should be guaranteed his full 5 year term and the procedure of his removal should be the same as prescribed in thecase of a Judge of the Supreme Court/High Court.

Do you agree ?

Q. 3.8 It has been suggested that the Governor should be empowered to summon the Legislative Assembly and himself check and verify in the House to decide the limited question whether the ruling party in the State has lost its majority in the Legislature.

Do you agree ?

Q. 3.9 Criticism is often levelled that in making his choice of the Chief Minister, in unstable party positions, after a Ministry in the State resigns on account of a no-confidence motion having been passed against it in the State Legislature, the Governor does not act fairly but in a manner calculated to advance the interests of a particular political party or group. In order to guard against the instability of the Ministries, the Constitution of the Federal Republic of Germany has introduced a device. Article 67 of the Basic Law lays down that the Bundestag (Federal Legislature) can express its lack of confidence in the Federal Chancellor only by electing a successor simultaneously, and then requesting the Federal President to dismiss the Chancellor. Do you think that if a similar provision is incorporated in our Constitution, it will prevent unnecessary friction between the Governor and the elected representative on the one hand, and reduce occasions for the above-mentioned criticism against the Governor, on the other? Have you any other suggestion?

Q. 3.10 The Administrative Reforms Commission recommended:

"Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and on

acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament."

What is your comment/view about the Constitutional validity/political propriety and pragmatic utility of issuing such guidelines?

PART IV
ADMINISTRATIVE RELATIONS

Q. 4.1 What are your views in regard to the pupose, function and use of Articles 256, 257 and 365 in the scheme and framework of our Constitution? Has there been a case where directions were issued under Article 256 or 257 and/or under both where, under the threat of invoking Article 365, any State was compelled to carry out such directions?

Q. 4.2 There is one view that Article 365 should be deleted. There is another view that since this is purely a consequential enabling clause (which has never actually been operated upon), it may remain as reserve provision.

Which view would you support and for what reasons?

Q. 4.3 The Administrative Reforms Commission in its report (1969) observed :

"The issue of direction (under Article 256 or Article 257) by the Centre to a State...............is an extreme step and should be taken only in cases of absolute necessity, where no other means of securing the objective are available. The assumption of governance by the President (under Article 356) is a drastic medicine prescribed in the Constitution as a last resort which cannot be administered as daily food as a matter of course".

On the above reasoning, the Commission recommended;

"Before issue of directions to a State under Article 256, the Centre should explore the possibilities of settling points of conflict by all other available means".

What is your reaction and comment with regard to the above-quoted recommendation of A.R.C.?

Q.4.4 The Constitution-makers with remarkable foresight anticipated the arising of situations "in which the Government of a State cannot be carried on, in accordance with the provisions of the Constitution" and provided *ex-necessitas* in Article 356 for use by the Union as ultimate weapon to remedy such a situation. Can you, after a survery of all or a substantial number of cases in which this Article was invoked, offer your considered views as to whether, genarally, this extraodinary, remedial power has been exercised properly?

If your answer is substantially or partly in the negative, please give reasons with reference to those cases in which, in your opinion, this power was misused contrary to the intent and purpose of this Article.

Q. 4.5 The Forty-Second Amendment Act, 1976 had substituted "one year" for the words "six months" in clause (4) of Article 356, with the result that the proclamation approved by Parliament under the preceding clause (3) unless revoked, ceases to operate on the expiration of a period of one year from the date of issue of the proclamation. The Forty-Fourth Amendment Act, 1978, restored the original period of "six months" in this clause, and also cut down the maximum total period for President's rule, mentioned in clause (5) from "three years" to "one year" except where the two extremely stringent conditions listed in sub-clause (a) and (b) co-exist. These changes were made as a safeguard against unnecessary extension of the Central rule beyond the period for which it was absolutely necessary to restore the normal functioning of the responsible Government in the State.

A view has been propounded with reference to certain situations that recently arose in a State and are likely to arise in some other States, that, where owing to the continued disturbed conditions, the break-down or failure of Constitutional machinery in a State cannot be repaired and normalcy restored within the time-limits specified in clauses (4) & (5) of Article 356, the said amendments, though intended to be a safeguard may turn into a handicap to the efficacious use of this power by the Union.

Do you agree with this view? If so, what other safeguard, if any, would you suggest in addition to, or in modification of clauses (4) and (5) which would while minimising the possibility of misuse of the power under Article 356, not inhabit its use as an ultimate weapon capable of effective action?

Q. 4.6 Under the present arrangements, many of the functions of the Union Government like census, elections, etc. are implemented by the State administration.

Are the present arrangements working satisfactorily?

Do you have any comments to offer in this regard?

Q. 4.7 At present, a number of Central agencies such as the Agricultural Prices Commission, Central Water Commission, Central Electricity Authority, Director-General of Technical Development, Monopolies and Restrictive Trade Practices Commission, Employees State Insurance Corporation, National Savings Organisation, Employees Provident Fund Organisation, Bureau of Industrial Costs and Prices, Food Corporation of India, etc. handle activities relating to subjects in the State and Concurrent lists of the Seventh Schedule to the Constitution. It has often been alleged that through these agencies the Union has made undue inroads into the States' autonomy.

Is this criticism justified?

If so what should be the proper role of such Central agencies in such matters?

Q. 4.8 A specific provision was made in Article 312 of the Constitution, with the unanimous support of the then provincial Governments, not only for regularising the two All-India Services, namely Indian Administrative Service and Indian Police Service which had been earlier created by an Executive Order, but also empowering Parliament to create, by law, one or more All-India Services common to the Union and the States, if they are

deemed essential in the national interest. The recruitment, discipline and control of these Services was to be tackled on a basis of uniformity and under the directions of the Central Government in order to foster stability and a broad national outlook which are essential for the efficiency and effectiveness of the Services and conducive to nati nal integration. Do you think that the All-India Services have fulfilled the expectations of the Constitution-makers ?

Some States have contended that they should be given greater control over the All-India Services.

What are your views ?

Q. 4.9 According to the Administrative Reforms Commission, the Union is competent by virtue of Article 355 to locate and use its Central Reserve Police and other armed forces in aid of civil power in any State, even *suo motu*. Some States, on the the other hand, have controverted this view and have opposed such Central intervention.

What are your views ?

Q. 4.10 In the Constitution, 'Newspapers, books and printing pressess' have been included in the Concurrent List (Entry 39, List III), while "........ broadcasting and other like forms of communication" have been included in the Union List (Entry 31, List I).

It was suggested during the Constituent Assembly debates that "broadcasting" should be included in the Concurrent List. Some States have also been urging that broadcasting and television facilities should be shared between the Union and States on a fair and reasonable basis as both have got equal need for access to these mass communication media for putting across their views to the people.

What are you views ?

Q.4.11 How far have the Zonal Councils set up under the States Reorganisation Act, 1956 served the purpose of collectively pursuing States' interests by cutting across party lines?

Q.4.12 Article 263 of the Constitution, which appears under the caption "Co-ordination between States", empowers the President to establish an Inter-State Council, if it appears to him that the public interests would be served by the establishment thereof. The Administrative Reforms Commission has also recommended the establishment of such a Council. .....

Do you think that setting up of such an institution would be desirable to iron out-inter-State and Union-State differences and issues and thereby to secure better cooperation between the States?

If so, what should be the functions and composition of such a Council ?

Should it be set up on a permanent basis, or as an experimental measure for a specified period of years ?

Should the Council have an independent Secretariat?

PART V

FINANCIAL RELATIONS

Q.5.1 The Constitution-makers expected that the revenue-gap between the resources and the fiscal needs of States to discharge their growing responsibilities, will be covered under a scheme of devolution partly by sharing with the States, proceeds of certain Central taxes and duties, and partly by grants-in-aid from the Union, under an arrangement "as automatic and free from interference as possible", while periodic changes will be made by the President on the recommendations of the Finance Commission, which we hope, will command the confidence of all".

After a review of the working of the mechanisms for devolution and examination of details of resources transferred by the Union to the States during the last 34 years, can it be said that the scheme of devolution envisaged by the Constitution-makers has worked well and come up to their expectations?

Q.5.2 The A.R.C. Study Team on Centre-State Relations has observed : "................... the outstanding feature of the financial relationship between the Centre and the States is that the former is always the Giver and the latter the Receiver...... The State resources on their own have not been enough even to meet all non-plan expenditure and there is thus heavy and increasing financial dependence on the Centre.

After a survey of the resource-transfers recommended by the several Finance Commissions subsequently, does the overall position stated by the A.R.C. Study Team, and quoted above, still hold good? If so, which of the following alternatives, or combinations thereof, do you think should be adopted and for what reasons ?

(a) Complete separation of the fiscal relations of the Union and the States, abolition of the scheme of transfer of resources and instead transferring more taxing needs to List II Seventh Schedule.

(b) Transfer of a few more elastic taxation heads to List II.

(c) All the taxing heads/taxing powers be transferred to the Union List to form a shareable pool, the respective shares of the Union and the States as a whole being specified in the Constitution itself. The amounts and the principles on which the States' share would be distributed amongst the various States, be determined by the Finance Commission.

(d) More Central taxes such as Corporation Tax, Customs Duty, Surcharge on Income Tax, etc., be brought into the shareable pool

(e) Financial resources, other than tax-revenues to the Union, be also distributed between the Centre and the States.

Q.5.3 The Directive Principles of State Policy spell out that the State shall endeavour, *inter-alia*, to provide social and economic justice and endeavour to eliminate inequalities amongst groups of people residing in different areas. Owing to historical reasons, the capacity of States to ensure through

their own resources, reduction of regional inequalities, and to attain social and economic justice varies widely.

A view has been expressed that regional imbalances can be reduced only by a strong Centre, having elastic sources of revenue and more discretionary powers to use the funds available with it for the development of poorer States. Giving more financial powers to States will only further tilt the balance in favour of richer States.

Do you agree? What are your views on the above observations?

Q.5.4 The options available to the Centre to attain the objective set forth in the preceding question are :

1. raising more revenue resources—

   (i) through taxation;

   (ii) through subventions from richer States to Central pool under some principles;

2. better control over expenditure, and

3. deficit financing.

The Central revenue account appears to show fairly large deficits during the past several years after making the necessary devolutions to the State Governments, as recommended by the Finance Commissions and by the Planning Commission.

Is deficit financing to cover this gap, in your view, in the national interest? If it is not, what suggestions would you take to bridge this revenue gap?

Q.5.5 It is stated that the present devolutions made through the channels of the Finance Commission and the Planning Commission do not appear to bridge the gap in resources between the poorer and richer States. Keeping this in view, please give your suggestions regarding the objective criteria that should be used for determining :

(a) the share of taxes,

(b) plan assistance, and

(c) non-plan assistance

for each State taking into account the tax efforts as well as efficiency and economy in management. Please also indicate what relative weightage should be given to each criterian.

Q.5.6 A view has been expressed that a 'special federal fund' for ensuring 'faster development in economically underdeveloped areas relative to other developed areas of the country, as provided for in the Yogolsav Constitution, should be established in India.

Do you think that our Finance and Planning Commissions are not adequate for the purpose?

Q.5.7 There appears to be certain imperatives in the allocation of taxation functions to the Union and the States. One cardinal principle is that a tax should be imposed by the authority which can best collect and administer it. The second is the imperative of Part XIII of the Constitution ensuring "freedom of trade, commerce and intercourse within the country". The third is the reduction of inequalities through use, *inter alia* of the taxation system as an instrument of economic policy.

In the light of these three principles, what Central taxation powers can reasonably, be transferred to the States?

Please elucidate end give reasons.

Q.5.8 It is held by some experts that major taxes like Corporation Tax, Income tax, Wealth Tax, Estate Duty, Customs Duty, Excise Duty, Sales Tax etc. have a profound bearing on the economy of the country as a whole and considerable damage may occur as a result of fragmentary approach to taxation. They advocate seperation between imposition of such taxes and distribution of the tax proceeds. For the former they recommended Central, levy of these taxes subject to control by a Council and Central and State Finance Ministers.

What are your views in this regard?

Q.5.9 It has been pointed out by some experts that devolution of revenue resources by the Finance Commission for non-plan expenditure once in five years and leaving it to the planning Commission to assess the financial requirements to sustain an expanded plan each year, is leading to serious difficulties. In their view, one organisation should deal with all financial transfers (plan and non-plan) on an assessment of capital and revenue resources which could be best handled by a permanent Finance Commission. The Planning Commission's role will be limited to functioning as an agency for overall investment, planning and decision-making in the interest of rational utilisation of scarce capital resources.

Do you agree with this approach? If so please elaborate?

Q.5.10 How far in your view, have the transfers, both statutory and discretionary, from the Union to the States, on the advice of successive Finance Commissions or otherwise, promoted efficiency and economy in expenditure, on the one hand, and narrowed down the disparities in public expenditure among the States, on the other?

Q.5.11 A view has been expressed that the present mechanism of transfer of resources has inbuilt propensities towards financial indiscipline and improvidance in terms of exaggerated revenue-deficit forecasts, adaption of populist measures resulting in revenue loss, incurring expenditure unmatched by available resources, etc.

Do you agree with this view, and if so, what correctives would you like to suggest ?

Q.5.12 The Seventh Finance Commission had suggested that the bulk of the resource-transfers should be done through tax-sharing and the role of grants-in-aid under Article 275, in the scheme of total revenue transfer should, as far as possible, be supplementary.

What is your comment with regard to this broad proposition?

Q.5.13 The Seventh Finance Commission has also laid down in order of priority, the following principles for grants-in-aid under Article 275 :—

(i) Grants-in-aid may, in the first place, be given to States to enable them to cover fiscal gaps, if any are left after devolution of taxes and duties so as to enable them to maintain the levels of existing services in the manner considered desirable by the Commission and built in their revenue forecasts.

(ii) Grants-in-aid may be made as correctives intended to narrow, as far as possible, disparities in the availability of various administrative and social services between the developed and the less developed States, the object being to endeavour to assure certain basic national minimum standards of such services in the country irrespective of State boundaries.

(iii) Grants-in-aid may also be given to individual States to enable them to meet special burdens on their finances because of their peculiar circumstances or matter of national concern.

What is your comment/view in regard to the principles enunciated above and the methodology of their application?

Q.5.14 It has been suggested that some of the Centre's other revenues, for example, the yield from the Special Bearer Bonds Scheme and the revenue accruing from raising administered prices of items like petroleum, coal, etc., should be brought within the divisible pool of resources. Are you aware of any other claims made on Central non-tax revenue to bring them within the divisible pool? Please give details. Are you satisfied about the logic of claiming that these revenues should properly come under the divisible pool of taxation? Please give detailed answers.

Q.5.15 The total savings available in the community have to be shared between the public and private sectors. Within the public sector, share mobilised by it has to be distributed between the Centre and the States and their respective public undertakings.

Do you think that the methods by which such distribution is effected, at present, are satisfactory?

Q.5.16 It has been stated that though the budgetary deficits of States have grown at a faster rate than that of the Centre because of the latter's increasing deficit the percentage of the Centre's revenue receipts being transferred to the States, has gradually been showing declining trend in spite of there being a substantial increase in these transfers in absolute terms. It has also been observed that the fiscal imbalance of the States is on the increase manifesting in their mounting indebtedness.

What are your comments in this regard?

Q.5.17 The Sixth Finance Commission was specifically asked to look into this problem of growing indebtedness of the States and suggest remedies. Do you agree that a periodical review of this nature should be also to handle any anomalies in the indebtedness of the State in future? The A.R.C. Study Team on Centre-State Relations, commenting on the over-increasing massive indebtedness of the States had observed that the States find it increasingly difficult to repay their debts, or even the interest charges in some cases, and that repayment of Central loans constitutes an increasingly large part of the total States' borrowings from the Centre.

What factors, in your opinion, have contributed to the above situation? What measures would you suggest to remedy it?

Q.5.18 It has been said that the States' capacity as well as freedom to borrow has been unduly restricted.

Do you agree? If so, what extent these restrictions can be relaxed without affecting the basic principles of sound finance?

Q.5.19 It has been alleged that on foreign borrowings the Centre charges from the States a higher rate of interest than what it pays to the foreign lender. If so, is this justified? Have you any comment to make on the present system of transferring foreign credit obtained for financing State Projects through the Centre to the States?

Q.5.20 A suggestion has been made that a Loans Council should be set up, on the pattern of the Australian Loans Council, which could fix the borrowing limits of different States and the Centre on the basis of principles to be approved by the National Development Council. The Reserve Bank of India at present, coordinates the market borrowings not only of the Centre and the States but also of the Private Sector.

In your view, would the Loans Council be a better institution than the Reserve Bank of India for this purpose. In the alternative, have you any suggestion to make about improving the working of the Reserve Bank of India in this context?

Q.5.21 Ways and Means Limits enjoyed by the State Governments with the Reserve Bank of India were doubled with effect from July, 1982. The annual report of the R.B.I. for 1982-83 notes that the continued existence of large overdrafts even after doubling the entitlement of Ways and Means advances points to the "unhappy position" of the States' Finances.

What, in your opinion, are the factors contributing to this situation and what remedies would you suggest?

Q.5.22 A view has been expressed that the States are not exploiting adequately their own sources of revenue.

Do your agree? If so, what suggestions would you give in this regard?

Q.5.23 A view has also been expressed that the Centre is not assessing and collecting all revenues that it can and should do. In this connection, it is also cited that (a) in spite of reaching commanding heights as intended, the public sector has not yielded the expected returns on capital investment, and (b) there is substantial leakage in Central taxation.

Do you agree? If so, what suggestions have you to make to remedy the situation?

Q.5.24 Do you think it will be a healthy convention conducive to the stability of State finances to require the Union to ascertain the views of the State Governments and give them due consideration, before moving a Bill to levy or vary the rate-structure of abolish any oI the duties and taxes enumerated in Articles 268 and 269?

Q.5.25 Some states have suggested that Article 269 of the Constitution should be better exploited to augment the resources of the States.

What are your views in this regard?

Q.5.26 A tax on Railway Passenger Fares was first levied by the Union Government in 1957 under Article269(d) Ior the benefit of the States. The Act was repealed in 1961 and in lieu thereof, a grant of Rs. 23·12 crores is now being given to the States. It has been pointed out that had the tax continued to operate, the ravenue on the basis of the greatly increased current passenger-fare earnings of Railways would have been much higher. On this reasoning, it is urged that this grant in lieu of the passenger fares tax should be revised and enhanced in proportion to the increase in the collection of railway fare.

What is your view in regard to this issue raised by the States?

Q.5.27 There are four Union Territories with Legislatures. A complaint has been made that although under Income-tax and Union Excise Duties shares are allocated to Union Territories taken together, the Government of India individually gives to them only grants-in-aid, thus depriving them of a share in the buoancy in Central taxes.

Is this grievance justified? If so, what measures would you suggest to ensure appropriate shares of taxes to such Union Territories also?

Q.5.28 What are your views on the working of the present arrangements in regard to provision of Central assistance to States for dealing with natural calamities? What suggestions would you make to ensure that relief assistance is put to optimum use.

Q.5.29 A proposal has been made for the creation of three new All-India institutions involving the participation of both the Union and the States but without taking away the ultimate residuary role of the Union Government :—

(1) There should be a National Loan Corporation (N.L.C.) supported by a consortium of nationalised banks which will be exclusively and specifically incharge of both loan-raising and loan-utilisation for productive, economically viable projects.

(2) There should be a National Credit Council(NCC) on which the States should have some representation. It should be entrusted with the task of assessing credit resources and growth possibilities without evoking adverse inflationary effects. The Council should also determine the share which the States as a whole can get but not exceeding 40 per cent, and also formulate the broad category of purpose for which the States could use their share in their plan frame work.

(3) There should be a National Economic Council (NEC) on which the States should be given some representation. This Council will not only have the function of seeing that commercial and industrial policy and economic management serve the National interest as a whole, but also take into account the differential interests of States in regard to Industrial licensing export and import licensing, subsidies, incentives, employment, etc. The National Loans Corporation and the National Credit Council should also be represented on this Council.

The annual reports of all these three bodies should be placed before Parliament for discussion and suggestions as well as before the State Legislatures for information.

What are your views with regard to these suggestions?

Q.5.30 A view has been expressed that who collects the funds and how the collected funds should be distributed are not very relevant because all funds flow from the public. What is more important is that the funds are spent prudently and the benefits to back largely to the people.

Do you agree?

Q.5.31 (a) There is criticism that the expenditure of the Union is not being organised in the best interest of the nation's growth and instead there are trends for incurrence of infructuous, unnecessary and uneconomic expenditure. A demand has been voiced in several quarters that the expenditure of the Union should be scrutinised so that such trends may be contained and additional resources found for helping the States, particularly the poorer ones.

Do you agree that such a periodical assessment is necessary?

(b) It has also been asserted that the States which complain of meagre developmental resources are indulging more and more in unnecessary expenditure mainly of a populist nature and not strictly on economic reasons, thereby depleting the already insufficient resources available for developmental purposes.

Do you agree?

(c) For both the above reasons, a suggestion has been made that there should be a permanent National Expenditure Commission to assess the nature and quality of expenditure and the need for revenue resources for both the Centre and the States, to enable them to discharge their respective obligations reasonably and satisfactorily.

Do you agree or have you any other suggestion? Please elaborate.

Q.5.32 Under Article 150 in Part V of the Constitution the accounts of the Union and the States are to be kept "in such form as the President may on the advice of the Comptroller and Auditor General of India prescribe". Likewise, under Article

151 of the Constitution the reports of the Comptroller and Auditor General of India relating to the accounts of the Union, shall be submitted to the President and those relating to the accounts of a State shall be submitted to the Governor of the States, both of whom shall cause them to be laid before the Parliament and the Legislature of the State, respectively.

What operational problems, and implications thereof, do you observe in the proper and timely preparation, examination and scrutiny of the accounts as having a bearing on Centre-State relations?

Q.5.33 The present system of audit relies very heavily on 'voucher audit' whereas the desirability of 'evaluation audit' is well established. To what extent, in your view, the objective of efficiency and promptness in audit can be pursued along with any meaningful progress in 'evaluation-audit'? Please give a specific suggestions, if any, in this regard.

Q.5.34 The Comptroller and Auditor General is a Constitutional functionary to perform such duties and exercise such powers in relation to the accounts of the Union and the States as may be given to him by Parliament by law. Shri Ashok Chanda, Chairman of the Third Finance Commission, had pointed out that the Comptroller and Auditor General was not doing all that was possible to keep a check on the accounts of the Union and the States. Under Article 149 of the Constitution, the Parliament enacted a Law in 1971 (amended in 1976), defining the duties, powers, etc. of the Comptroller and Auditor General.

In your view, does this answer the criticism made by Shri Ashok Chanda? Has Parliament under this Act conferred sufficient powers and enjoined adequate duties on the Comptroller and Auditor General to enable him to keep an effective watch on the expenditure of the Union and the States?

Q.5.35 The Comptroller and Auditor General is responsible only to the President and the Governor of the State for submission of his reports which are presented to Parliament and the State Legislature, respectively. It is then for Parliament and State Legislatures to exercise such checks that they feel necessary to ensure financial propriety.

Are you satisfied that the reports of the Comptroller and Auditor General presented to Parliament and State Legislatures are comprehensive enough and reasonably accurate to enable them to take firm views in the matter. If not, what improvements, if any, would you suggest about the reporting?

Q.5.36 The Public Accounts Committee of the Parliament and the Public Accounts Committee of State Legislatures along with the Committee on Public Undertakings examine the reports of the Comptroller and Auditor General and further probe into issues that they think are important. In this exercise, the Comptroller and Auditor General helps them. Is this, your view, a sufficient check to answer the voiced complaint of insufficient expenditure control at the Centre and in the States?

Q.5.37 The Estimates Committees of the Parliament and of the State Legislatures go into the wider aspects of policies and programmes than those covered in the reports of the Comptroller and Auditor General to the Parliament and the State Legislates, and advise the Government on the improvements necessary. Would you agree that in the light of the need for a scrutiny of expenditure of the Union and of the States, this Committee can act as a watchdog to give useful legislative and administrative advice to the administration?

Q.5.38 If you think that an Expenditure Commission is needed for assessing the propriety of expenditure of the Union and the States, is not such a Constitutional authority already provided in the Comptroller and Auditor General of India?

Q.5.39 Some State Governments are of the view that while there can be no objection to monitoring the accounts of the utilisation after the expenditure has been made the clearance of the plans of action formulated by the States by the administrative Ministry concerned at the Centre is an irritant and a source of considerable delay. The State Governments, which are the beneficiaries under the schemes should be authorised to decide the validity of the expenditure under the approval scheme without the intervention of an external agency.

What is your comment in regard to the above view? By what other means can the Centre ensure that funds meant for a specific purpose are, in fact, utilised for that purpose?

PART VI

ECONOMIC AND SOCIAL PLANNING

Q.6.1 "Economic and Social Planning", an Entry in the Concurrent List of Seventh Schedule of the Constitution, recognises the vital role which the Centre might play in consultation with the States in the matter of undertaking planning in a national perspective, to meet national needs, subscribing to national priorities and in coordinating the various plans sectoral and territorial. The A.R.C. Study Teams and other Studies conducted by experts have noted, among others, three shortcomings in planning relationship.

(1) As a national endeavour, the plans to not secure the commitment of the States by involving them earnestly in the primary task of determining goals and perspectives after a full and frank consideration of all the basic issues, the measure of consultation with the States effected through the National Development Council being inadequate and the consultation procedures at the meetings of the Chief Ministers and the Central Ministers being superficial and hurried.

(2) The Union Ministers tend do insist on the incorporation of the schemes framed by them, and the departmental groups establish a 'client relationship' with the Central Working Group and tend to accept the schemes framed by the Central Group without proper scrutiny.

(3) There is too detailed involvement of the Centre with programmes legitimately falling wholly within State jurisdictions.

What remedial measures and procedural changes would you suggest to remove or, at any rate, to minimise the shortcomings listed above, and for what reasons?

Q.6.2 A view has been expressed that a National Development Council, consisting of all the Chief Ministers of the States presided over by the Prime Minister, and experts in various fields as Members be set up on a statutory basis. It should have powers to discuss and approve the recommendations of the Planning Commission with regard to economic development. When once the development plans are approved by the Council, the States should be free to implement them, in accordance with the approved pattern and adequate financial resources should be provided to the States. The Council should have the opportunity of expressing its opinion on matters of national importance.

What is your opinion in regard to the above proposal?

Q.6.3 The resolution setting up the Planning Commission states that the Commission would act "in close understanding and consultation with the Ministries of the Central Government and the Government of the States". Do the present composition and procedures of the Commission allow for such close understanding and consultation with the State Governments? If not, what improvements would you suggest?

Q.6.4 Three views have been expressed about the composition of the Planning Commission—

(i) The Commission should include sufficient number of Ministers who can authoritatively define for the experts on it, the preferences and objectives of the Government and then persuade the Centre and State Governments to accept and implement the Plan.

(ii) It should be a high-grade advisory of economists, technologists and management experts.

(iii) It should be enlarged to include representatives of all the States and made an independent body, free from all pressures of Union Cabinet which generally reflects the opinion/policy of the ruling party at the Centre.

Which of these three views would you support and for what reasons?

Q.6.5 It has also been suggested that the Planning Commission should be not a department of the Government of India but should be made an autonomous body under the National Development Council for everseeing Planning, investment and decision-making at the national level.

What are your views with regard to the above suggestion?

Q.6.6 Do you agree that there is need to consider and incorporate national priorities in the State Plans? If you do, please consider the criticism that the Planning Commission has been examining in too great a detail the States' finances and Plans to ensure this objective, thereby raising allegation of undesirable erosion of States' autonomy. In this context, what modifications of the procedures in the Planning Commission for scrutiny of the State Plans, to ensure national priorities, should, in your view, be introduced?

Q.6.7 What are the merits and demerits of the present system of channelising Central assistance by way of loans and grants through the Planning Commission to the States?

Q.6.8 Do you agree with the view that the present system of arriving at the States' Plan size by adding to their assessed resources independently, predetermined quantum of Central Plan assistance on the basis of the Modified Gadgil Formula, IATP, etc. (which may not provide for all the plan needs of States), operates harshly against the economically weaker States? If so what changes, if any, would you suggest in this regard?

Q.6.9 How far the Criteria evolved by the National Development Council for allocating Central Plan assistance to States equitable? How far has the present system of allocation of Central assistance contributed to the attainment of the planning objectives of balanced regional development and removal of poverty? Please also comment on the present system of determining special Central assistance for Tribal and Hill Areas' Sub-Plans, etc. and the mechanism of earmarking of State Plan outlays in aggregate and for certain priority sectors.

Q.6.10 A view has been expressed that the large number of Centrally Sponsored Schemes (through some of which substantial amounts of Central assistance on matching basis are channelised to the States), tend to distort State Plan priorities as they induce the State Governments to opt for them.

Do you agree with this view and would you like to suggest any change in this regard? If so, please specify.

Q.6.11 Do you think that the monitoring and evaluation machinery established in the Planning Commission as well as within each State to watch the implementation of the plans is adequate? If not, what improvements would you suggest for ensuring that the Central and State funds invested in the development plans yield the desired results?

Q.6.12 Do you think that decentralised planning would help in introducing a spirit of "cooperative federalism" in our planning system, and if so, would you briefly outline the steps which should be taken in that system to ensure proper cooperation between the States and the Centre at the stages of Plan preparation and Plan implementation?

Q.6.13 Since the recommendation of the Administrative Reforms Commission on constituting Planning Boards in each State, many of the State Governments have taken steps to strengthen their planning machinery.

To what extent, in your opinion, the enhanced planning capabilities of States are playing an effective role in plan formulation, implementation and review? What further improvements, if any, would you suggest in this direction? As State Planning Boards gain in experience, should the National Plan become progressively more indicative and less imperative?

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PART VII

MISCELLANEOUS

Industries

Q.7.1 By virtue of its powers under Entry 52. List I, Parliament, by making the necessary declaration in terms of this Entry enacted the Industries (Development and Regulation) Act, 1951. The Act gives powers to the Central Government to compel registration of the existing industrial undertakings and not to establish any new industrial undertakings, mentioned in the First Schedule to the Act, except under, and in accordance with, a licence issued in that behalf by the Central Government.

The First Schedule to the Act, as originally enacted, included only a few industries which were of vital public interest and of national importance. But the Act has been repeatedly amended and in course of time, more and more industries have been added to the First Schedule and the Centre has now brought under its control items like razor blades, gum, match sticks, soaps, paints, warnishes, weighing machines, sewing machines, hurricane lanterns, steel furniture, cutlery, pressure cookers, agricultural implements, bicycles, footwear, house-hold appliances, hand tools, type-writers, chinaware and pottery, oil-stoves, etc. It has been criticised that as a result of this indiscriminate extension of the First Schedule to cover a very high proportion of industries in terms of value of their output, "the basic constitutional scheme has been patently subverted and "industries" has been virtually transformed into a Union subject".

Do you agree with this view? If so can you give specific instances, if any, where this power has been used to the detriment of States' interests?

Q.7.2 (i) Should there not be laid down, in your opinion, some norms to define or describe what is "national/public interest" in the context of national control over an industry, when Parliament alone can legislate?

If your answer is in the affirmative, what should be such norms in your opinion?

(ii) From the present list of items in the First Schedule to the Industries (Development and Regulation) Act, 1951, what items, in your opinion, can be deleted on the ground that they are not really crucial to the national/public interest to justify control by the Union?

Q.7.3 Have you any suggestion to make for improving and/or decentralising the present procedures for industrial licencing and Central clearance for capital-issues, import of capital goods and raw materials and foreign collaboration?

Q.7.4 The National Committee on Development of Backward Areas in its reports on "Industrial Dispersal", "Village and Cottage Industries" and "Industrial Organisation"—has pointed out the big gap in raw material supply at fair rates to the small sector, marketing structures to ensure a non-exploitative price for the products of the small sector and financial support to the sector. The gap in technology to ensure a drudgery—free approach to the sector has also been emphasised.

In your opinion (a) have the States organised themselves sufficiently to support this sector? If not, in what time phase do you think this is possible? (b) What are the glaring deficiencies in the States' approach to this problem so far?

Q.7.5 In the context of loans to the State Plans what comments, if any, have you to make on the working of the Centrally controlled national industrial financing institutions, such as, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India, Life Insurance Corporation and Unit Trust of India?

Q.7.6 Locational decisions on Central investments in the public sector are matters of crucial interest to the States. It is alleged that the States are not always taken into confidence before deciding on such locations.

Is this criticism justified?

Q.7.7 Criticism has been voiced that in several cases the Centre has either favoured or neglected individual States in the matter of its direct investment in heavy industries. Is there any justification for such criticism? If so have you any suggestions in this regard which might make such Central investment decisions more objective?

Q.7.8 Are you satisfied with the methodology adopted for identification of industrially backward districts/areas for provision of various Central fiscal and financial incentives for promotion of industries, given the present limitations of information? To what extent, the various Central incentives for promotion of industries in backward areas have succeeded in your opinion?

Do you have any alternative suggestions, on the above matters?

Trade and Commerce

Q.8.1 Article 307 of the Constitution provides for appointment by Parliament by law of an authority for carrying out the purposes of Articles 301, 302, 303 and 304 which deal with the imposition of certain restrictions on trade, commerce and intercourse among States. No much authority (under Article 307) has so far been constituted. Regulatory laws (tax and non-tax) imposing restrictions on freedom of trade and commerce are a perennial source of controversy between the States and the Centre and among the States themselves. Do you think that in the interests of securing better Centre-State relationship in trade and commerce, it is necessary to appoint an authority to :—

(a) survey and bring out periodically a report on the restrictions imposed on intra-State and inter-State trade and commerce by different governments;

(b) recommend measures to rationalise or modify the restrictions imposed with a view to facilitate trade and commerce; and

(c) examine the complaints from the public and the trade in this regard?

Have you any comments to offer? Please specify them.

Agriculture

Q.9.1 While agriculture, including animal husbandry, forestry and fisheries, is in the State List (List II, Seventh Schedule), through several Entries in the Union List and particularly these in the Concurrent List of the Seventh Schedule, the Constitution provides a large scope for Central initiative in agricultural matters. The Study team of the Administrative Reforms Commission on Centre-State Relations (1967), while examining the scope of Entry 33, in the Concurrent List, had observed "it appears to us that agriculture should be treated as a State subject and that Central attachment in the scope of the assumption of responsibility for substantive activity should not be permissible".

How far has this position changed since 1967? To what extent would you go with the above view point?

Q.9.2 Examining the Centre-State relations in agricultural development, the National Commission on Agriculture (1976) had recommended that a long term perspective be developed in which the "Central and Centrally sponsored schemes being implemented through the State agency ultimately form part of the State sector" and that their number should be kept to a minimum.

Would you agree with this view, and if so for what reasons? Do you have any specific suggestions to offer in this respect?

Q.9.3 The National Commission on Agriculture (1976) had also suggested (i) that the States should be 'closely associated' with the formulation of the Central and Centrally sponsored sectors of the agricultural plan through Joint Working Groups, and (ii) that there should be a continuous dialogue between the Central and the State Working Groups to ensure that adjustments effected in the plan on account of resources constraints are "within the general acceptance of the States and their appreciation of priorities of programmes and implementing capacity".

To what extent do you think effective cooperation exists between the Centre and the States on the above aspects? What improvements, if any, would you like to suggest?

Q.9.4. How far, and with what implications, Union Government's initiative affects the States with respect to (a) fixation of minimum of fair prices of agricultural items, (b) irrigation (including inter-State aspects), (c) provision of strategic inputs, including credit and (d) forestry policy and administration?

If you find any serious problems in Centre-State relations in these aspects, what solutions, if any, would you like to suggest?

Q.9.5 Do you find any problem in the sphere of Centre-State relations with respect to the role of agricultural research (e.g., Indian Council for Agricultural Research) and financial institutions (e.g., National Bank for Agricultural and Rural Development). (NABARD)? What suggestions, if any, would you like to give in this respect?

Food & Civil Supplies

Q.10.1 Do you think that the present arrangements for Centre-State consultation are consistent with the actual responsibilities of the State Governments or there is scope for improving Centre-State liaison in the areas of procurement, pricing, storage, movement and distribution of foodgrains and other essential commodities? Please give specific suggestions.

Q.10.2 Do you think that the arrangements for administering the Essential Commodities Act and other regulatory Central Acts affecting States' areas of responsibilities need to be periodically reviewed? If so, what arrangements would you like to suggest in this regard?

Education

Q.11.1 Some States have expressed the view that there is unnecessary centralisation and standardisation in the field of education and too much of Central interference in the initiative and authority of the States? How far is this criticism justified?

Q.11.2 Have you any comments to make on the role of the University Grants Commission—(a) in exercising influence over University education, and (b) in extending financial assistance?

Q.11.3 What suggestion would you like to make to evolve a consensus among the States as well as between the Centre and the States in the field of education through a process of discussion, consultation and persuasion?

Q.11.4 Do you discern any difficulty in the operation of the Constitutional provisions under Articles 29 and 30 which guarantee the rights of the minorities in regard to the establishment and management of denominational educational institutions? If so, what improvements would you like suggest?

Q.11.5 Can you give any other specific instances of conflicts or issues between the Centre and the States in regard to programmes of educational development and suggestions for resolution of these issues ?

Inter-Governmental Co-ordination

Q.12.1 In U.S.A. the Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American Federal system and to recommend improvements. As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system.

Do you think it would be useful to set up such an institution in our country which would promptly deal with many of the irritations and problems which arise with regard to Centre-State relations in India? If so, please elaborate as to what should be the role and composition of such a body.

Agriculture

Q.9.1 While agriculture, including agricultural education and research, is in the State List (Entry 14, Seventh Schedule), through several Entries in the Union List and particularly those in the Concurrent List of the Seventh Schedule, the Constitution provides a large scope for Central initiative in agricultural matters. The study team of the Administrative Reforms Commission on Centre-State relations (1967), while examining the scope of Entry 14 in the State List, had observed "It appears to us that agriculture should be treated as a State subject and that, in all matters of the scope of the distribution of responsibility for substantive activity should not be permissible".

How far has this position changed since 1967? To what extent would you go with the above view points?

Q.9.2 Examining the Centre-State relations in agricultural development, the National Commission on Agriculture (1976) had recommended that a long term perspective be developed in which the Central and Centrally sponsored schemes being implemented through the State agency ultimately form a part of the State sector and that their number should be kept to the minimum.

Would you agree with this view, and if so, for what reasons? Are you advocating any alternative suggestions in this respect?

Q.9.3 The National Commission on Agriculture (1976) had also suggested (i) that the States should be actively associated with the formulation of the Central and Centrally sponsored sectors of the agricultural plan through joint working groups and (ii) that there should be a continuous dialogue between the Central and the State Planning Groups to ensure that adjustments effected in the plan on account of resources constraints are within the general acceptance of the States and their appreciation of priorities of programmes and implementing capacity.

To what extent do you think effective cooperation exists between the Centre and the States on the above aspects? What improvements, if any, would you like to suggest?

Q.9.4 How far and with what implications Union Government's initiative affects the States with respect to (a) fixation of minimum of fair prices of agricultural produce, (b) irrigation (including non-Plan expenses), (c) provision of essential inputs including credit and (d) forestry policy and administration?

If you find any serious problems in Centre-State relations in these respects, what improvements, if any, would you like to suggest?

Q.9.5 Do you find any problem in the sphere of Centre-State relations with regard to the role of agricultural research (e.g. Indian Council for Agricultural Research), and financial institutions (e.g. National Bank for Agriculture and Rural Development (NABARD))? What suggestions, if any, would you like to give in this respect?

Food & Civil Supplies

Q.10.1 Do you think that the present arrangement for Centre-State cooperation is consistent with the actual responsibilities of the State Governments, or there is scope for improving Centre-State relations in the sphere of procurement, storage, movement, and distribution of foodgrains and other essential commodities? Please give specific suggestions.

Q.10.2 Do you think that the arrangements under the Essential Commodities Act and the Sugar Cane (Control) Act [illegible] or separate rules need to be reviewed? If so, what arrangements would you suggest in this regard?

Fisheries

Q.11.1 Some States have expressed the view that deep-sea fishing [illegible] within the territorial waters [illegible] of the State. [illegible]

Q.11.2 Have you any suggestions [illegible] of the University Grants Commission [illegible] affecting financial assistance?

Q.11.3 What regulation would you [illegible] the Central and the States [illegible] through development of [illegible] programmes?

Q.11.4 Do you consider any [illegible] of the Constitutional provisions [illegible] as to ensure the right [illegible] in regard to the establishment [illegible] of [illegible] local [illegible] so as to [illegible] suggest?

Q.11.5 Can you give any specific instances of conflict of interest between the Centre and the States in regard to procurement of [illegible] and the separate and suggestions for [illegible] the same?

Inter-governmental Coordination

Q.12.1 In U.S.A. the Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. As a permanent body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce more efficient cooperation among the levels of government and more effective functioning of the federal system.

Do you think it would be useful to set up such a similar body in India? What would generally be its [illegible] and functions [illegible] and problems [illegible] to be referred to [illegible] in India? If so, please give the details of what should be the composition of such a body.

SUPPLEMENTARY QUESTIONNAIRES NOS. 1 to 10 ON DIFFERENT TOPICS ISSUED TO THOSE CONCERNED WITH THE SUBJECTS

COMMISSION ON CENTRE STATE RELATIONS

Supplementary Questionnaire No.1

(FOR CENTRAL GOVT.)

1. A study conducted by the IIPA in February 1984 on 'Small Scale Sector & Big Business' has pointed out that the reservations of certain categories of industries have been circumvented by large industrial houses. Do you agree with this conclusion? Will you please enumerate the legislative and administrative arrangements for preventing entry of big business houses in the reserved areas ?

2. Kindly give a brief note indicating the number of units in the Small Sector which have come up during the last five years and the investment involved in the reserved area and one non-reserved area.

3. What are the present arrangements for consultation with the State Governments for augmenting the schedules under the IDRA Act? Have you received any communication from any State Government pointing out the need for improving the arrangements and for periodic review ? Do you think there is such a need ?

4. One of the complaints frequently made in the field of industries is that of excessive centralisation and inordinate delay in clearance of cases. Please comment ? Can you broadly indicate in what proportion of cases the clearance is delayed due to various reasons including the procedure. Please give details of a few cases.

5. It has been reported in the press that a few State Governments are trying to circumvent the policy on MRTP by entering into joint ventures with the large/big business houses etc. in certain spheres. To what extent this is true and what are the implications of such practices ?

Supplementary Questionnaire No. 2

(FOR STATE GOVTS.)

Industry

1. The First Schedule to the Industrial Development and Regulation Act enables the Union Government 'to take under its control' the industries specified therein particularly the larger units. There is a viewpoint that this arrangement is essential for effecting desired regulation over the setting up or expansion of such industries. On the other hand, views have been expressed to the effect that regulation of industries in its different aspects should be done by evolving separate arrangements.

   What is your opinion on the above view point ? What concrete arrangements would you suggest for regulation of industries, if different from the present system ?

2. **One of the objectives of industrial regulation is to reserve certain categories of industries for the Small Scale Sector. It is held by many that this requires uniform legislation covering the entire country for which a centralised legislation is desirable. The alternative to this could be that each State Government separately legislates on the subject but it may lead to variations in the list of industries and the qualifying amount from State to State.**

   Which of the above two approaches would you favour and for what reasons ? If you have any other alternative to suggest, please specify.

3. What is the role of the State Governments in promoting the growth of Small and Medium Industries? Do you think there is scope for an expanded role for the States ? If so, please indicate how this can be achieved ?

4. Do you agree that the reservation of some of the listed items in Schedule I for Small Scale Sectors is in conformity with your State Government's Policies to promote the growth of Small Scale Sectors ? Do you feel any of the items reserved for Small Scale Sector should be removed from the List ? If so why ?

5. Some experts have commented that the Centre has virtually converted 'industries' which is 'essentially a State subject' into a Central subject by virtue of entry 52 of List-I. Do you agree with this view ? If so would you kindly specify the area of encroachment(s) alongwith the legislation and relevant sections in the legislation causing the encroachment ?

6. Do you agree with the industrial policy resolutions announced from time to time ? What according to you would be the best way of drawing a balance between a uniform national policy and adequate power of the State in accordance with the interest of the Constitution ?

7. A view has been expressed that although industries is a State subject, in formulating industrial policy, adequate consultations between the Centre and the States do not take place. To what extent do you agree with this view-point ? Do you have any suggestion to improve the present system ?

8. Do the provisions and working of the Monopolies and Restrictive Trade Practices (MRTP) Act in any way affect the industrial development of the States ? If so, please specify in what manner, would you like to suggest any improvement in this regard ?

Supplementry Questionnaire No. 3

INTER-STATE RIVER WATER DISPUTES

1. Whether bodies like Damodar Valley Corporation (DVC), Bhakra-Beas Management Board (BBMB), set up under specific Acts are an effective way of

management of inter-state river water and river valleys ? If so, whether the Central Government, (Ministry of Irrigation and Power) have any plan to use the provisions of the River Boards Act, 1956 ?

2. There has been adverse criticism about the inordinate delay in referring the Inter-State River Water disputes to the Tribunal under Section 4 of the Inter-State River Water Disputes Act. The Study Team of the Administrative Reforms Commission on Centre-State Relations has, therefore, suggested that there should be a mandatory time-limit within which, after an application under Section-3 is received from a State Government, the dispute must be referred to a Tribunal by the Central Government. It has been suggested that this should be incorporated in the Inter-State River Water Disputes Act, 1956 by an amendment thereof. What are your views in this respect ?

3. It has been suggested that the Tribunal's awards should by law be required to be given within a period of 3 years. This also will require an amendment of the River Water Disputes Act. What are your views in this respect ?

4. It has been suggested that Section 11 may be amended to enable the aggrieved State or States to approach the Supreme Court for the enforcement of the duty enjoined on the Central Government to constitute the Tribunal and refer the dispute to it, in case no tribunal is set up within the mandatory time-limit suggested in Q. 2. What are your views in regard to this suggestion ?

5. One of the difficulties in the expeditious disposal of Inter-State River Water disputes by the Tribunal may be the lack of availability of data, or, delay in supply of the data by the State Governments. It has been, therefore, suggested by some experts that if the State Governments do not provide necessary data in time, the Tribunal may proceed to give its award on best-judgement basis making use of the existing data before it. This will require building up of necessay data base in respect of the existing Inter-State Rivers and river valleys. At present, Central Water Commission has some arrangements to collect data of the waters of such Inter-State rivers and river valleys. Institutional arrangements should be strengthened to collect this data from the major rivers and to ensure their regular review and up-dating :

(a) What are the present arrangements for collection of data in this respect ?

(b) Does the Central Water Commission have its own arrangements for such data collection or do they rely on data supplied by the State Government ?

(c) Is any separate institutional arrangement is necessary for this purpose ?

6. Have you any improvements to suggest in the existing arrangements between the Union and the States, which would ensure not only equitable distribution of river waters between the States concerned but also their optimum use for the wider national interest ?

Supplementary Questionnaire No. 4

QUESTIONNAIRE ON A GOVERNOR'S DISCRETIONARY POWERS UNDER ARTICLES 163 & 200

I—Statement of Broad Issues

This Questionnaire seeks to elicit views on the discretionary powers of the Governor under Article 163 of the Constitution and in particular on his discretion in reserving Bills for the consideration of the President under Article 200.

2. The discretionary power of the Governor to reserve Bills passed by the State Legislature for the consideration of the President, and the extent and manner of the exercise of that discretion have been questioned. Delays sometimes occur at the level of the Government of India in conveying President's assent or withholding of assent to Bills so reserved. The broad issues therefore are :—

(i) the scope of a Governor's discretionary power under Article 163;

(ii) the scope of the discretionary power of a Governor to reserve a Bill under Article 200 for the consideration of the President ;

(iii) the principles/norms/considerations that should govern the exercise of discretionary power particularly in reserving Bills for President's consideration; and

(iv) the advisability of prescribing time-limit within which a Governor and the President should take one of the other steps specified in Articles 200 and 201 respectively.

3. In the following paragraphs an attempt has been made to give a brief description of how articles 163 and 200 came to be adopted by the Constituent Assembly and background information on these and other Articles of the Constitution which have been taken into account while framing the Questions.

II—Background

4. **Views of Constitution framers Art. 163.**—When Clause 143 of the Draft Constitution (as Article 163 then was) was under discussion in the Constituent Assembly, Shri H.V. Kamath moved an amendment for deletion from this Article the words "except in so far as he is by or under this Constitution required to exercise his function, or any of them in his discretion". and consequent deletion of sub-clause (ii), (which corresponds to clause (2) of the present Article giving a definitive power to the Governor to decide the question, if any raised. whether any matter is or is not one as respects which he is by or under the Constitution required to act in his discretion).

5. The proposed amendment was vigorously supported by Dr. H.N. Kunzru, Prof. Shibban Lal Saksena, Shri H.V. Pataskar and Shri Rohini Kumar Chaudhuri. The focal point of their criticism was that the wide phraseology in which Clause 143 was couched, gave the Governor a general power to choose in his discretion, whether or not in the performance of any of his functions he had to solicit, abide by or overrule the advice of his Council of Ministers. [*vide* extracts in Appendix A (i)].

6. **In concurrence with Shri T.T. Krishnamachari and Shri Alladi Krishnaswami (who opposed the amendment) Dr. Ambedkar tried to dispel the apprehensions of Dr. Kunzru and others by giving this interpretation about the use and scope of Clause 143 : "This Clause is a very limited clause, it says except in so far as he is by or under this Constitution.** Therefore, article 143 will have to be read in conjunction with such other articles which *specifically* reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his Ministers in any matter in which he finds he ought to disregard (emphasis added). [For fuller extracts, see Appendix A (ii)].

7. **Present position—Discretion of Governors.**—Whatever might have been the views of the framers of the Constitution, it would appear from a plain reading of Article 163 that clauses (1) and (2) of the Article confer on the Governor the general power to exercise discretion in respect of any of the functions entrusted to him by the Constitution. The expression "by or under the Constitution" in clause (1) can be taken as covering all situations in which the power to exercise discretion is either expressly mentioned or necessarily implied in the relevant Articles. Further, a decision of the Governor to act in his discretion in a particular situation is protected from being questioned by any court or other authority by clause (2).

8. In practice, situations have arisen and will arise in which a Governor may necessarily have to exercise his discretion even though there may be no express provision to that effect in the relevant Articles. Thus, there may be no Council of Ministers duly responsible to the Legislative Assembly to advise him; or, the advice given by the Council of Ministers cannot be reconciled with the course of action which, in the opinion of the Governor, should be adopted in view of his responsibility either to the Centre under the Constitution or to the Constitution itself which in accordance with his oath of office he is required to preserve, protect and defend.

The following are some examples :

(a) appointment of a Chief Minister [Article 164(1)] when no single party has a clear majority;

(b) dissolution of the Legislative Assembly [174 (2) (b)] when no stable Ministry can be formed;

(c) reserving a State Bill for the consideration of the President (Article 200); and

(d) reporting to the President that the Government of a State cannot be carried on in accordance with the provisions of the Constitution [Article 356(1)].

9. **Art. 200**—The substantive part of Article 200, when it was considered by the Constituent Assembly, carried the same wording as it does now. The Draft Article had only one Proviso corresponding to the First Proviso to the present Article 200. It empowered the Governor on a Bill being presented to him for assent, to return it *in his discretion* with a message to the Assembly for reconsideration. Dr. B.R. Ambedkar moved an amendment substituting a new proviso (*viz.* the present First Proviso to Article 200) in which *inter alia* the words "in his discretion" did not find a place. This was done in pursuance of a decision taken by the Special Committee of the Constituent Assembly to remove all references to discretionary powers of the Governor from the Draft Constitution. Dr. Ambedkar explained that in a responsible Government there could be no room for a Governor to act in his discretion. The amendment was adopted. The provisions of Article 163 were apparently lost sight of.

10. The Second Proviso to Article 200 owes its origin to Schedule IV of the Draft Constitution which contained Instruments of Instructions for the Governor. The Constituent Assembly deleted the Schedule but retained the provision which required the Governor to reserve a Bill for the consideration of the President, if in his opinion the Bill would have the effect of endangering the position of the High Court. The rationale for this was that it was essential to give this power to the President (of halting such legislation) in order to maintain an important institution like the High Court.

11. **Assent to Bills.**—When a Bill passed by the State Legislature is presented to the Governor, Article 200 gives him the following alternatives :—

(i) Assent to the Bill;

(ii) Withhold assent from the Bill;

(iii) Return the Bill, if it is not a Money Bill to the Legislature for reconsideration alongwith a message ;

(iv) Reserve the Bill for the consideration of the President.

12. **Distribution of Legislative powers.**—The alternative in Article 200 of reserving a Bill for the consideration of the President if that Bill is on a State List subject, has to be viewed in the context of the conferment of Legislative powers by Article 245 and their distribution between the Union and the States under Article 246 and Seventh Schedule. Article 246(3) gives exclusive power to the State Legislature to make laws in respect of matters in the State List. This is subject to :—

(i) the rule (a) that in case of an irreconcilable conflict and overlapping between Union and State powers, the Union power as enumerated in List-I shall, to the extent of the conflict, prevail over the State powers enumerated in Lists II and III ; (b) that in the *Concurrent* sphere in the event of repugnancy between a State Law and a law made by Parliament, the latter shall, to the extent of the repugnancy, prevail,

(ii) the limitations in other provisions of the Constitution *e. g.* Arts. 249, 250, 252, 253, 353, 357 etc.

13. **Bills to be reserved for President's consideration.**—Bills on States List subjects fall into three categories *viz.*—

(i) Bills which must be reserved for President's consideration *viz.* those-

(a) containing provisions which would so derogate from the powers of the High

Court as to endanger the position which that court is by the Constitution designed to fill (Second Proviso to Article 200);

(b) relating to taxation in respect of water or electricity stored, generated, consumed, distributed or sold by an inter-State river or river-Valley authority established by Parliament by law [Article 288(2)]; and

(c) being Money Bills and Finance Bills in respect of which directions have been given during a financial emergency in terms of Article 360 (4) (a) (ii).

(ii) Bills which may be reserved for President's consideration and assent to immunise them against challenge on the ground of Article 14 or Article 19 or to otherwise ensure their constitutional validity *viz.* those

(a) providing for acquisition of estates etc. (First Proviso to Article 31 A);

(b) giving effect to Directive Principle of State Policy (proviso to Article 31 C); and

(c) legislation imposing restrictions on trade and commerce and intercourse among States, when the necessary previous sanction of the President was not obtained. (Proviso to Article 304(b) read with Article 255).

(iii) Bills other than those failing under (i) and (ii) above *e.g.* under Article 254(2).

14. **Responsibilities of a Governor.**—The Governor is the Constitutional head of the State. But it may not be possible for him to follow invariably, as the President is required to do under Article 74, the convention in a parliamentary system of government of acting only on the advice of his Council of Ministers. As explained in paras 7 & 8 above, he may be required to exercise certain functions in his discretion.

15. The need for over-rulling the advice of his Council of Ministers arises mainly because of the Governors responsibility as Head of State and responsibility to the President and to the Constitution. Thus under Article 356, he has to report to the President if a situation arises in which the Government of the States cannot be carried on in accordance with the provisions of the Constitution. Certain Governors have special responsibilities vide Articles 371, 371A, 371C, and 371 F. The oath or affirmation of the Governor under Article 159 which requires him to preserve, protect and defend the Constitution provides him an overall guideline in deciding whether or not to act in his discretion in a particular situation.

III—Questionnaire

1. (i) Keeping in mind the above background viz., all that was said in the Constituent Assembly in regard to the deletion or retention of the mention of the discretionary power in Article 163. Can this language of the Article, in your opinion, reasonably be construed as vesting the Governor with discretionary power of a general nature to be exercised in respect of any one or more of the functions assigned to him under the Constitution ? Does the expression "by or under the Constitution" in clause (1) read with clause (2) of the Article lend itself to this interpretation ?

(ii) Does the explanation-cum-interpretation, as to the above scope of clause (1) of Article 163 given by the Constitution-makers (S/Shri B. R. Ambedkar, T.T. Krishnamachari and A. K. Ayyar) hold good ? In other words, is the scope of the phrase "by or under the Constitution" in this Article, limited to those functions of the Governor in the performance of which he is *specifically* required by any provision of the Constitution *to act in his discretion* ?

(iii) If you agree with the aforesaid interpretation expounded by the Constitution-makers, could you identify such provisions which specifically reserve discretionary power to the Governor and read in conjunction with Article 163, have the effect of limiting its scope ?

(iv) Will the phrase "by or under this Constitution", occurring twice in Article 163, referentially take in those provisions of the Constitution also, which not expressly but by necessary implication require the Governor to discharge his functions or any of them in his discretion ? If so, could you identify those provisions ?

(v) If you agree with the suggsetion posed in the preceding question, would, you include among others, the following constitutional provisions, as requiring the Governor, by *necessary implication* to exercise his functions or any of them in his discretion *normally* or in extraordinary situation ?

(a) Article 164 under which the Governor is vested with the power to appoint the Chief Minister and dismiss the Ministers as they "held office at the pleasure of the Governor".

(b) Article 167 which gives the Governor the right to be informed of all dicisions of the Council of Ministers relating to administration and all proposals for legislation, to call for information relating to administration and legislation, and to require that any matter on which a decision has been taken by a Minister alone should be submitted for the consideration of the Council of Ministers.

(c) Article 174 which gives the Governor the power to summon, prorogue the House or Houses of Legislature of the State and to dissolve its Legislative Assembly.

(d) Article 175—Right of Governor to address and send messages to the House.

(e) Article 200 which gives the Governor the power to assent to a Bill, withhold assent therefrom or return it for reconsideration, or reserve it for the consideration of the President.

(f) Articles 355 and 356 (1) read together-giving the Governor the power to report to the President *i.e.* the Union Government as to whether or not the Government of the State is being carried on in accordance with the Constitution.

(vi) If a Ministry resigns and declines to stay in office till another is formed or till President's rule is proclaimed, is the Governor empowered under Article 163(2) to decide that the various executive functions will be exercised by him in his discretion witinhout the advice of a Ministry ?

2. (i) On the assumption that you agree with the suggestion posed in Q.1 (iv), is it not desirable in your opinion to circumscribe that discretionary power which he may claim by implication on his own decision under Article 163 read with other relevant Articles of the Constitution ? If so, in what manner ? Should it be done by making the necessary changes in Article 163 or/and other relevant provisions of the Constitution so that little is left to the Governor to imply, assume and decide that he would exercise any of his functions, under the Constitution in his discretion ?

OR

(ii) Would you like merely to regulate such discretionary power of the Governor by laying down broad principles ? If so, in what manner ? Should it be done by incorporating those principles in the Constitution itself, or in any instrument issued under the authority of the Constitution ?

(iii) A Governor's oath of office under Article 159 binds him to "preserve, protect and defend the Constitution and the law". Does this Article read with Article 163 allow a Governor to exercise his discretion in any matter where the advice of his Ministry appears to him to go against the Constitution or the law ?

3. (i) Whether under Article 163 read with Article 200, in choosing one of the alternatives available thereunder when a Bill is presented to him for assent, the Governor has (without or against the advice of the Council of Ministers) any discretionary power to reserve it for consideration of the President ?

(ii) Can the discretion of the Governor, if any, to reserve a Bill under Article 200 for the consideration of the President he spelled out from the responsibility cast on him directly or by necessary implication by or under Article 159, 355 and 356, the constitutionality of which, in his opinion, is —

(a) merely doubtful or debatable ; or

(b) patent on the face of it; or

(c) which is manifestly against the National interest or harmful to the unity and integrity of the country as a whole ?

The views expressed by some experts on this point are summarised in Appendix 'B'.

(iii) If the answer to the preceding question (i) be in the positive, is such discretion untrammelled? If not, what principles/ norms/ considerations should govern the exercise of this discretionary power, particularly in reserving Bills passed by the State Legislature for President's consideration ?

(iv) Will it be expedient to specify such principles/ norms/considerations in or in any instrument issued under the authority of the Constitution ?

(v) Whether any time-limit be specified in Articles 200 and 201 within which the Governor and the President shall exercise their respective powers, failing which the Bill shall be deemed to have been asserted to ? If so, what those limits should be ?

(vi) When a State Bill is returned by the President through the Governor for reconsideration as provided in the Proviso to Article 201, and the Bill, after it is passed by the Legislature with or without amendment, is again presented to the President for his consideration, should it not be laid down (on the analogy of the First Provision to Article 200) that the President shall not withhold assent ?

4. (i) When State Bills referred to in Article 31A or 31C are reserved for the consideration of the President and receive his assent, they cannot be challenged on the ground that they contravene Article 14 or 19. It may happen that the State Council of Ministers from the opinion that it is not necessary for the Bill to seek immunity from challenge on the ground of Article 14 or 19 and advise accordingly the Governor to accord his assent thereto and not reserve it for the consideration of the President. Should the Governor in such a situation, after overruling the advice of the Council of Ministers, reserve the same in the exercise of his descretion for the consideration of the President ?

(ii) If a Bill passed by the Legislature of a State relating to trade, commerce and intercourse amongst States is presented to the Governor for assent on the advice of the Council of Ministers would the Governor be justified in the exercise of his discretion to withhold his assent and reserve it for the consideration of the President on the ground that the previous sanction of the President was necessary for its introduction in the State Legislature under the Proviso to Article 304 (1) ?

(iii) A Bill which has received the sanction of the President in terms of the Proviso to Article 304(b) is passed by the State Legislature with amendments which, in the Governor's view, place restrictions on the freedom of trade, commerce and intercourse which cannot be considered as reasonable in the public interest. Can the Governor in the exercise of his discretion reserve such a Bill for the consideration of the President ?

(iv) If the in-built policy of a State Bill passed by the State Legislature with respect *to any of the matters in the State List* (*List II*) is at variance with the policy laid down in a Union law, should the Governor reserve such a Bill in the exercise of his discretion for the consideration of the President on the ground that, in his opinion, it appears to infringe the policy of the law made by Parliament ?

(v) If in the above case, the Policy of the Union is not incorporated in any Union Law but is being pursued in implementation of an executive order of the Central Government, will it be proper for the Governor to reserve such a State Bill [relating to a matter in List II] in the exercise of his discretion for the consideration of the President on the ground that, in his opinion, it is at variance with the Union Policy ?

(vi) In view of Article 254, will it be proper for the Governor to reserve a Bill passed by the State Legislature for the consideration of the President merely because, in his opinion, it is repugnant to or may be in conflict with an existing Central Law or a Bill pending for legislation before Parliament ?

(vii) Assuming that the Governor has a discretion in reserving Bills for the consideration of the President, is he competent under the Constitution to reserve indiscriminately all State Bills for the consideration of the President merely on the ground that they relate to matters mentioned in the Concurrent List (List III)?

(viii) If a Bill on a State List subject is reserved by the Governor for the consideration of the President on the ground that it infringes some provision of the Constitution or some Central statute or some policy laid down in a Union statute, will it be proper for the President to require the State Government to make modifications in the Bill which would require a substantial change in the Policy underlying the State Bill ? In such a case, will the entire procedure of reserving such a Bill for the consideration of the President and the President's assent to the Bill being made conditional on certain Policy changes being made by the State Government amount to an encroachment by the Union on the field of legislation set apart by the Constitution for the State ?

5. (i) When a State Bill is reserved by the Governor for the consideration of the President on the ground that it infringes some provision of the Constitution or that in the opinion of the Governor so derogates from the powers of the High Court as to endanger its position, is the Union Executive the appropriate authority to decide on the nature and extent of repugnancy or unconstitutionality of the Bill ?

(ii) For the above purpose, should the Union Council of Ministers advise the President to refer the Bill to the Supreme Court under Article 143 and act in accordance with such opinion as that Court may give ?

(iii) Should the Union Executive or the Supreme Court, as the case may be, examine the entire Bill on only those provisions of the Bill which are in question ?

APPENDIX-A(i)

Shri H. V. Kamath's amendment in constituent Assembly to draft Article 143 – Extract of speeches of Shri Kamath and other Members who supported the amendment

SHRI H. V. KAMATH (C.P. & Berar : General) : Mr. President, Sir, I move : "That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in this discretion' be deleted.".

If this amendment were accepted by the House, this clause of article 143 would read thus :—

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the President in the exercise of his functions."

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise *vis-a-vis* his ministers, than has been given to the President in relation to his ministers. If we turn to article 61(1), we find it reads as follows :—

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governor, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to invest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

PANDIT HIRDAY NATH KUNZRU : (United Provinces : General) : Mr. Presidnet, I should like to ask Dr. Ambedkar whether it is necessary to retain after the words "that the Governor will be aided and advised by his Ministers" the words "except in regard to certain matters in respect of which he is to exercise his discretion". Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done ? The functions of the Ministers legally will be only to aid and advise the Governnor. The article in which these words occur does not lay down that the Govenor shall be guided by the advice of his ministers but it is expected that in accordance with the Constitutional practice prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

My friend Mr. T.T. Krishnamachari said that as article 188 of the Constitution empowered the Governor to disregard the advice of his Ministers and to take the administration of the province into his own hands, it was necessary that these words should be retained, *i.e.* the, discretionary power of the Governor should be retained. If however, he assured us, section 188 was deleted later, the working of article 143 could be reconsidered. I fully understand this position and appreciate it, but I should like the words that have been objected to by my Friend Mr. Kamath to be deleted. I do not personally think that any harm will be done if they are not retained and we can then consider not merely article 188 but also article 175 on their merits; but in spite of the assurance of Mr. Krishnamachari the retention of the words objected to does psychologically create the impression that the House is being asked by the Drafting Committee to commit itself in a way to a principle that it might be found undesirable to accept later on. I shall say nothing with regard to the merits of article 188. I have already briefly expressed my own views regarding it and shall have an opportunity of discussing it fully later when that article is considered by the House. But why should we, to begin with, use a phraseology that is an unpleasant reminder of the old order and that makes us feel that though it may be possible later to reverse any decision that the House may come to now, it may for all practical purposes be regarded as an accomplished fact ? I think, Sir, for these reasons that it will be better to accept the amendment of my honourable Friend Mr. Kamath, and then to discuss articles 175 and 188 on their merits.

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr. Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great Britain and the British Dominions, that the Governor or the Govenror-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Minister the duty of informing the Governor of the decisions come to by the Council of Ministers in regard to administrative matters and the legislative programme of the Government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my Friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to say that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

PROF. SHIBBAN LAL SAKSENA (United Provinces : General) : Mr. President, Sir, I heard Very carefully the speech of my honourable Friend, Mr. Krishnamachari, and his arguments for the retention of the words which Mr. Kamath wants to omit. If the Governor were an elected Governor, I could have understood that he should have these discretionary powers. But now we are having nominated Governors who will function during the pleasure of the President, and I do not think such persons should be given the powers which are contemplated in section 188.

Then, if article 188 is yet to be discussed and it may well be rejected—then it is not proper to give these powers in this article before hand. If article 188 is passed, then we may reconsider this article and add this clause if it is necessary. We must not anticipate that we shall pass article 188, after all that has been said in the House about the powers of the Governor.

These words are a reminder of the humiliating past. I am afraid that if these words are retained, some Governor may try to imitate the Governors of the past and quote them as precedents, that this is how the Governor on such and such an occasion acted in his discretion. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; and no less a person than the Honourable Pandit Govind Ballabh Pant had given notice of the amendment which Mr. Kamath has moved. I think the wisdom of Pandit Pant should be sufficient guarantee that this amendment be acceped,

It is just possible that article 188 may not be passed by this House. If there is an emergency, the Premier of the province himself will come forward to request the Governor that an emergency should be declared, and the aid of the Centre should be obtained to meet the emergency. Why should the Governor declare an emergency over the head of the Premier of the Province? We should see that the premier and the Governor of a Province are not at logger heads on such an occasion. A siutation should not be allowed to arise when the Premier says that he must carry on the Government, and yet the Governor declares an emergency over his head and inspite of his protestations. This will make the Premier absolutely important. I think a mischievous Governor may even try to create such a situation if he so decides, or if the President wants him to do so in a province when a party opposite to that in power at the Centre is in power. I think article 188, even if it is to be retained should be so modified that the emergency should be declared by the Governor on the advice of the Premier of the Province. I suggest to Dr. Ambedkar that these words should not find a place in this article, and as consequential amendment, sub-section (ii) of this article should also be deleted.

SHRI H. V. KAMATH : Sir, on a point of clarification, Sir, may I know why it is that though emergency powers have been conferred on the President by the Constitution no less than on Governors, perhaps more so, discretionary powers as such have not been vested in the President but only in Governors?

SHRI H. V. PATASKAR (Bombay : General) : Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised whether the Governor is to be merely a figure-head, whether he is to be a constiturional head only or whether he is to have discretionary powers. To my mind the question should be looked at from an entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the powers and functions of a Governor. It only says :

"There shall be a Council of Ministers with the Chief Minister at the head to aid an advise the Governor in the exercise of his functions."

Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor ? In my view article 188 is probably necessary and I do not mean to suggest for a moment that the Governor's powers to act in an emergency which powers are given under article 188, should not there. My point is this, whether if this provision, *viz.*, "except in so far as he is by or under this Constitution required to excercise his functions or any of them in this discretion is not there, is it going to affect the powers that are going to be given to him to act in this discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer Mr. Alladi Krishnaswami Ayyar, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say 'Notwithstanding anything contained in article 143". In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision in article 188 by saying "Notwithstanding anything contained in article 143", it looks so obnoxious to keep these wordes here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the Governor and his functions, by telling them that they shall not give any aid or any advice in so for as he. the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtsey and politeness. Therefore, I think the question should be considered in that way. The question is not whether we are going to give discretionary powers to the Governor or not. The question is not whether he is to be merely a figurehead or otherwise. These are questions to be debated at their proper time and place. When we are considering article 143 which defines the functions of the Chief Minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

SHRI ROHINI KUMAR CHAUDHURI (Assam : General) : I rise to speak more in quest of clarification amd enlightenment than out of any ambition to make a valuable contribution to this debate.

Sir, one point which largely influenced this House in accepting the article which provided for having nominated Governors was that the Honourable Dr. Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the honourable Dr. Ambedkar now, whether any person who has the right to act in his discretion can be said to be a more symbol. I am told that this provision for nominated governorship was made on the model of the British Constitution. I would like to ask Dr. Ambedkar if his Majesty the King of England acts in his discretion in any matter. I am told- I may perhaps be wrong - that his Majesty has no discretion even in the matter of the selection of this bride. That is always done for him by the Prime Minister of England.

Sir, I know to my cost and to the cost of my Province what 'acting by the Governor in the exercise of his discretion' means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers- Mr. Allah Bux. Sir if inspite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget.

We have always thought that it is better to be governed by the will of the people than to be governed by the will of a single person who nominates the Governor who could act in his discretion. If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork. Furthermore, as the article says, whenever the Governor thinks that he is acting in his discretion nowhere can be questioned. There may be a dispute between the Ministers and the Governor about the competence of the former to advice the Governor; the Governor's voice would prevail and the voice of the Ministers would count for nothing. Should we in this age countenance such a state of affairs? Should we take more than a minute to dismiss the idea of having a Governor acting in the exercise of his discretion? It may be said that this matter may be considered hereafter. But I feel that when once we agree to his provision, it would not take long for us to realise that we have made a mistake. Why should that be so? Is there any room for doubt in this matter? Is there any room for thinking that anyone in this country not to speak of the members of the legislature, will ever countenance the idea of giving the power to the Governor nominated by a single person to act in the exercise of his discretion? I would submit, Sir if my promise is correct, we should not waste a single moment in discarding the provision which can power the Governer to act in his discretion.

I also find in the last clause of this article that the question as to what advice was given by a Minister should not be enquired into in any count. I only want to make myself clear on this point. There are two functions to be discharged by Governor. In one case he has to act on the advice of the Ministers, and in the other case he has to act in the exercise of his discretion. Will the Ministry be competent to advise the Governor in matters where he can exercise his discretion? If I remember aright, in 1937 when there was a controversy over this matter whether Ministers would be competent to advise the Governor in matters where the Governor could use his discretion, it was understood that Ministers would be competent to advise the Governor in the exercise of his discretion also and if the Governor did not accept their advice, the Ministers were at liberty to say what advice they gave. I do not know what is the intention at present. There may be cases where the Ministers are competent to give advice to the Governor but the Governor does not accept their advice and does something which is unpopular. A Governor who is nominated by the Centre can afford to be unpopular in the province where he is acting as Governor. He may be

nervous about public opinion if he serves in his own province but he may not care about the public opinion in a province where he is only acting. Suppose a Governor, instead of acting on the advice of his Ministers, acts in a different way. If the Ministers are criticised for anything the Governor does on his own, and the Ministers want to prosecute a party for such criticism, would not the Ministers have the right to say that they advised the Governor to act in a certain way but that the Governor acted in a different way? Why should we not allow the Ministers the liberty to prosecute a paper, a scurrilous paper, a misinformed paper, which indulged in such criticism of the Ministers? Why should not the Ministers be allowed to say before a court what advice they gave to the Governor? I would say, Sir—and I may be excused for saying so—that the best that can be said in favour of this article is that it is a close limitation of a similar provision in the Government of India Act, 1935, which many Members of this House said, when it was published, that they would not touch even with a pair of tongues.

PANDIT HIRDAY NATH KUNZRU : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

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APPENDIX-A(ii)

Shri H. V. Kamath's Amendment in Constituent Assembly to Draft Article 143—Extracts of Speeches of Members who opposed the Amendment.

SHRI T. T. KRISHNAMACHARI : Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion respective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appropriate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivable do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. It is to be given in the article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception in article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point that I would like to draw the attention of the House to and I think the article had better be passed as it is.

SHRI ALLADI KRISHNASWAMI AYYAR (Madras : General) : Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143, namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in this discretion." So long as there are articles in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

The only other question is whether first to make a provision in article 143 that the Governor shall act on ministerial responsibility and then to go on providing "Notwithstanding anything contained in article 143....he can do this" or "Notwithstanding anything contained in article 143 he can act in his discretion." I should think it is a much better method of drafting to provide in article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his dicretion. If of course the House comes to the conclusion that in no case shall the Governor act in his discretion, that he shall in every case act only on ministerial responsibility, then there will be a consequential change in this article. That is, after those articles are considered and passed it will be quite open to the House to delete the later part of article 143 as being consequential on the decision come to by the House on the later articles. But, as it is, this is perfectly in order and I do not think any change is warranted in the language of article 143. It will be cumbrous to say at the opening of each articles "Notwithstanding anything contained in article 143 the Governor can act on his own responsibility".

The Honourable Dr. B. R. AMBEDKAR : Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in or the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to take up the point because on this point I can very well satisfy the House by reference to the provisions in the Constitution of Canada and the Constitution of Australia. I do not think anybody in this House would dispute that the Canadian system of Government, is not fully responsible system of Government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

"Section 55—Where a Bill passed by the Houses of Parliament in presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to the provisions of this Act, either assent thereto in the Queen's name, or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

PANDIT HIRDAY NATH KUNZRU : May I ask Dr. Ambedkar when the British North America Act was passed?

The Honourable DR. B. R. AMBEDKAR : That does not matter at all The date of the Act does not matter.

SHRI H. V. KAMATH : Nearly a century ago !

THE HONOURABLE DR. B. R. AMBEDKAR : This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government. If they had felt that this provision was not compatible with responsible government, they had even today, as Dominions, the fullest right to abrogate this provision. They have not done so. Therefore in reply to Pandit Kunzru I can very well say that the Canadians and the Australians do not think that such a provision is an infringement of responsible government.

SHRI LOKNATH MISRA (Orissa : General) : On a point to order, Sir, are we going to have the status of Canada or Australia? Or are we going to have a Republican Constitution?

THE HONOURABLE DR. B. R. AMBEDKAR : I could not follow what he said. If as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgement, necessary. The only question that arises is.

PANDIT HIRDAY NATH KUNZRU : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

THE HONOURABLE DR. B. R. AMBEDKAR : I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution", those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretion ry power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143 "that except as provided in articles so and so specifically mentioned—articles 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning the some manner that the Governor shall have discretion.

Now, the matter which seems to find some kind of favour with my honourable friend, Pandit Kunzru and those who have spoken in the same way in that the words should be omitted from here and should be transferred some-where else or that the specific articles should be mentioned in Article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities or other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

SHRI H. V. KAMATH : Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article?

THE HONOURABLE DR. B. R. AMBEDKAR : Of course, there is, because we do not want to vast the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act insubordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

APPENDIX B

Views of some Experts on the discretion of the Governor to Reserve A Bill under Article 200 for the Consideration of the President.

M.C. SETALVAD

"A very unusual feature of the Indian Constitution is the control which the Constitution enables the Union Executive to exercise over legislation passed by the State Legislature. Under Article 200 of the Constitution a Bill passed by the Legislature of a State consisting of one or two Houses, as the case may be, has to be presented to the Governor for his assent; and it is provided that "the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President".

"Apart from the discretionary power of the Governor to reserve a State Bill for the consideration of the President contained in Article 200, there are certain other provisions in the Constitution which require either that Bills on certain State subjects shall not be introduced in the Legislative Assembly of the State without the previous sanction of the President, or that certain legislation, though competent to the State, must be reserved for the assent of the President in order to obtain validity.

There is no provision for the reservation of State legislation for the consideration of the National Executive either in the United States or in Australia. No d ubt, in certain Constitutions in the Commonwealth, provisions are found which empower the Governor-General to reserve the Bill for the signification of the Queen's pleasure, or which empower the Queen to disallow an Act which has been duly passed by the Parliament of a member of the Commonwealth and assented to by the Governor-General. Powers of this nature are found in the Constitutions of Canada, Australia and New Zealand. Convention has, however, established that the Queen would take no action in regard to a reserved Bill contrary to the wishes of the Government of the member of the Commonwealth concerned, and that her exercise of the power of disallowance is no longer possible. The founding fathers of the Indian Constitution seem, however, to have relied on the Canadian Constitution for the introduction of this control over State legislative power in the Constitution.

The Canadian Constitution, besides giving the power of disallowance of enactments passed by the provincial legislature to the Governor-General also provides for the reservation of provincial Bills for the signification of the pleasure of the Governor-General. A Bill so reserved does not become law unless the Governor-General has, within, one year, signified his assent. It may well be that the framers of the Canadian Constitution, having before them the working of the United States Constitution, thought it best to provide for this power in the Governor-General so that the Dominion executive may be able to control the exercise of their legislative power by the provincial legislatures and prevent its abuse by them. It appears that, in all, about 69 provincial Bills were reserved in Canada upto 1955 for the signification of the pleasure of the Governor-General, thirteen of which were assented to by him........"

"......As early as 1873, the federal authorities instructed the Lieutenant-Governor of Ontario not to reserve Bills relating solely to matters of provincial concern, and this instr. ction was repeated on many occasions to other Lieutenant-Governors The Federal Government did not consider it proper to assume responsibility in respect of matters of purely provincial concern."

"It appears from the study (made by the Indian Law Institute) that when Bills are sent to the Union Executive for the assent of the President, they are examined by the Union Government with reference to various matters, such as (a) compliance with Central statutory requirements; (b) conformity with the policies of the Central Government; (c) ultra vires the existing Central legislation; (d) constitutionality; and (e) availability of procedural safeguards to aggrieved parties. The study points out that it is a matter of doubt that a conditional assent which it has been the practice to accord is strictly in conformity with the Constitution. It points out that "the Centre may be helpless against a recalcitrant State, disregarding the direction issued or the condition imposed in an informal manner and not in strict compliance with the terms of Article 201........"

"Though the matter is not free from controversy, the better opinion seems to be that the powers vested in the Governor under Article 200 are discretionary powers. Having examined the proposed legislation, it would be for him to decide whether, as a part of the Legislature, he would assent to it. If he feels some doubt about the validity or the advisability of the course of action outlined in the Bill, he can ask the Legislature to reconsider the whole or a particular part of it. It may be that he may feel the matter to be of such importance that he should not take the responsibility of assenting to the Bill, himself, but reserve it for the consideration of the President. All these are indications that the power vested in the Governor requires him to exercise his own judgment in the matter. That judgment may be exercised from the point of view of the constitutionality of the legislation or its advisability in the interests of the State or in the larger interests of the country. These aspects emphasise the importance of the part intended to be played by the Governor as the Constitutional Head of the State".

"......This is a very debatable question. On a proper interpretation of the Article 200, it would seem that each of the three alternatives which the Governor has under Article 200 is a function to be exercised by him in his discretion. Ordinarily, a Governor would reserve a Bill for the consideration of the President only in special circumstances. He may have doubts about the constitutionality of the Bill; or he may feel that the Bill conflicts with some parliamentary legislation or that is not in consonance with the policy adopted in the matter all over the country........"

"......The Union Executive seems to have exceeded its powers under the Constitution by intimating that the President would assent to the Bills on certain alterations being made in them or on cert in conditions being satisfied.

[Shri M.C. Setalvad : pages 73 to 77 and 161 to 166, Union and State Relations (1974)]

Dr. HARI CHAND

"Then there are two articles of the Constitution, namely, articles 200 and 356 which give discretion to the Governor, if not directly at least by implication. It is argued that while reserving a Bill for the consideration of the President under Article 200, the Governor must exercise his discretion irrespective of the advice tendered to him by the Council of Ministers. Otherwise th purpose of Article 200 would be entirely defeated and it would be reduced to a dead letter.

(Dr. Hari Chand : Page 88, Constitutional Developments since Independence—Indian Law Institute).

SHRI CHANDRA PAL

"Articles 200 and 356 of the Constitution also provide discretionary powers to the Governor, not directly but by necessary implication. The Governor must use his discretion for reserving a Bill for consideration of the President under Article 200 of the Constitution irrespcetive of the advice given to him by his Council of Ministers.

(Shri Chandra Pal : Page 128, Governor's Power to appoint Chief Minister : Some recent trends and problems, Journal of the Institute of Constitutional & Parliamentary Studies, Vol-XVII).

H. M. SEERVAI

"In *K. A. Mathialagan* v. *The Governor* (A.I.R. 1973 Mad. 198 F.B.) a Full Bench of the Madras High Court held that the exception in Article 163(1) has reference only to these functions in which the Governor is expressly required to use his own discretion. In the matter of prorogation the Governor is subject to and bound by the advice of the Chief Minister when he is so authorised under allocation of Government business rules.

After the Supreme Court's decision in *Shamsher Singh's* case (A.I.R. 1974 S.C. 2192)—the proposition that the Governor is required to act in his discretion only by *express provisions* is no longer good law, for, both the judgments (of A.N. Ray, C.J. and Krishna Iyer, J.) in that case held that in some cases the Governor had power to act in his discretion as a matter of necessary implication. Again, the statement that the words "in his discretion" have the technical meaning given to them under the G.I. Act 1935, is also not good law, for the Supreme Court gave those words their plain natural meaning, namely, that where the Governor acts "in his discretion" he is not obliged to follow the advice given to him by the Council of Ministers. The Full Bench did not give weight to the language of Article 163(2) which postulates that a question might arise whether by or under the Constitution the Governor is required to act in his discretion; and Article 163(2) provides an answer by making the Governor the sole and final judge of that question, and by further providing that no action of the Governor shall be called in question on the ground that he ought or ought not to have acted in his discretion. It is submitted that in view of Article 163(2) the Court had no jurisdiction to decide whether the Governor ought or ought not to act in his discretion as rightly held by the Calcutta High Court in *M. P. Sharma's* case."

(H.M. Seeravai, Para 18.48, page 1730, Constituional Law of India, Third Edn., Vol. II).

N. A. PALKHIVALA

"The object of the "Constitution-makers" in enacting these provisions was simple and clear. While the constitutionality of any State legislation can always be challenged in a court of law, its wisdom cannot be; and, further, it is better to prevent a clearly unconstitutional measure from reaching the statute book than to have it struck down later by the court. A Governor is expected by the Constitution to reserve only such Bills for the President's assent as are patently unconstitutional or palpably against the national interest."

"The Rajamannar Committee recommended repeal of that provision of Article 201 which permits the Governor to reserve any Bill for the consideration of the President. However, this power may be usefully retained if its indiscrimanate use can be checked by some machinery, *e.g.* by providing mandatory guidelines in the Instrument of Instructions to the Governor".

(N.A. Palkhivala : Pages 12 and 13, Centre-State Relations : A Broad Perspective).

PROF. M. P. JAIN

"A general provision authorises the State Governor to reserve a Bill passed by the State Legialature for presidential consideration and assent. No norms have been laid down in the Constitution as to when the Governor can exercise this power, or when the President can refuse to give his assent to a state Bill, and on its face, it appears to be a blanket power. The Governor is a nominee of the Centre. It has not been made clear whether the Governor is to act in this matter on the advice of the state ministers or on his own responsibility. Obviously, it is difficult to think that the state ministers will give him such an advice, and, therefore, he will act either on his own initiative or on the 'dictate' of the Centre."

(Prof. M. P. Jain: Page 219 Constitutional Developments since Independence—Indian Law Institute).

DR. R. B. TIWARI

"When a Bill has been passed by the State Legislature, it is presented to the Governor for his assent under article 200 of the Constitution. The Governor has power to reserve the Bill for the consideration of the President. This he will do by using his discretion. A legislative measure which, in the opinion of the Governor, must have the approval of the Central Government, will be reserved by the Governor for the President's consideration. In the exercise of his power the Governor has to play a constructive role in federal relations."

Further the Governor is bound by virtue of second proviso to article 200 to reserve a Bill for the consideration of the President "Which in the opinion of the Governor would, if

it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this constitution designed to fill."

Thus, the Governor's opinion in such matters is very important for the purpose of upholding judicial independence and integrity which is at the base of the democratic government.

(Dr. B.R. Tewari : Page 343, the Union and the States, Editors, S. N. Jain, Subhash C. Kashyap and N. Srinivasan).

D. D. BASU

As regards the Governor's power under Article 200, obviously, it is not included in the list of his functions which are to be exercised 'in his discretion'.

Some complication is, however, introduced by the fact that there is the second Proviso to Article 200 as well as some other provisions in the Constitution, *e.g.* the 1st Proviso to Article 31A (Vol. D. pp. 350, 368) which make it *obligatory* for the Governor *not* to give his assent to a Bill, even though he may be so advised by his Ministers, but to *reserve* the Bill for consideration of the President in the specified cases. In such cases, if the Governor acts according to ministerial advice, contrary to the *Express provisions* of the Constitution, his assent would be *void*. [of. State of Bihar V. Kameswar, A. 1952 S.C. 252 (265)].

The question is whether even outside these cases, the Governor has the implied authority to withhold his assent and reserve the Bill for the consideration of the President. Ray, C.J., opined (para 56) that even in these cases the Governor would be justified to act according to 'the best of his judgment' and to 'pursue such courses which are not detrimental to the State'. It is quite possible that when different politicial parties are in power at the Union and the State levels, the Council of Ministers of a State may not like sensitive legislative measures to be forwarded to the President for acting according to the view of the Union Council of Ministers. Can the Governor, in such a situation, withhold his assent against the advice of his Council of Ministers, on the ground that such advice of Ministers, responsible to the State Legislature, would be detrimental to the national interest ? The advocates of State power would point out that the power under Art. 200 stands outside the list of discretionary powers or functions/under the Constitution as well as those express provisions which make it obligatory for the Governor to reserve a Bill for the President's consideration. Such contention deserves a fuller considration by the Supreme Court in some future case, because the *pros and cons* do not appear to have been fully examined in *Samsher case* (para 56).

From the *legal* standpoint, one thing is clear, namely, that once it is evident that the Constitution does not include the function under Article 200 within the discretionary jurisdiction of the Governor, the same view should be taken under Article 200 as under Article 111,—so that the Governor must act according to the advice of his Council of Ministers to give his assent to a Bill passed by the State Legislature, except in those cases where the Constitution itself requires him to reserve a Bill for the consideration of the President.

(D. D. Basu : pages 309-310, commentary on the Constitution of India, Volume-E, Sixth Edition).

D. D. BASU

It may be expected that the President will use his power to refuse assent to a reserved State Bill only upon the federal principle, viz., where the proposed law may be apprehended to clash with some Union Legislation or Union policy. Again, the power of refusal should be resorted to only in extreme cases where the power of return fails or may be expected to fail or where it is not quite safe to leave the constitutionality of the State law to be determined by the courts *e.g.*, where there is a patent violation of some fundamental right or unconstitutionality on some other ground upon which authoritative judicial opinion may have been already available; or a violation of the Directive Principles of State Policy as regards which annulment by the Courts is not open. Another salutary object may be the safeguarding of uniformity of legislation, *i.e.* the avoidance of unnecessary diversity in principle (as distinguished from details) between laws of different States relating to the same subject. Perhaps the President may also use his power where legislation by one State unnecessarily affects the legitimate interests of another State or its citizens.

Apart from such exceptional cases, the President should not veto laws passed by the representative Legislatures of the States, who have the primary right to determine their policies and implement them within the limits set forth by the Constitution, simply because the Union Executive does not approve of those policies, may be' owing to difference in the party complexion. If that is done, the veto power would be an instrument for transforming the federal system into a unitary one. Again, since the President, under our Constitution has no power of direct disallowance, and his power of veto relates only to reserved Bills as regard which he has also the power to return the Bill with a message for reconsideration, it is evident that the President will, in the first instance, resort to the milder alternative of return and that the power of veto will be used only if the State Legislature persists in its views and the Bill is again presented to the President in the same form, under the latter part of the Proviso to Article 201.

(D.D. Basu : Page 198, Commentary on the Constitution of India, Volume H, Sixth Edition,)

DR. S. N. JAIN

There are a large number of provisions in the Constitution through which the Central executive gets a controlling hand in State legislation.

In practice the process of giving the President's assent to State Bills involves two distinct stages : (1) Before a Bill is introduced in the State Legislature, the State sends the Bills for obtaining the administrative approval of the Union Government. This is in short is the prior approval of the Union Government, this is in short is the prior approval stage which is normally followed, though may not be required by th Constitution. (2) After the Bill is passed by the State Legislature, it is sent to the Union Government for assent. The Bills are usually sent to the Ministry of Home Affairs, Government of India, for scrutiny at both these stages. The Ministry sends the bill to the Ministry of Law and various other Ministries concerned with the subject-matter of the Bill. The Bill is examined from various angles, such as constitutionality, policy perspectives, procedural safe guards etc.

Grounds of Central scrutiny for Bills other than those received under Article 304(b)—

(a) Compliance with Central Statutory Requirements.

(b) Conformity with the policies of the Central Government.

(c) *Ultra vires* the existing Central Legislation.

(d) Examination from the point of view of constitutionality.

(e) Availability of procedural safeguards to aggrieved parties.

(Dr. S. N. Jain & Dr. Alice Jacob : pages 347 to 351, The Union and the States, Editors : S. N. Jain, Subhash C. Kashyap and N. Srinivasan).

DR. ALICE JACOB

"Thus the question arises as to whether a Governor can reserve a Bill for the assent of the President when such reservation is not agreed to by the State Government. Is he merely the constitutional head of the State or can he act in his discretion ?"

"When a Bill of the State Legislature is presented to the Governor for his assent, he has three courses open to him under Article 200. First, he can assent to the Bill; second, he can withhold assent and in the case of Bills other than Money Bills, return the Bill with his recommendations; third, he can reserve the Bill for the consideration of the President. The second Proviso further mentions a specific situation in which the constitution enjoins on the Governor to reserve a Bill for Presidential consideration when , in his opinion, the Bill prejudicially affects the powers of the High Court.

Regarding the question whether the Governor can reserve a Bill for the Presidential consideration when advised against by the State Cabinet, the dual role of the Governor envisaged by the Constitution becomes important. The Governor in view of his capacity as the nominee of the President, has to fulfil certain obligations. Consequently, it is reasonable to presume that the Governor can exercise his personal discretion irrespective of the advice of the State Cabinet, in referring a Bill to the President. However, in the interest of amicable Centre-State relations, the Governor should exercise his discretion only in exceptional and warranted cases."

(Dr. Alice Jacob : pages 30-31, The Union and the States, Editors : S. N. Jain, Subhash C. Kashyap and N. Srinivasan).

The following propositions emerge from the judgment of Ray C. J. : (Samsher Singh's case)—

RAY C. J.

Propositions emerging from his judgment which show that the President and the Governors are Constitutional heads of the Union and the State Governments.

"..........

(e) The expressions used in relation to the powers and functions of the President are : "is satisfied", "is of opinion", "as he thinks fit" and "if it appears to"; as to the Governor the expressions used are the first three.

(f) However, the position of the Governor is slightly different, because, Article 163 provides : "Council of Ministers to aid and advise Governor—(1) There shall be a Council of Ministers with the Chief Minister of the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion the decision of the Governor is his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. (3) The question whether any, and if so, what advice was tendered by Ministers to the Governor shall not be inquired into in any court".

(g) Provisions of our Constitution which use the expression "in his discretion" with reference to the Governor are : Article 371A(1)(b) and (d) and (2)(b) and (f), and Sch. VI paras 9(2) and 18(3). In addition to the express provisions mentioned above there are two provisions where by, necessary implications, the Governor can act in his discretion. Thus Art. 356 shows that the Governor can make a report to the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution "Here the Governor would be justified in exercising his discretion even against the advice of his Council of Ministers (because) the failure of the Constitutional machinery may be because of the conduct of the Council of Ministers". Again, "Art. 200 requires the Governor to reserve (for the consideration of the President) any Bill which in his opinion if it became law would so derogate from the power of the High Court as to endanger the position which the High Court is designed to fill under the Constitution ....Art. 200 indicates another instance where the Governor may act irrespective of the advice from the Council of Ministers.

............"

(H. M. Seervai, para 18.23, pages 1711-1712, Constitutional Law of India, Third Edn. Vol. II).

M.V. PYLEE

Under Article 200, power is vested in the Governor to return a Bill passed by the State Legislature and presented for his assent with a message requesting the Legislature to reconsider the Bill, either as a whole or any part of it, and suggesting recommendations for amendments. The Governor, however, cannot return a Money Bill. Although this power of the Governor can be made use of by the Ministry as a safeguard against hasty legislation, it appears to be little significant if its use is restricted to this purpose only. In fact, under a parliamentary system, almost all legislation is a product of the Government's initiative. If a Private Member's Bill finds an occasional place in the huge volume of Government business in the Legislature, even that cannot be passed without the support of the Government which commands a clear majority. In other words, almost every Bill that is presented to the Governor for his assent is the result of policy decisions taken at Cabinet level and of detailed consideration in the Legislature.

It is unlikely that such legislative enactment would be sent back for reconsideration either as a whole or in parts at the instance of the Cabinet. This should lead us to the conclusion that the Governor, in his discretion, may return a Bill for reconsideration and suggest suitable amendments although the occasions for the exercise of such a power seem to be rare.

There is another provision under Article 200 which empowers the Governor to reserve a Bill for the consideration of the President if in the opinion of the Governor the provisions of the Bill will "so derogate from the powers of the High Court as to endanger the position which the Court is by this Constitution designed to fill". Although the Constitution has special provisions safeguarding the independence of the High Court and its powers and jurisdiction are defined therein, it operates within the boundaries of the State and as an integral part of the overall machinery of the State Government (consisting of the executive, the Legislature and the judiciary). Hence the State Legislature is competent to legislate on a number of matters which will directly or indirectly affect the working the High Court. This provision, therefore, safeguards the position of the High Court against any measure that may affect its independence.

The power of promulgating Ordinances is a power which the Governor exercises with the aid and advice of the Ministry. But there are three circumstances under which the Governor cannot promulgate Ordinance without prior instructions from the President. The second of these States :

The Governor shall not, without instructions from the President, promulgate any such Ordinances if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President.

The power of the Governor to reserve a proposal of the State Cabinet to issue an Ordinance, for instructions from the President, should naturally be one that he exercises in his discretion.

(M.V. Pylee, pages 405-406, Constitutional Government of India).

Additional Questions Regarding A Governor's Discretionary Powers Under Article 200

(Please also see Appendices A & B to this Questionnaire)

POINT 1

1. The views on the discretionary powers of the Governor in regard to reserving Bills for the consideration of the President differ widely. One view is that the Governor must invariably go by the advice of his Council of Ministers except when the Second Proviso to Article 200 is attracted. (cf A. G. Noorani). This view derives support from what was said by the Constitution-makers with regard to the purpose, scope and use of draft Articles 175 and 176 (Corresponding to Articles 200 and 201).

[*Vide* Appendix A(i) and (ii)]

A limited variation of this view is that apart from the second proviso to Article 200, the Governor must reserve a Bill for the consideration of the President where it is obligatory to do so under the Constitution (*e.g.* First Proviso to Article 31A and Article 288). In respect of other Bills the Governor is bound by the advice of his Council of Ministers (cf. R.C.S. Sarkar). According to this view, the question of the Governor exercising his discretion in assenting to a Bill, or in withholding assent from a Bill or returning a Bill to the Legislature with a message does not arise at all.

2. Para 18.23 of Seervai's "Constitutional Law of India, Volume II" summarises the Judgement of Ray C. J. in Samsher Singh's case and para 18.32 gives the view of the learned author on the question whether the Governor can exercise certain powers in his discretion and if so what those powers are. Seervai goes no further than pointing outth at the second proviso to Article 200 requires, by *necessary implication*, the Governor to exercise his discretion in reserving for consideration of the President any Bill which *in the opinion of the Governor* if it became law would so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

3. The contrary view is that each of the alternatives under Article 200 is a function to be exercised by the Governor in his discretion. If he has doubts about the constitutionality of a Bill, or he feels that a Bill conflicts with a Parliamentary enactment or a national policy, he should reserve the Bill for the consideration of the President. (cf. M.C. Setalvad). A substantially similar view is that under Article 200 the Governor, though he has no general power to veto legislation, can withhold his assent to a Bill or reserve it for the consideration of the President. The Governor should reserve a Bill if the Bill is patently unconstitutional or is palpably against the national interest, or is in direct opposition to a directive principle of State policy or is of grave national importance (cf. Soli J. Sorabjee). There is also the view that a Governor would violate his oath of office if he assented to a Bill which deals with a subject falling in the Union List (cf. L. P. Singh). In Basu's "Commentary on the Constitution of India" Sixth Edition, Volume-II (Pages 195 and 198) it is expressed that it is within the Governor's discretion to reserve a Bill passed by State Legislature for consideration of the President. The learned author suggests that the Governor has a discretion to reserve a Bill and the President *i.e.* the Union Council of Ministers a similar discretion to refuse assent to a Bill, only in extreme cases, where it is *patently* violative of some fundamental right or is unconstitutional on some other ground upon which authoritative judicial opinion may have been already available or it violates a Directive Principle of State Policy as regards which annulment by the Courts is not open or is repugnant to any Act of Parliament, or where it unnecessarily affects the legitimate interests of another State or its citizens.

Question 1.4—If, the view stated in para 2 above is the correct one, could you please comment on the other views summarised above and throw light on the incorrect assumptions if any on which they are based?

POINT 2

5. Under the First Proviso to Article 200, when a Bill other than a Money Bill is presented to the Governor for assent, the Governor may *inter alia* return the Bill, together with a message, to the Legislature for reconsideration. If the Bill is passed again by the Legislature and presented to the Governor for assent, the Governor cannot withhold his assent.

6. If the Governor returns a Bill with a message to the Legislature on the ground that the Bill was unconstitutional or against the national interest and if the Bill is passed by the Legislature again without removing those defects, it has been argued that there is nothing to prevent the Governor from withholding his assent to the Bill and reserving it for the consideration of the President. (cf. Soli J. Sorabjee).

Question 2.7—Is the above view correct ?

POINT 3

8. The Government of Nagaland has put forward the following views on the implications of Article 371A(1)(a).

9. According to that Government, Article 371A (1)(a) empowers the State Legislature to enact laws relating to the following matters enumerated in that sub-clause :—

(i) Religious or social practices of the Nagas;

(ii) Naga customary law and procedure;

(iii) Administration of Civil and Criminal justice involving decisions according to Naga customary law;

(iv) Ownership and transfer of land and its resources.

The Government of Nagaland argues that no act of Parliament in respect of the above matters can apply to the State of Nagaland unless its Legislative Assembly so decides by a resolution.

10. The subjects at (i), (ii) and (iii) overlap Entries 1, 2 and 13 of List III. The first segment of (iv) *viz.* "ownership and transfer of land" is convered by Entry 18, List II. The last segment of (iv) namely, "and its resources" impinges upon Entries 53 and 54 of List I. According to the Government of Nagaland the effect of the operation of Article 371A(1)(a) is that notwithstanding anything in the Constitution, legislative competence with regard to the aforesaid subjects at (i) to (iv) vests exclusively in the Legislative Assembly of Nagaland and that Articles 200 and 254 (2) also would not apply to State legislations on these subjects.

11. The Government of Nagaland claims that Article 371A(1)(a) has retrospective effect. That is, a law of Parliament on the four subjects in question which was passed prior to 1-2-1963 (*viz.* the date of formation of Nagaland) cannot apply to the State unless the Legislative Assembly of the State decides by a resolution that it applies. This interpretation is in accordance with the aggreement between the Government of India and the Naga People's Convention on the basis of which Article 371A was incorporated.

Question 3. 12. (i) Is the above reasoning correct ?

(ii) What are the implications of Article 371A(1)(a) in relation to Lists I, II and III in the Seventh Schedule?

(iii) Does Article 371A(1)(a) have retrospective effect?

APPENDIX A(i)

Comments and Suggestions received on articles 175, 176 & 231 (2) of the Draft Constitution, views thereon of the drafting and the Special Committees, and final recommendations of the Drafting Committee

The Draft Constitution as settled by the Drafting Committee was submitted to the President of the Constituent Assembly on 21-2-1948. It was published on 26-2-1948 and comments and suggestions were invited from all. The Drafting Committee considered on 23rd, 24th and 27th March, 1948 the comments and suggestions received till then and recommended certain amendments to the Draft Constitution.

2. In April 1948, the Special Committee consisting mostly of the Members of the Union Constitution Committee, the Provincial Constitution Committee and the Union Powers Committee, examined the Draft Constitution, the comments and suggestions received and the recommendations of the Drafting Committee thereon. In October, 1948, the Drafting Committee considered the recommendations of the Special Committee and examined the comments and suggestions on the Draft Constitution which were received after the Drafting Committee had last met (i.e. after 27-3-1948). Before the Draft Constitution was considered by the Constituent Assembly, a reprint of the Draft was made available to members, showing, opposite the relevant Articles, the amendments which the Drafting Committee had recommended for adoption.

3. The comments and suggestions received on draft Articles 175, 176 & 231(2) [which correspond to the present Articles 200, 201 & 254(2) respectively], the notes of the Constitutional Adviser which reproduce the views thereon of the Drafting/Special Committee and the recommendations of the Drafting Committee for amendment (*vide* pages 125 to 127 and 264 of Part 1, Volume IV ofB . Shiva Rao's "The Framing of India's Constitution—Select Documents" are summarised below :

DRAFT ARTICLE 175 (Present Article 200)

4. It was suggested that—

(i) Article 175 should provide that when a Bill passed by the State Legislature is presented to the Governor, "the Governor shall assent to the Bill". This should replace the provision that "the Governor shall declare either that he assents to that Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President".

(K. Santhanam, M. Ananthasayanam Ayyangar, T.T. Krishnamachari and Shrimati G. Durgabai).

(ii) This Article should provide *inter alia* that if the Governor does not assent to the Bill, the Legislatives Assembly of the State should get automatically dissolved and fresh elections should be held immediately.

(Tajamul Husain).

(iii) The provision that the Governor may reserve the Bill for the consideration of the President should be omitted.

(Jaya Prakash Narayan).

5. The notes of the Constitutional Adviser observed that under draft Article 175 the power of the Governor to declare that he assents to the Bill or that he withholds assent therefrom or tha the reserves the Bill for the consideration of the President would be exercised by him on the advice of his Ministers. Also as the Governors would be nominated by the President instead of being elected by the Provinces, all references to the exercise of functions by the Governor in his discretion would be omitted from the Draft Constitution. Accordingly, the words "in his discretion" would be omitted from the Proviso to Draft Article 175 and the power of the Governor to return the Billl to the Legislature under this Proviso would be exercised by him on the advice of his Ministers.

Further, the provision regarding reservation of a Bill for the consideration of the President would be necessary in view of draft Article 231(2) [present Article 254(2)]. Besides, a provision was being made for reservation by the Governor of Bills affecting the powers of High Courts for the consideration of the President, It was therefore essential that the provision regarding reservation of Bills for the consideration of the President should be retained

6. The Drafting Committee recommended amendments (i) deleting the words "in his discretion" in the First Proviso to Draft Article 175 and (ii) inserting the Second Proviso to that Article. (These correspond to the First and Second Proviso to the Present Article 200).

DRAFT ARTICLE 176 (Present Article 201)

7. K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari, Shrimati G. Durgabai and Jaya Prakash Narayan suggested that this Article should be deleted. The Constitutional Adviser's note pointed out that, as the provision relating to reservation of Bills for the consideration of the President could not be omitted from Article 175, it was not possible to delete Draft Article 176.

DRAFT ARTICLE 231(2) [Present Article 254(2)]

8. K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai suggested that this clause should be deleted. The Constitutional Adviser's note explained that the expression "repugnant" used in clause (1) of this Article had sometimes been construed very widely. If the amendment was accepted, the State Legislature would hardly have any power to make laws with respect to a Concurrent List matter on which there was an earlier law made by Parliament or there was an existing law. This would unduly restrict the powers of the State Legislature to make laws in respect of the Concurrent List matter. The amendment could not therefore be accepted.

APPENDIX-A(ii)

Extracts of Speeches in Constituent Assembly on Draft Article 175.

DR. B. R. AMBEDKAR : The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore, the new proviso deletes the word "in his discretion". Similarly, it is felt that this right to return the Bill should not be extended to a Money Bill and consequently the words "if it is not a money Bill' are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province in unicameral. It is a salutary provision and may be made use of in all cases even where the Legislature of a province is bicameral.

SHRI BRAJESHWAR PRASAD : Under Article 175 the the Governor has no power to veto a Bill in his own discretion or initiative but can do so only if he is so advised by his Ministry. I am not in favour of this provision. Then, he cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President. There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain articles of this Constitution, and also if the Governor is advised by his Ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the legislature, whether passed once or twice by it.

PROF. SHIBBAN LAL SAKSENA : I completely disagree with my friend, Mr. Brajeshwar Prasad, who seems to favour everything which gives power to the Governor and the Council. He wants that the Governor should have power to held up any legislation.

I know he is the moninee of the President, but it is quite possible that the party in power in the province may not be the same as the party in power in the Centre and the President may not be *persona grata* with that party. I therefore think that it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the Council. I think that the original proviso should remain and the Governor should have power to send back a Bill only where there is no Second Chamber.

SHRI T. T. KRISHNAMACHARI : The Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The Governor is no longer vested with any discretion. If it happens that as per amendment No. 17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the Governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message.

It is a saving clause and vests power in the hands of the Ministry to remedy a hasty action that they might have undertaken or enable them to take an action which they feel they ought to in order to meet popular opinion which is reflected outside the House in some form or another and for this purpose only this new proviso has been put in. It does not abridge the power of the responsible Ministry in any way and therefore, it does not detract from the power of the Lower House to which the Ministry is undoubtedly responsible; it does not confer any more power on the Governor. On the other hand it curtails the power of the Governor from the position envisaged in the original proviso which it seeks to supplant.

APPENDIX-B(i)

Views of some experts on the discretion of the Governor to reserve a Bill under Article 200 for the consideration of the President

SOLI J. SORABJEE

Under Article 213, the Governor performs functions which are legislative in nature, namely, promulgation of Ordinances. This function is to be performed on ministerial advice and not in the Governor's discretion. However, in deciding whether the ordinance falls within any of the categories set out in the proviso to Article 213, the Governor necessarily has to act in his individual discretion and judgment and arrive at his independent conclusion and in such a situation he cannot be bound by ministerial advice.

The rationale underlying this proviso is to prevent the state executive from promulgating an Ordinance which is of such a nature that the State Legislature, were it in session, would not be able to enact it as a law on account of certain constitutional requirements, or because the Ordinance is such that, if it were a Bill passed by the Legislature, the Governor would withhold his assent and reserve it for Presidential consideration

Under Article 200, the Governor can withhold his assent to a Bill or reserve the Bill for the consideration of the President. Obviously, in such matters he is not expected to act on the advice of the Council of Ministers when the Bill has been passed by the Legislature of the State.

The Governor has no general power of vetoing legislation passed by the State Legislature. None the less, he can stall the legislative measure by withholding his assent, not indefinitely, but for a reasonable time, and request the Legislature to reconsider the Bill and introduce such amendments as he recommends in his message. If, however, the Bill is passed again by the Legislature with or without amendment, the Governor shall not withhold assent therefrom, vide first proviso to Article 200.

There is another course open to the Governor. He may straightway reserve the Bill for consideration of the President and thereby stall the legislation.

What are the norms and criteria that the Governor should follow in reserving Bills for Presidential consideration ? ....

It is suggested the Governor should exercise the functions of reserving a Bill for Presidential consideration, if (a) the Bill is patently unconstitutional e.g., if *ex facie* it discriminates against certain persons or communities in a hostile manner, or it is a patent usurpation of the Union's legislative powers; (b) if it is palpably against the larger interests of the country from the point of view of its unity and integrity and the necessity of maintaining the federal principle, and clashes head on with the general policy of the Union; or (c) if it is in direct opposition to the directive principles of State policy; or (d) if the Bill passed by the State is of grave national importance, and especially in a case where it is apparent to him that the reconsideration of the Bill in the light of the amendments recommended in his message by the House or Houses would be an idle formality.

These examples are only illustrative. What needs to be emphasized is that this power should be exercised on rare occasions and in exceptional cases.

Divergent views have been expressed on the question whether the Governor after the second reading of the Bill and its passage in the Legislature can thereafter reserve the Bill for Presidential consideration. According to one school of thought, after the second reading the Governor cannot withhold assent to the Bill. The other—and the better—view is that the Governor's power is not exhauated after the passage of the Bill for the second time in the Legislature. If the Governor is of poinion that the Bill continues to contain provisions which are patently repugnant to the Constitution, there is nothing to prevent him from withholding his assent to the Bill and reserving it for consideration of the President.

Again the second proviso to Article 200 provides that the Governor shall not assent to a Bill which would, if it became law, so derogate from the power of the High Court as to endanger its position under the Constitution. This provision does not confer a discretion but casts an obligation upon the Governor. But the point is that the question whether the Bill does or does not derogate from the power of the High Court is a matter left to the opinion of the Governor—and again, from the very nature of the situation, he has to act in this contingency independently of the Council of Ministers and irrespective of their advice.

(The Governor, Sage of Sabateur : Roli Books International)

R. C. S. SARKAR

The Governer has the discretionary power to return a Bill for reconsideration of the Legislature and suggest suitable amendments. He may do so on the ground that the constitutionality of a Bill is doubtful or a Bill is mainfestly against state interest or national interest. This discretionary power is analogous to the President's power under the Proviso to Article 74(1).

This power of the Governer may be used by the Ministry to remedy defects in the Bill. But such cases will be rare. This provision will lose its significance if its use is restricted to this purpose only.

2. The Governer's power to reserve a Bill for the consideration of the President is in general tems. If literally interpreted, every Bill can be reserved for President's consideration and this has given rise to controversy.

3. In view of the erosion of the legislative authority of the States and their demand for greater autonomy, Article 200 should not be interpreted so as to give wider powers to the Union. Secondly, in a parliamentary system, the provisions of the Constitution should not be so interpreted as to enlarge the powers of the Governor at the cost of the powers of the real executive viz. the Cabinate.

4. The mandatory provisions where Bills have to be reserved for the consideration of the President are (i) Second Proviso to Article 200, (ii) Article 288(2), (iii) Article 31A, (iv) Article 31C and (v) during a financial emergency, Article 360(4)(a)(ii). The previous sanction of the President is required for the introduction of a Bill referred to in Article 304(v) or for moving

an amendment thereto. If the necessary previous sanction is not obtained, the Bill after it is passed has to be reserved for the President's consideration.

In all the above cases, the Governor, in the exercise of his discretionary power, has to reserve Bills for the President's consideration even without or against the advice of his Council of Ministers. In all other cases he should act only on the advice of his Ministry. Article 200 should be amended to make this clear and also to provide a time limit of, say, *3 months* within which the Governor should exercise his power. This power of the Governor cannot be regulated by an Instrument under the Constitution.

5. A Governor should not reserve a Bill either in the Concurrent field or in the State field for President's consideration, unless he is so advised by his Ministry.

6. If a Bill in respect of a State List matter represents a policy which, according to the Governor, is at variance with the policy laid down in a Union law, the Governor should not reserve the Bill except on the advice of his Council of Ministers. Similarly the question of reservation does not arise if the Union policy is laid down merely by an executive order.

7. When a Bill is reserved for the President's consideration the Union examines it not only from the point of view of its constitutionality but also from all possible angles to find out whether it conforms to the policies of the Union and whether there are procedural safeguards for aggrieved parties. The Union often tends to dictate its policies to the State. If a Bill on a State List subject is reserved under the Constitution, the President has the right to veto the Bill unless it conforms to the policy laid down by the Union. The Constitution gives powers to the Union executive to control State legislation. Whether this power should be restricted is a matter for discussion.

8. When a Bill is reserved either because it affects the powers of the High Court or its constitutional validity is in doubt, it is the duty of the Union executive to examine the entire Bill from all possible angles.

The advisory opinion of the Supreme Court should be sought only in exceptional cases where grave issues are involved.

9. When the President returns a Bill to the State legislature and it is passed again with or without amendment, the President should have the power to veto the Bill without giving reasons. In the peculiar circumstances prevailing in our country, the Union executive should have necessary control over State legislation.

10. A time limit of, say, 3 to 6 months should be provided for the exercise of President's powers under Article 201. If the President is dissatisfied with any Bill, he should in the first instance return the Bill for reconsideration of the State legislature. When the Bill is again received by the President he may either give his assent to the Bill or veto it. But no reasons need be given for vetoing a Bill because the President's action will become subject to judicial review.

Article 201 may be amended to give effect to the above suggestions.

[Summary of views communicated to this Commission]

A. G. NOORANI

Be it remembered that the Constitution of India does not confer on the Union the power of disallowance over State legislation as is enjoyed by the Union in Canada. What the Constitution confers, on the contrary, is a facility to the States to depart from and override Central legislation on a matter in the Concurrent List of topics for legislation if its own particular needs so dictate. The President's assent—i.e. the Government of India's approval—was intended by the framers of the Constitution as a necessary regulation of the facility lost it make a mockery of Central legislation which makes for uniformity. It was not intended to confer an arbitrary veto on the Centre or a licence for dilatoriness. It is a gross perversion of the Constitution that a power conferred on the Union to enable it to assist the States in enlarging their autonomy is abused by it systematically to curtail the autonomy. The Concurrent List covers subjects on which both the Union and the State would wish to legislate from their respective stand-points of uniformity and diversity. Balancing the two calls for statesmanship.

2. The constitutional position is perfectly clear. First the States are not at all obliged to refer to the President for his assent any Bill on a topic in the State List. Secondly, it is not open to Governor to reserve any Bill for the President's consideration except on the advice of the Council of Ministers. Both prepositions are subject to one proviso alone, namely, a Bill which in the opinion of the Governor would, if enacted, so "derogate from the powers of the High Court as to endanger the position which it is designed to fill by the Constituiton'. However, Bills on matters in the Concurrent List are preferable by the Governor to the President for his assent on the advice of his Council of Ministers when the State wishes to enact, for reasons of its local conditions, legislation to override central legislation on a matter in that List.

3. Once a Bill is passed by the State Legislature, the Governor can either accord his assent to it, withhold assent or refer it to the President (Art. 200). He is, however, bound to withhold assent and refer the Bill to the President if in his opinion it "derogates" from the power of the High Court. Under article 201 the President can either accord or refuse assent or return it for "reconsideration".

["Centre's Veto on States laws" by A. G. Noorani—Indian Express dated 20-9-1985].

L.P. SINGH

Articles 200 might give the impression that the Governor has wide discretion in the matter of giving assent to a Bill or reserving it for the consideration of the president. If, in the opinion of the Governor, a Bill is likely to derogate seriously from the powers of the High Court, the Governor is required to reserve the Bill for the consideration of the President; It is not so much a matter of exercise of discretion as of a constitutional obligation. However, a more complex question arises when the Governor is presented a Bill which deals with a subject falling within the Union List of the Seventh Schedule. I had a case in which the State :Legislature had passed a Bill dealing with a inter-State migration, which falls in the Union List. I felt that in assenting to the Bill I might be violating my oath of office—'to protect, preserve and defent the Constitution'—and in reserving it for the assent of the President, if advised by the Council of Ministers not to do so, I would be departing from a healthy convention which I was anxious to respect. The understanding Chief Minister helped me out by leaving me free to reserve it for the assent of the President.

2. There was a case in one of the other States, in which I was asked to approve Draft Regulations purporting to have been framed under the proviso to Article 320(3), which went beyond the scope of the proviso, and were violative not only of statutory rules but also of certain Fundamental Rights. I returned the papers with the observation that a Governor ought not to be required to append his signature, even by way of acquiescence, to proposals which were clearly violative of the Constitution and the law: and the matter rested at that.

3. I have mentioned these two instances because they involved a basic question : to what extent could a Governor, guided by his oath of office, refuse to agree to a course proposed by the Ministry ? The view I took was that in marginal or doubtful cases the Governor should act on the advice of the Ministry, and it is only when an obvious infringement of the Constitution is involved, and he has failed to persuade the Ministry to give up its proposal, that he should withhold his approval.

[The Governor, Sage or Saboteur : Roli Books International]

GOVIND NARAIN

It may be noted, in the context of Article 200, that in some catagories of Bills which are passed by both Houses of Legislature, it is obligatory on the part of the State Government to recommend to the Governor that the Bill be reserved for the assent of the President. Such Bills, in the normal course, are referred to the President and, after examination by the Union Ministries concerned, are put up for the President's orders. The powers of the President in respect of such Bills are laid down in Article 201 of the Constitution. A very important responsibility devolves on the Governor in respect of Bills which are derogatory in any manner to the position and prestige of the State High Court. The Second Proviso to Article 200 of the Constitution makes it obligatory on the part of the Governor

to reserve for the consideration of the President any Bill which in his opinion would, "if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this constitution, designed to fill."

[The Governor, Sage or Saboteur : Roli Books International]

APPENDIX-B(ii)

Extracts from Supreme Court Judgement in Samsher Singh v. State of Punjab/Air 1974 SC 2192/Relating to Exercise of Discretion by Governor under Article 200.

RAY C. J.

54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an Administrator of an adjoining Union Territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other Articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371-A(1)(b), 371-A(1)(d) and 371-A(2)(b) and 371-A(2)(f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the Constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is applicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgement. The Governor is required to pursue such courses which are not detrimental to the State.

K. IYER J.

153. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various Articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister). restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the Head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will aventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement* regarding royal assent holds good for the President and Governor in India :

"Refusal of the royal assent on the ground that the monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course—a highly improbable contingency—or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements : but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to prudence would suggest the giving of assent."

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*Constitutional and Administrative Law by S.A. de Smith—Penguin Books on Foundations of Law.

Supplementary Questionnaire No. 5

QUESTIONS ON THE OFFICE OF THE GOVERNOR AND PRESIDENT'S RULES ETC.

Appointment of Governors.

1.1 To ensure that in the appointment of Governors due regard is paid to the criteria envisaged by the framers of the Constitution, it has been suggested that a Governor should be selected from a panel of names cleared by an Advisory Group consisting of the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha, the final decision being left to the Prime Minister. Do you agree ? Should the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha be included in the Advisory Group ?

1.2 The convention of consulting the Chief Minister has reportedly fallen into disuse. It has been suggested that since this convention has failed, requirement of such consultation be made mandatory by so incorporating it in the Constitution itself, through an amendment. Do you agree ?

. 1.3 What are your views in regard to selecting Governors from among (a) politicians and (b) retired civil/defence personnel ?

Removal of Governors.

2.1 According to one view, the fact that the tenure of a Governor is precariously dependent on the unfettered pleasure of the President i.e. the Union Council of Ministers, has impaired his (Governor's) capacity to act in his own judgment in matters in respect of which he is required by or under the Constitution to exercise his discretion. On these premises it has been suggested that the Governor should be made removable only after following and impeachment procedure on the same lines and grounds as applicable to the President.

2.2 Alternatively, it has been suggested that a Governor should be made removable only in consultation with the Advisory Group proposed earlier for advising on the appointments of Governors. What are your views on this issue ?

Transfer and appointment for a second term.

3.1 Very often a Governor, before the completion of his tenure, is transferred as Governor of another state. Do you consider that this feature has affected the dignity of the office or the indpendence of its incumbment ?

3.2 After completion of his tenure should the Governor be eligible for appointment for a fresh term as Governor in either the same State or another State ?

Pension and Post-retirement restrictions.

4.1 Should a Governor on the completion of his full term be eligible for a liberal pension ? Will this make for greater objectivity in the exercise of his discretionary power while in office ?

4.2 Should a Governor after completion of his term, be made ineligible to hold any office of profit under the Government of India or the Government of a State ?

4.3 Should the Governor, after completion of his term, be made ineligible to hold any elective office such as Minister at the Centre or in a State, President of India, Vice-President of India or Member of Parliament or of a State Legislature ?

Role of Governor—Fortnightly reports.

5.1 According to the current practice, the Governor sends and the Centre expects fortnightly reports from the Governor as to how the activities and affairs of the Government in the State are being carried on. Can the authority for this practice be spelled out from the duties imposed on the Union *inter-alia*, under article 355 ? In any case, would you prefer the making of an express provision in the Constitution authorising or requiring such reports from the Governor ?

5.2 Is there scope for improving the content and purpose of the Governor's fortnightly report to the President ? Should he send a copy of this report to the Chief Minister ?

5.3 Besides reporting important developments in the State, should the Governor highlight major problems in which the Centre could help the State ? What should be the Governor's role vis-a-vis that of the Chief Minister in regard to such problems ?

Discretionery Powers.

6.1 What are the situations in which a Governor may be called upon to exercise his discretion as envisaged in Article 163(1) ? Could a situation arise in which a Governor may be constrained, in order to conform to his oath of office under article 159, to over-rule the advice of his Ministry and exercise his discretion ?

6.2 In his capacity as Chancellor of a University appointed *ex-officio* under a State Act, is it obligatory for a Governor to act according to the advice of his Council of Ministers ? On the contrary, should the Governor act according to his individual judgment after consulting his council of Ministers ? In either case what would be the Constitutional justification ?

6.3 (i) When a Governor is satisfied that the Chief Minister no longer enjoys majority support in the Legislative Assembly, should be proceed to (a) dismiss the Ministry or (b) ask the Chief Minister to face the Asssembly within the shortest possible time ?

(ii) If the Chief Minister is unwilling to face the Assembly within a reasonable time, should the

Governor (a) dismiss the Ministry or (b) summon the Legislative Assembly with the sole purpose of verifying the majority support of the Ministry, or (c) suggest to the Centre that President's Rule may be proclaimed ?

(iii) Should it be expressly provided in Article 174(1) that the Governor may in a situation like (ii) above, summon the Assembly in his discretion ?

6.4 If a Chief Minister or a Ministry is found indulging in or encouraging anti-national activities or engaging in corrupt practices, will it be constitutionally valid for the Governor to dismiss the Ministry and made efforts to identify another leader who can form a stable Ministry ? Alternatively, should the Governor recommend proclamation of President's Rule ?

6.5 In view of the controversies that have been raging around the actions of certain Governors' should a set of guidelines be issued to Governors by the President ? If so, will this need an amendment to the Constitution ?

Law and Order.

7.1 If there is public disorder (not amounting to 'internal disturbance') in a State, which the State police is unable to quell, will the Centre be competent to deploy *suo motu* its armed forces in aid of the State Police or its law enforcing agencies under Article 355 or in the exercise of its executive power under Article 73 read with Entry 2A of List-I ?

7.2 Do you agree with the view that under Article 355 the Union has the executive authority to deploy its armed forces in a State in order to protect the State against internal disturbance ? On the other hand, does the expression, "deployment of any armed force of the Union....in any State in aid of the civil power" occuring in Entry 2A of List I mean that the Centre can deploy its armed forces only if there is a request to that effect from the State Government ?

7.3 Assuming that the duty imposed on the Union by Article 355 forms part of the executive power of the Union, can the Union require that a State should sent to it information on the subject of public order and security within the State ? If the State fails to do so would such failure amount to impeding the exercise of executive power of the Union and justify Centre's giving appropriate directions under Article 257(1) ?

7.4 In the Constituent Assembly Dr. B.R. Ambedkar explained that the word "and" interposed between "external aggression" and "internal disturbance" on the onehand, and between "internal disturbance" and "to ensure that the government in every State is carried on in accordance with this Constitution" on the other, can be read both conjunctively and disjunctively, as the occasion may require.

This implies that occasions are conceivable where "External aggression" or "internal disburbance" exists as a fact but does not involve or give rise to a situation in which the Government of the State cannot be carried on in accordance with the Constitution. It follows that on such an occasion involving 'internal disturbance' simpliciter, Article 356 (1) cannot be validly invoked. If that be the right position what other steps or alternatives are permissible under the Constitution to enable the Union to discharge the duty imposed on it under Article 355 ?

7.5 Conversely a situation of "external aggression" may not be so serious in extent and nature as to cause or involve a situation of grave emergency threatening the security of India or any part thereof, to justify action under Article 352. What alternatives would be available under the Constitution to the Union in such a situation of 'external aggression" for performing the duties laid on it by Article 355 ?

President's Rule.

8.1 The phrase "a situation has arisen in which the Government of the State cannot be carried on in occordance with the provisions of the Constitution" occurring in Article 356 (1) is capable of both a wide as well as a narrow interpretation. In its widest amplitude it may comprehend each and every infringement of any provision of the Constitution, whatever be the extent and nature of the infringement or the relative importance of the provision infringed in the Constitutional set-up, as a breakdown of the Constitution. In the narrow sense this phrase would mean no more than an actual failure or break-down of the Constitutional machinery or the system of constitutional government in the State as contemplated in the Constitution.

In Basu's "Shorter Constitution of India the renowned author has coordinated several intrinsic factors including what was said in the Constituent Assembly Debates and as to the marginal heading of the Article so as to reach the conclusion that this phrase should be given the narrow interpretation indicated above. Do you think the expression "cannot be carried on" postulates that all possible remedial alternatives were explored or availed of but failed. The words "*cannot be*" indicate that this power is to be invoked as a last resort, the situation being such that it is not possible to rectify the aberration from the constitutional path by adopting any other alternative. The use of the word "provisions" in plural in the contexual expression "in accordance with the provisions of the Constitution" read with the marginal note, further fortifies the conclusion that it was intended to convey the sense of failure of the constitutional system of responsible government in the State and not astray infraction of some or/any provision of the Constitution, which could be rectified by having recourse to other remedial action. Do you agree with this interpretation? (b) Further, does the aforesaid phrase in Article 356(1) comprehend a situation where the failure or breack-down of the Constitution is imminent.

8.2 To what extent, if any, is the scope of Article 356(1) controlled by Article 355?

Coordination between States.

9.1 Do you consider that setting up of an Inter-State Council under Article 263 should not be postponed any longer? What should be its composition and functions?

9.2 It has been suggested that there should be prior consultation with the Inter-State Council, among others, in matters like appointment/removal of Governors, proclamation of President's rule in a

State under Article 356, undertaking legislation under Article 249, undertaking legislation under those entries in List I which impinge upon linked entries in List II or List III, State Bills reserved for the Consideration of the President, border disputes etc. Do you agree?

9.3 What are the reasons for Zonal Councils not being effective in achieving their objective of collectively pursuing States' interests?

9.4 How should the Inter-State Council function in relation to (a) the National Development Council and (b) Zonal Councils?

Failure to comply with Centre's directions

10. A view has been expressed that under Article 365, the President can lawfully hold that the government of the State cannot be carried on in accordance with the provisions of the Constitution, *only if* the direction of the Central Executive which is not complied with by the State, falls within the four corners of any of the provisions of the Constitution which expressly extend the executive power of the Union to the giving of such direction, namely; Article 353, 360(3), during the period when the appropriate proclamation of Emergency is in force, or Articles 256, 257 and 339 (2) when no such proclamation is in force. Conversely, the saction in Article 365 cannot be invoked if the direction disobeyed or ignored was issued under any other provisions of the Constitution e.g. Articles 347, 344(6), 350A, which do not expressly extend the executive power of the Union to the giving of the directions mentioned in those provisions, the reason being that non-compliance with direction issued under such directory provisions does not create a situation of substantive or constructive failure of the Constitutional machinery in the State.

Do you agree with this view?

Supplementary Questionnaire No. 6

QUESTIONS REGARDING ARTICLE 249 OF THE CONSTITUTION OF INDIA

Background

There was no provision in the Government of India Act, 1935 corresponding to the present Article 249. No such provision exists in the Constitutions of Australia, Canada and United States.

However, the author of this draft, Shri B. N. Rau, the Constitutional Adviser, cited the following extract from the Privy Council decision, *Attorney-General for Ontario* v. *Canada Tempoerance Federation*(1946 *A. C.* 193) to support the draft Article 226 (now Article 249).

"The true test is to be found in the real subject matter of the legislation ; if it is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole, then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good Government of Canada, though it may in another aspect touch upon matters specially reserved to the Provincial Legislatures".

A perusal of the entire judgment however shows that this decision did not lay down any sweeping rule that by virtue of Sections 91 and 92 of the British North America Act, 1877, the Dominion Parliament is competent to legislate as regards any Provincial or local subject whenever, in its opinion, it has assumed national importance. In that case, the Privy Council was interpreting the residuary power of the Dominion Parliament to legislate for "the peace, order and good Government of Canada". In an earlier case *Russell* v. *The Queen.* (1882) 7 A. C. 829, the Canada Temperance Act, 1878 was "held to be within the legislative competence of the Dominion Parliament under s. 91 of the British North America Act, 1867, on the ground that it related to the peace, order and good Government of Canada, *and did not deal with any of the matters exclusively reserved to the Provinces by s. 92 of the Act of* 1867". The crucial lines are those that have been underlined. In *Attorney-General for Ontario's case* (ibid) decided on Junuary 21, 1946, the earlier decision in *Russel's* case was upheld and accordingly it was decided that Parts 1, 2 and 3 of the Canada Temperance Act, 1927, which replaced the Act of 1878, were equally valid Dominion Legislations.

Be that as it may, when the draft Article 226 (corresponding to the present Article 249) was on the anvil, it was severely criticised both inside and outside the Assembly. The Hindustan Times claimed in an Editorial that it dealt a death blow to Provincial autonomy. Several Law Professors expressed the belief later voiced by members of the Assembly—that it perverted the amending process and ought, therefore, to be removed from the draft Jayaprakash Narayan also urged that this provision should be dropped. The Legislatures of Bombay and East Punjab, when debating the merits of the Draft in the autumn of 1948, favoured its ommission, regarding it as a grave infringement of Provincial rights. Many Assembly members held this view, and twenty proposed an amendment deleting the article. Amount the many supporters of the amendment were K. Santhanam, M. A. Ayyangar, Smt. Durgabai, T.T. Krishnamachari and V. T. Krishramachari, Acharya Jugal Kishore, and five Muslims.

This Article was referred to a Special Committee which again considered the subject at its meeting on 11-4-1948, and recommended:—

"(i) A resolution authorising Parliament to legislate with respect to a State subject in the national interest should not be moved in the Council of States "without prior consultation with the Governments of States concerned."

(ii) It would have to specify the period during which Parliament was to have the power thus granted and this period was not to exceed 3 years; and

(iii) Further extensions for not more than 3 years at a time could be made by fresh resolutions."

The proposal of the Special Committee was accepted and the draft article was accordingly included. The Constitutional Advisor again defended the original draft article.

On 18-10-1948, the Drafting Committee again considered the draft Article and opined that it would not be necessary to dilute the provision to the extent of the suggestions made by the Special Committee that there should be previous consultation with the States. It decided therefore, to delete this condition and the draft article was accordingly revised.

This article was considered by the Constituent Assembly on 13-6-1949. Dr. Ambedkar moved and amendment restricting the scope of the legislation to a period not exceeding one year at a time.

Even thereafter, most of the members, including Pataskar, Alagesan, V. S. Sarwate, criticised that this article will be a mockery of Provincial autonomy and pleaded for its deletion. Shri B. M. Gupte, (who later became the Attorney-General of India), opposed the inclusion of the Article on the following grounds :—

"(i) One House of the Parliament cannot do this;

(ii) the State Legislature also should vote for the resolution;

(iii) there is nothing to warrant that such powers are necessary or required; and

(iv) during non-emergency times it should not be possible for the Centre to encroach upon the State fields."

However, this clause was adopted by the Assembly and incorporated as Article 249 in the present form.

Article 249 has been made use of on very few occasions. On August 12, 1950, consequent upon the requisite resolution passed by the Council of States, Parliament assumed powers under this Article in respect of all matters in Entries 26 and 27 of List II, for the effective control of black-marketing for a period of one year. It was later extended for one more year. The said resolution enabled Parliament to enact,— (1) Prices of Goods Act of 1950; (2) the Essential Supplies (temporary powers) Amendment Act of 1950. Later, another resolution passed by the Council of States under Article 249 enabled Parliament to enact— (3) The Evacuee Interest (Separation) Act of 1951. Subsequently, by the Constitution (Third) Amendment Act of 1954, items " (b) foodstuffs, including edible oilseeds and oil (c) Cattle fodder including oilcakes and other concentrates; (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute" were added to Entry 33, List III to which Entries 26 and 27, List II, were, in terms subject.

After 1951, no occasion has arisen for exercise by Parliament of the power under Article 249. Thus, for the last 34 years, this Article is lying otiose.

Some State Governments and Political Parties have urged for deletion of the Article. To the same effect was the recommendation of the Rajamannar Committee (1971). Other have suggested its amendment for introducing safeguards against its misuse while the rest are not against its retention as it is.

Article 249 is vulnerable to criticism on these grounds :—

Grounds of criticism

(1) A resolution passed by the Council of States with a 2/3rd majority of the members present and voting does not necessarily mean that 2/3rd of the 22 States support the authorisation, because even the seven bigger States having larger representation in the House, namely, Uttar Pradesh (34), Bihar (22), Maharashtra (19), Andhra Pradesh (18), Tamil Nadu (18), Madhya Pradesh (16), and West Bengal (16), plus the nominated block (12) may furnish the requisite 2/3rd majority notwithstanding opposition from the representatives of the remaining 15 States. Thus it makes not only a mockery of the division of powers effected by Article 246 read with Schedule VII but also perverts and short-circuits the normal amending process enjoined by Article 368.

(2) The experience of the use of the Article in enacting the three enactments aforesaid in 1950-53 shows that this power has been invoked not to tide over a problem which has temporarily assumed national dimensions but as a stop-gap arrangement with the ultimate object of taking away the *explusive* competence of the States, permanently, in regard to that matter, through a constitutional amendment.

(3) None of the resolutions passed under this Article by the Council of States in the cases aforesaid were in keeping with the hope expressed by the Constitution makers, that the Resolution should "limit itself to a particular aspect of a subject in the State List instead of extending to the whole of that subject" (see B. Shiva Rao's Framing of India's Constitution, vol. IV, p. 261).

(4) In any case, Article 249 has remained otiose for the last 31 years. It is redundant, particularly when the same object can be achieved by resorting to the better alternative in Article 252.

Suggestions

Some of those who are not in favour of deletion of Article 249, suggest—

(1) That this Article should be so amended that the "matter" referred to in it should be limited to a particular aspect or items of an Entry in the State List so that Parliament should not, by passing a resolution under this Article, take over the *entire* field, even it be for a temporary period encompassed by that Entry.

(2) A resolution under Article 249 should not be moved in the Council of States, without prior consulation with the Intor-State Council which should have, among others, on its membership the Chief Ministers of all the 22 States.

(3) Another suggestion is that in addition to No. (2) above, previous consent of at least half of the State Governments and State Legislatures must be obtained.

(4) The most moderate suggestion which will least disturb the present provision is that in Article 249 in between the words "members present and voting" and "that it is necessary and expedient", should be inserted the following words:—

"representing not less than half of the total number of States"

Q. What is your reaction with regard to the comments/views and suggestions summarised above in this Note?

ANNEXURE

Article 249

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than to-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein :

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Supplementary Questionnaire No. 7

QUESTIONS REGARDING ARTICLE 252 OF THE CONSTITUTION OF INDIA

Background

This Article largely corresponds to Section 103 of the Government of India Act 1935. Whereas Section 103 enabled the Provincial Legislatures to amend or repeal a law so made by the Federal Legislature, clause (2) of Article 252 takes away this power of the State Legislatures and provides that an Act passed under clause (1) of Article 252 can be amended or repealed by following the same procedure. Thus, Clause (2) contains a bar to amendment or repeal by any State Legislature of the law passed by Parliament under Clause (1) of the Article.

Clause (2) was severely criticised in the Constituent Assembly and even after its enactment it has been the subject of perennial criticism by knowledgeable persons, political parties and others. During the Constitutent Assembly Debates, K. Santhanam expressed an apprehension that Clause (2) "may become inoperative because no State would like to get into a noose from which it cannot get out at all. As things stand, they can hand over the power to Parliament; but once the Act is passed, then the State becomes practically powerless even though the matter is one with respect to which it has power. This is rather unsatisfactory". Seervai, in line with several other critics, comments...."it is difficult to understand the reason for this departure (from its parent Section 103 of the Government of India Act 1935), for the Article loses its utility if the power of the State Legislature is permanently taken away...." (Parenthesis added).

On the other hand, the apprehensions so prophetically voiced by K. Santhanam have turned out to be true; for, even the Central Legislature finds it difficult to amend or revise a statute once passed by following the procedure laid down in clause (1) of Article 252. This difficulty stems from the fact that the consent/comments of the State Legislatures concerned solicited for the proposed amendment either may not be forthcoming or be so qualified and hedged around by discordant conditions, that it may not amount to the 'consent' requisite under Clause (1). The difficulty experienced in revising the Estate Duty Act, 1953 in its application to 'agricultural land', and the Urban Ceiling Act 1976 are in point. The following solutions have, therefore, been suggested to facilitate the working of the provisions in Article 252 :—

Suggestions

(1) Before framing the Bill and soliciting the resolutions/views of the State Legislatures under clause (1) of the Article, the Inter-State Council should be consulted.

(2) Clause (2) should be omitted and the power of the States to amend or repeal the Act passed under Clause (1) should be restored as under the Government of India Act, 1935 but subject to a proviso on these lines :

> "Provided that where such an amending or repealing law is made by the Legislature of a State. such an amending and repealing Law shall not take effect, unless having been reserved for the consideration of the President, it has received his assent."

(3) Any law passed by Parliament in respect of a matter in List II, by consent and adoption obtained under Article 252 (1), should not be of perpetual duration but for a specific term, say, for three years and subject to periodic review and re-enactment, if necessary, for a term not exceding the original term, by following the same procedure as specified in Clause (1) of Article 252.

Q. What is your reaction with regard to the comments/views and suggestions summarised above in this note?

ANNEXURE

Article 252

(1) If it appears to be Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Supplementary Questionnaire No. 8

MISCELLANEOUS QUESTIONS REGARDING VARIOUS ARTICLES OF THE CONSTITUTION OF INDIA

Q. 1 Can our Constitution be called 'Federal" notwithstanding several unitary features not found in other 'Federation"?

Q. 2 Which provisions/features of the Constitution in Your opinion, are fundamental for the protection of the 'independence' and ensurance of the unity and integrity of the country?

Q. 3 (i) Are the obligations of the Union and the States arising expressly or by necessary implication from Articles 256, 257, 339(2), 354, 355, 356, 357 and 365 of the Constitution reasonable and necessary for preserving the independence, unity and integrity of the country?

(ii) Is any of these provisions susceptible to easy misuse? If so, would you suggest any safeguards, constitutional or extra-constitutional to minimise their possible misuse?

Q. 4 Criticism has been levelled that over the years under the colour of a declaration of "National interest" or "Public interest" purportedly made under certain Entries in List-I, the Union Parliament has drained out the content of the linked Entries in List II of the Seventh Schedule and thus improperly encroached upon the State legislative field.

Do you agree? If so, can you give any instances of such encroachments? Do you consider that such declarations should be of a perpetual nature or for particular durations subject to periodical review?

Q. 5 (i) Article 263 which appears under the caption "Coordination between the States", empowers the President to set up an Inter-State Council charged with the duty of:—

"(a) enquiring into an advising upon disputes which may have arisen between States, or

(b) investigating and discussing subjects in which some of the States have a common interest: or

(c) making recommendations upon any such subject and in particular for the better coordination of policy and action with regard to that subject".

It further invests the President with power to define its duties, organisation and procedure. What are your views/suggestion in regard to the necessity of setting up an Inter-State Council, its composition, specific role and authority?

(ii) Are the provisions of Article 263 wide enough to enquire into and advise upon any dispute which may have arisen between the States, or between a State or States and/or the Union? In other words, should an Inter-State Council, step up pursuant to Article 263, be competent to enquire into and advise upon a dispute which would otherwise be within the competence of the Supreme Court by virtue of Article 131? Will not in that situation, the functions of the Inter-State Council and the Supreme Court, if it is seized of the suit under Article 131, overlap and conflict with each other?

Q. 6 In Keshva Nanda Bharati's case, the Supreme Court ruled that Parliament was not competent under the exercise of its amendatory power under Art. 368 to alter or change the basic features/structure of the Constitution.

What should be the criteria, in your opinion, for identifying such features? Would you categorise the following as such features:—

(1) Unity and integrity of the Nation.

(2) Sovereign domocratic republican structure.

(3) Federal or quasi-federal feature of the Constitution.

(4) Judicial Review.

(5) Rule of Law.

(6) Supremacy of the Constitution.

(7) The objectives specified in the Preamble to the Constitution.

(8) Secularism.

(9) Freedom and dignity of the individual.

(10) The concept of social and economic justice—to build a welfare State.

(11) The principle of free and fair elections.

(12) The principle of separation of powers.

(13) Parliamentary system of Government.

Q. 7 What changes, if any, would you suggest in the distribution of legislative powers under the Seventh Schedule and other provisions of the Constitution?

Q. 8 Generally, can you point out any specific provision, or defect in the working of the Constitution which has generated friction between the Union and the States? What are your suggestions or solutions for minimising or alleviating such frictions, if there are any?

Q. 9 What are your views on Article 370 of the Constitution ?

Q. 10 Do you subscribe to the view that Sales Tax should be abolished, and instead, additional excise duty be levied by the Union in consultation with the the States and collected by the States themselves?

Supplementary Questionnaire No. 9

ARTICLE 356

1. In the Constituent Assembly Dr. B. R. Ambedkar explained that the power given under Art. 356 was a last resort power, to be exercised very springly when all other correctives fail. He also indicated some of these alternatives, which should be tried before invoking this extraordinary power. He Said :—

"....I share the sentiments that such articles will never be called into operation and that they remain a dead letter. If at all they are brought into operation. I hope the President who is endowed with these powers will take proper precautions before actully suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred that things were not happening in the way they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the Province to settle matters by themselves. It is only when these two remedies fail that he should resort to this Article".

How far was the use of Art. 356 by the Janata Government in 1977 in accordance with the procedure suggested above by Dr. B.R. Ambedkar? In this connection it may be kept in mind that the power to dissolve the State Legislative Assembly vests under Art 174 in the Governor, and it can be assumed by the President only after, and not before, the imposition of the President's Rule.

2. In *Rajasthan Case*, the Supreme Court (per Mr. Justice P. N. Bhagwati) observed : "....merely because the ruling party in a State suffers defeat in the elections to the Lok Sabha.... by itself can be no ground for saying that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The federal structure under our Constitution clearly postulates that there may be one party in power in the State and another at the Centre." Do you agree with this observation.

In the light of this observation, will it be in accord with constitutional *propriety* as distinguished from arid *legality*, to use Art 356 for the purpose of dismissing the Ministry and dissolving the Legislative Assembly of a State on the *sole* ground that in Elections to the Lok Sabha the ruling party in the State has suffered an overwhelming defeat?

3. Two divergent suggestions have been made before the Commission. One which seeks its support from the extracted statement of Dr. B. R. Ambedkar, is that, if a Ministry is defeated in the Assembly and thereupon resigns and all efforts made by the Governor to have an alternative Ministry enjoying support of the Assembly fail, the Governor should not straightaway report and recommend of imposition of the President's Rule but he must try another alternative, viz., dissolve the Assembly in the exercise of his own judgement, irrespective of the advice of the defeated Chief Minister, keeping a care-taker Ministry and leaving the resolution of political dead-lock to the electorate.

The contrary suggestion put before the Commission, is that the Governor should not in the aforesaid situation dissolve the Assembly on the advice of the defeated Chief Minister or even in his own discretion, but recommend forthwith, imposition of President's Rule, leaving it to the President (i.e. the Union Government), eitherto keep the Assembly in a state of suspended animation for a period not exceeding two months or to dissolve it earlier.

What are your comments/views regarding these divergent suggestions?

4. A suggestion has been made that as a safeguard against the misuse of the power under Art. 356 and to make the control of Parliament over its exercise real and effective, provisions similar to these contained in clauses (7) and (8) of Art. 352 should be drafted on Art. 356, also. What is your reaction and comment in regard to this suggestion?

5. A suggestion has been made that as a safeguard against the misuse of the power under Art. 356 and for making the remedy of judicial review meaningful, the material facts and grounds, on the basis of which, President takes action under Art. 356, must be stated in the report of the Governor and also made an integral part of the Proclamation issued under Art. 356(1). It is further suggested that such self-contained report of the Governor and the Proclamation may first be laid before the Inter-State Council, and thereafter together with its advice/comments, they should be laid by the Union Cabinet before Parliament, not later than 2 months of the date of the issue of the proclamation. What is your comment with regard to this suggestion?

Additional Questions

1. Can the provisions of Art. 356 be legitimately used to resolve a ministerial crisis caused by an intra-party dispute or dissensions, or, for reform of mal-administration in a State ?

2. Does the last segment of Art. 355 allow some Central action other than that stipulated under Art. 356. That is to say, can the Union Government legally constitute a Commission of Enquiry against a State Chief Minister or Minister, on charges of corruption, nepotism or misuse of power ?

3. Certain academic, legal and political circles read clause (3) of Art. 356 as specifically requiring that the Presidential proclamation as to the failure of the constitutional machinery in a State must be placed before each House of Parliament for approval/or ratification *within* a period of two months. Do you agree with this interpretation ?

4. In a number of cases, the Proclamation issued under Art. 356(1) was not placed before Parliament within the prescribed period of two months. at all. It was avoided in various ways :

   (i) By dissolving the Legislative Assembly of the State concerned within two months of the imposition of the President's Rule. This happened in the case of West Bengal (1970). Mysore (1971) and Gujarat (1974). Similarly, in 1977, the proclamation dissolving the 9 State Legislative Assemblies, was never put before the Parliament.

   (ii) By rescinding the first proclamation and reissuing the same before the expiry of the period of two months stipulated in clause (3). This course was followed in the cases of Orissa (1971) and Bihar (1972).

   If your answer to the preceding question is in the affirmative, did not the failure to place the proclamation before both Houses of Parliament within the specified period of two months, in the above instances, amount to contravention or circumvention of the requirement in clause (3) ?

5. If the control of Parliament provided in clause (3) of Art. 356 was intended to operate as a safeguard against the arbitrary or improper exercise of the power, what solution would you suggest to plug the loopholes or to remove deficiencies in this safeguard, revealed by the decision of the Supreme Court in *State of Rajasthan Vs. Union of India* (AIR 1977 SC 1361) (Please see Annexure-A) ?

6. A suggestion has been made that even within the present framework of the Constitution the President can rightly insist that he will not take any irreversible action (including dissolution of the Assembly)

unless he is assured of majority support for the measure, not only in the Lok Sabha, but also in the Rajya Sabha, that in doing so he would not be acting against any norms of democratic principles. Here he would be acting with a view to assure that his office is not allowed to be used for circumventing or by-passing the constitutional requirement of approval by each House of Parliament. What is your comment in regard to this suggestion ?

7. If you do not agree with the suggestion posed in the preceding question, what is your comment with regard to the alternative suggestion propounded in certain circles that by a constitutional amendment such a discretion to stop or prevent misuse of the power under Art. 356 be conferred on the President ?

ANNEXURE 'A'

Abstract from Rajasthan Case

"Approval by either House of Parliament before the expiration of two months has no constitutional relevance to the life of Proclamation and the Proclamation would continue in (full) force (and effect) for a period of *two months despite* such disapproval."

(Parenthesis within brackets and emphasis added).

Supplementary Questionnaire No. 10

SUPPLEMENTARY QUESTIONNAIRE ON TAXATION OF AGRICULTURAL INCOMES

1. The subject "Taxes on agricultural income" is shown in Entry 46 of List-II-State List of the Seventh Schedule to the Constitution. A view has been expressed that the States have not adequately exploited this source of tax assigned to them to augment their revenues.

Is any direct tax on agricultural incomes being levied in your State? If so, please give information with respect to the following :

(a) Since when it is being levied ?

(b) The tax-base and broad rates of tax ?

(c) The yield during the last 5 years (1980-85) and as percentage of total tax revenue in the State.

(d) The rebates, concessions, relief, etc. given from time to time.

(e) Serious difficulties, if any, being experienced in the administration of the tax.

(f) Any estimates of tax-evasion which are available.

(g) Any other information relevant with respect to taxation of agricultural income in your State.

2. If at present no direct tax on agricultural incomes is being levied in your State, please inform about the following :

(i) Was it ever levied in some form and then given up ? If so,

(a) the period during which it was levied;

(b) the level of yield (both amount and as percentage of total tax revenue of the State), and

(c) the reasons for giving up the tax ?

(ii) If not levied at any time in your State,

(a) was it ever considered to levy the tax? If so, when and the main reasons for not levying.

(b) If levy of the same has not been considered at all so far, what are the views of the State Government in regard to it?

3. Are there any other direct taxes on agricultural sector which are being levied or were levied in your State ?

If so, broad details of their nature base, yield (also as percentage of total tax revenue of the State) and rebates/relief, etc. given with respect to them from time to time or reasons for discontinuing them, if given up.

4. A specific suggestion has been made that the Constitution be amended for transferring the subject of 'Taxation of Agricultural Income' from the State List to the Union List and the States should get the net proceeds of such a tax. Such an amendment would help the States in getting over the resistence they might face should they consider to levy agricultural income-tax, make available of more revenue to the States, and also ensure a uniform approach to taxation in this field.

What is your reaction to the above proposal? If you not do agree, please give reasons ?

5. Should you be favourably inclined to the proposal stated in Question 4 above, please comment on the following :

(i) What should be the exact tax base ?

(ii) Whether the proceeds of the tax should become available to the States in terms of the arrangements under Article 268 or 269 of the Constitution ? (Please give reasons also).

(iii) Whether in the levying of the tax States should be consulted (a) initially and (b) also at subsequent stages while varying tax rates, etc ? If so, what would be the appropriate form for such a consultation ?

6. Please give a short note highlighting any other matter which you might consider relevant for the Commission on Centre-State Relations to keep in view, but not covered by the above Questions. The note may also mention, *inter alia,* the facts with respect to structure of agricultural incomes/economy in your State and the changes in the same since 1960.

NOTE : In the "Replies to the Questionnaire", received from the State Governments and Political Parties, reproduced in the following pages, the paragraph numbers correspond to the serial numbers of the questions containted in the Questionnaire issued by the Commission.

GOVERNMENT OF ANDHRA PRADESH

(a) Replies to the Questionnaire

(b) Memorandum

Andhra Pradesh

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Our country has been described as a Union of States. It is a federal Constitution. The provisions of the Constitution as well as the working of the Constitution has shown that there is a bias towards concentration of power with the Union.

1.2 The Articles mentioned in the question have found a place in the Constitution to ensure smooth administrative relations between the Union and the States. However, Article 356 has come in for a lot of criticism. We recommend the abolition of the Office of Governor as we have found in actual practice that Governor is a convenient and willing tool in the hands of the Union Executive to subvert the democratic process in a State. A review should be made of the needs or the States which have to shoulder heavy welfare responsibility and adequate tax resources should be provided to meet these commitments. Greater autonomy for States should be welcomed in national interest. The clause regarding 'Autonomy' should not be misconstrued for aggrandisement of powers. It should be considered as a logical concommitent to discharging welfare responsibilities.

1.3 Territorial as well as Functional decentralisation is inevetable in a vast and heterogenous country like India. There can be no quantitative analysis to arrive at optimum solutions in these matters.

1.4 No. federal Constitution of modern countries have co-ordinated national and provincial Governments.

1.5 Our Constitution is basically sound and flexible enough to meet the challenges of the times. If the Constitution worked under true spirit and intent, there may not be occasions for confrontation between the Union and the States. Recourse to Article 263 will provide a very healthy way out of all delicate problems of Union-State relationship. What is required is mutual consultation and avoidance of mistrust. Particularly, constitutional amendments of far-reaching character should be done through a consultative process with State leadership. This will be in keeping with the tradition of our original Constitution where Members of the Constituent Assembly were drawn from the leadership of the States also.

1.6 It is absolutely necessary to ensure the unity and integrity all over the country. The emergency provisions under Article 352, 353, 355 and 356 take care of this problem. However, we would like to reiterate that we do not consider it necessary to rely on Governors report for proclamation of Emergency under Article 356. In fact we recommend that the Office of Governor be abolished.

1.7 Articles 256 and 257 relate to directions by the Union Executive to the State Governments for compliance of laws made by the Parliament. These Articles have rarely been invoked and no controversies arising out of these provisions have been reported. Article 365 gives a constitutional backing to the President to secure the implementation of directions. This is a penal provision and is part and parcel of the earlier provisions. What is important in all these matters is that these provisions should not be misused or worked in a prejudicial manner. There is nothing inherently wrong with the provisions themselves.

So far as Articles 356 of the Constitution is concerned, it is our considered view that keeping a Legislative under suspended animation for more than six months is not advisable.

1.8 Reorganisation of boundaries may become necessary under public and national interest. Any alteration of States' boundaries should be done only after consultation with such States after eliciting the popular views in the affected areas.

PART II

LEGISLATIVE RELATIONS

2.1 The scheme of distribution of Legislative powers between the Union and the States is inherently weighed in favour of the Union. The Constitution has laid down in the Seventh Schedule, the three Lists, namely, the Union List, the State List and the Concurrent List. By virtue of Articles 248 and 249, the Union Parliament is in a position to enhance its legislative powers beyond the normal scope contained in the Lists. A judicious scheme of distribution of powers would vest with the State Legislatures, unequivocal powers relating to its discharge of responsibilities. This is absent in our Constitution. The State List consists of 66 items but some of them are subject to restriction flowing from the provision made in respect of them in the Union List and the Concurrent List. For example, Parliament has been empowered under Entries 7 and 52, 53 and 54 and 56 of List I (Union List) to legislate in respect of Industries, mines and minerals and water, which occur in the State List at Entries 24, 23 and 17 respectively. Similarly, there are Entries in the Concurrent List such as 20, 22, 23 and 34, which read with Article 251 circumscribe the power of the States in regard to Economic and Social Planning, Trade Unions, Industrial and Labour Disputes, Trade and Commerce in, and the production, supply and distribution of essential goods and Price Control. The phrase 'public interest' occuring in Entries 52, 53 and 54 have virtually nullified in practice the corresponding Entries in the State List. Some of the important Entries in the Concurrent List of the Seventh Schedule are :

(a) Entry 20, Economic and Social Planning;

(b) Entry 17 (a), Forests; and

(c) Entry 34, Price Control;

(d) Entry 33 (b), Trade and Commerce in, and production, supply and distribution of food-stuffs including oil seeds and oils;

(e) Entry 38, Electricity;

(f) Entry 25, Education including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I, Vocational and technical training of labour ; and

(g) acquisition and requisitioning of property.

Most of these Entries have enlarged the powers of the Union at the expense of the States. The Andhra Pradesh State would like to bring to focus two specific irritants. The Government of Andhra Pradesh had approached the Government of India for cutting forests to the required extent to lay road and lay on electric line. One of these instances related to the Telugu Ganga Project. The Union Government has treated the State Government as though it is a private party indulging in denudation of forests. This has been possible because of the Central Legislation under Article 317(a) Forests.

Entry 33 of the Concurrent List has been arbitrarily used by the Union Government to thwart the State Government's scheme of supplying rice at Rs. 2 a kilo, to the weaker sections.

2.2 In the first place, it must be ensured that the Union Parliament should evolve a criteria for legislating on State Lists. Wherever practicable, prior consultation with States by the Union should be imperative whenever Union Legislates on State List. These safeguards will ensure that the complementary legislative powers of the Union and the States are exercised in harmony. As regards Concurrent Legislation, it must be ensured that terms like 'public interest' and 'national interest' are not used as a cover for encroaching on the States' domain. Perhaps Entries like Broadcasting, T.V., etc., may be included in the Concurrent List.

2.3 Prior consultation with the State Governments will promote trust and confidence in the States, when the Union Parliament is legislating in national and public interest. However, consultation should not be reduced to formality. The spirit of the Constitution must be observed and Union Legislation on Concurrent List should be restricted to national and public interest which cannot be legitimately discharged by the State Government.

2.4 In a country with differing political parties at the Union and States, concepts of public and national interest may connote differently to different States and the Union. Any legislative measure in public of national interest will, therefore, be viewed differently by the constituent States and the Union. The law to be enforced cannot have a predetermined life. Like any other legislation, the life of legislation on these matters also will depend on the exigencies of national needs. What is important is that there must be a machinery for prior consultation and an institutional arrangement for review. This may assuage the feelings of those States or the Union which feel aggrieved.

2.5 The Seventh Schedule which spells out the jurisdiction of the Union and the States in legislating matters must be reviewed, keeping in view the overall national requirement. Consistent with national integrity and unity, equl importance should be given to development of a nation. The powers and responsibilities should be shared as co-equals.

PART III

ROLE OF THE GOVERNOR

3.1 The Political experience of the States where President's rule has been imposed under Article 356 has also necessitated a rethinking on the institution itself. We feel that the office of Governor has outlived its utility and we recommend the abolition of the office of Governor.

3.2 We are convinced that the Governor invariably acts as an agent and tool of the Union. We do not think any healthy convention can be fostered by Governor. We recommend the abolition of this post.

3.3 As mentioned earlier Governor's Report under Article 356 (1) to the President has shown an alarming degree of variations. It is not always that the recommendation of the Governor was in the spirit of the Constitution.

We have had instances where the Governors have preferred minority party leaders to form the Government. Whenever the political situation in a State gets confused and the party position in the Legislative Assembly is not clear, Governor's role become important. The functioning of democracy in the States cannot be left in the hands of the Governor who is a nominee of the Prime Minister. We recommend the abolition of office of Governor.

The Governors, by and large, accept the advice of the Council of Ministers for prorogation or dissolution of the Legislative Assembly. But we do not think that there is any need for the office of Governor.

3.4 We are convinced that there has been a gross misuse of the office of Governor. We do not consider it necessary to have the institution of Governor. The question of discretion of Governor in reserving bills for Presidential assent is irrelevant in the context of our recommendation to abolish the post of Governor.

3.5 No, we do not agree with the conclusion of the Indian Law Institute. What is important in such matters is not how many Bills have been delayed but what Bills have been delayed, and in what manner the President acting on the advice of Union Ministries revised the intention of the State Legislatures.

3.6 Is the Governor the Constitutional head of the State or is he an agent of the Union Government? Article 153 and 154 do not spell out the exact position, and it is widely believed that he does act for the President and the Union Government. This impression has gained ground by the actions of the Govenors in different States at different times. The Constitutional Bench of the Supreme Court unequivocally held that the Governor, though he is appointed by the President which means in effect and substance the Government of India, he is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he

carries out his functions and duties. He is an independent Constitutional office which is not subject to the control of the Government ol India. Inspite of this judicial pronouncement by the Supreme Court in all significant respects the actual practice bears no relation to the constitutional position.

The white paper on the office of Governor released by Karnataka Government spells out the grave and dubious actions and decisions of Governors. The misdeed of Governor reached the Himalayan Height when the Governor of Andhra Pradesh dismissed the Telugu Desam majority party leader and Andhra Pradesh Chief Minister Sri N. T. Rama Rao on an alleged suspicion that Sri N. T. Rama Rao had lost majority support. After this incident the Governor forfeited whatever little credibility was left in that office. Andhra Pradesh State is convinced that no useful purpose is being served by the office of Governor which is a relic of the imperial past and the post should be abolished.

3.7 We recommend the abolition of the office of Governor. The mode of selection, security of tenure and other related issues does not therefore deserve any consideration.

3.8 The Governor need not perform the function of assessing majority in the House. We recommend the abolition of the Office of Governor. The question whether a Chief Minister enjoys a majority or not can always be tested on the floor of the House like any other issue coming up for decision and voting.

3.9 It is not always possible for the Legislature to elect a Chief Minister before passing vote of no-confidence against the previous Government. In the event of no political party having absolute majority and where coalition is also not possible, the only solution is to dissolve the House. In any case we do not propose any role for the Governor. We recommend the office of Governor be abolished.

3.10 We recommend the abolition of the office of Governor. The question of examining guidelines to Governor therefore does not arise.

PART IV

ADMINISTRATIVE RELATIONS

4.1 Articles 256, 257 and 365 are intended to ensure compliance of Union laws by recalcitrant States. Article 365 strengthens the hands of the Union by giving a Constitutional backing to enforce the Union directions. On no occasion did the State receive any direction.

4.2 Article 365 is penal provision intended to secure compliance of the States. If the law of the land is to be upheld, there is no other alternative. What is important is the exercise of power under this provision in good faith and in a bonafide manner.

4.3 It is always advisable for the Union to explore possibilities of securing compliance of Union directions by persuasion before resorting to the compulsive penal provisions of the Constitution.

4.4 We have already explained in the answer to Q. 3.6 that we recommed the abolition in the office of Governor and given the extreme example of gross misuse of the Governor's office.

4.5 Prolonged President's Rule will kill democratic initiative and make permanent solution even more difficult. Provisions under Clause 4 and 5 require no change.

4.6 The present arrangements for implementation of functions like Census and Elections by the State administration are working satisfactorily. In fact, these are the two areas where the State administration have acquitted very creditably in completing the time schedule operations.

4.7 It is a fact that Union intervention on State and Concurrent Lists has increased on account of the creation of a number of central agencies as cited in the question 4.7. These agencies may have been created in pursuance of a national policy to ensure a stable economy and a uniform Economic and Social balance in the country. There have been criticisms about the Agricultural Prices Commission and Food Corporation of India. In Central agencies which do not include representatives of the State Government, there is always a feeling that the Union does not take the States' view point into account before taking decisions.

4.8 In a co-operative federal structure like ours there is need for interdependence between the State Government on the one hand and the Union Government on the other. The present arrangement by which the best talent available in the country is harnessed and utilised for both Governments is necessary. The composition of the All India Services and the facility for national reference at any time will be a great cementing factor in Union-State relations. It must be appreciated that once an All India Service Officer is allotted to a State Cadre, he has to function under the authority of the State Government which utilises his services. Especially in disciplinary matters the State Government must have sufficient control. Under the present grievances procedure a Member of All India Service who is suspended by the State Government has right of appeal to the President. The appeal is decided by the President on the aid and advice of the Union Home Ministry. In other words, it is the Union Government which sits in judgement over the State Government in such matters. We recommend that the President should be advised by an independent and autonomous body like the Union Public Service Commission in such disciplinary matters.

It is necessary to remember that most of the senior posts in the Union Ministries are to be occupied by officers of the All India Services and, in particular of the I. A. S., on a deputation basis the 'period of deputation' being fixed. Unfortunately, in the past this aspect has been lost sight of, if not deliberately ignored. If the practice of officers of the State cadres working in Delhi reverting to the State Government at the end of the period of their deputation is followed strictly, it would result in such feeling being avoided. It would also have the additional advantage of more people working both in the Union Ministries in the States having the benefits of seeing both sides and, therefore, having a better understanding of the functioning of the Governments at both these levels. Such a knowledge cannot but be useful in removing any Union-State 'Irritant' real or imaginary.

4.9 The experience of the State Government that the Union Government has so far deployed the Central Reserve Police and other armed forces in aid of civil power only, on requisition from the State Government. Since the State Governments are not in a position to maintain a large force permanently which is very expensive, recourse to forces like the Central Reserve Police become necessary for the State Government.

4.10 In a democracy, media plays an important role. At present the Government media like Radio and Television (T. V.) are with the Union. Unlike some of the western countries where even private bodies control these media, in India even the State Government do not have these media under their control. For a variety of reasons it is felt that the State Governments also must be permitted to have their own media or at least a fair share of time in the Union Government's Radio and (T. V.) Television Programmes. In the absence of autonomous corporations controlling these media, this is a solution which should be acceptable to all concerned. We are not unaware that the misuse of these media can have global repurcussions and could land the country into strange situations affecting foreign relations. We recommend that a law be made, or the present law be amended, to enable State Governments, wherever feasible, to set up their stations, subject to such conditions or restrictions as necessary in the national interests. A statutory body may be set up to administer this Act so as to inspire in the State Government the confidence that any restriction which is imposed in really in the interests of the nation as a whole.

4.11 There has not been much impact on account of the deliberations of the Zonal Councils.

4.12 Much of the friction between the Union and the States in areas not covered by the Planning bodies could be reduced if the provisions of article 263 for setting up an Inter-State Council are utilised. This article has not been put to any worthwhile use till now, except in a very peripheral manner. There are several instances which will be outside the scope of the Planning process but need to be considered at the highest level. It will remove much of the misunderstanding not only beteween the Union and the States but among States *inter se*, if this Council, as envisaged in Article 263, is formed on a firm basis and also meets regularly, say not less than once or twice a year.

The State forum could also be taken advantage of for discussing even items which fall within the Union List so that even the Central Policies could be formulated after giving an opportunity to the States to express their view and simultaneously hear and understand the reasons of the Union Government for any proposed policy. The Inter-State Council is really a high-powered body and the consensus which emerges on various issues discussed in it should be given the highest consideration and not merely brushed aside after having gone through the formalities of holding such meetings. Such a course of consultations and consensus is likely to have results which are more lasting than discussions held between individual Ministers or among individual officers.

PART V

FINANCIAL RELATIONS

5.1 Transfer of resources, from the Centre to the States, has been taking place through the Finance Commission, Planning Commission and others. Some of these are statutory and others are discretionary transfers. In spite of sizeable transfers, the States have not become financially stable and in fact their position has deteriorated. The objectives of equity and reduction of regional imbalances also have not been achieved so far.

2. We feel that this situation, even after a sufficiently long period of 34 years, is mainly due to the spirit in which various Constitutional measures have been worked and its inherent federalism allowed to deteriorate into an arbitrary unitary system, and not to any inherent short-comings of the Constitution as such. Examples of this situation are very well known and the States have been pointing them out to various Finance Commissions and in the meetings of the NDC. Some of them may be briefly mentioned here.

3. (i) Surcharge on income tax levied in 1962-63 as a temporary measure, is still being continued, thus depriving the States of legitimate resources.

(ii) By an amendment of the Income Tax Act in 1959, the income tax paid by companies was brought under Corporation Tax which is not divisible with the States. Thus, a very elastic source of revenue has been denied to the States.

(iii) Resources collected through CDS, Bearer Bonds etc. which flow out of and A kin to Income Tax, are denied to the States.

(iv) The 3 commodities transferred from State Sales Tax to Additional Excise Duties under a tax rental agreement are not being exploited properly in spite of very strong sentiments of the States. Further, States are being steam rollered into transferring 5 more commodities from sales tax.

(v) Grant in lieu of the abolished tax on railway passenger fares is being fixed in a cavalier fashion, depriving the States of sizeable resources.

On a number of the above grievances of the States, the Finance Commission were convinced of the validity of the States' claims, but were constiained to make any amends because of their Terms of Reference and the *Letter* of the Constitution. Unless the Constitution is worked in the *spirit* in which it was framed and the federal polity is restored in its true sense, the States will continue to the supplicants for resources only and not true and full partners with the Centre.

5.2 The situation described by the ARC Study Team on Centre-State Relations, is more true now than before. The remedy lies in bringing more taxes such as Corporation Tax, Surcharge on Income tax etc., into the divisible pool and also equitable sharing of some of the non-tax revenues of the Union [i.e., (d) and (e) of the alternatives mentioned].

5.3 Without adequate transfer of resources and their equitable distribution among the States, the States have naturally failed in reducing regional imbalances in their own respective areas and the disparities among the States have also increased. This situation created as a result of the Centre's own mistaken actions cannot be cited as a reason for putting more powers in the hands of the Centre. Symptoms should not be mistaken for the disease. The remedy lies in restoring to the States their due status envisaged in the Constitution. Further, statutory transfer of resources account for about 40% of the total transfers to States. Over the years, the transfers from the Finance Commissions are becoming more equitable. Inspite of sizeable discretionery transfers by the Centre, backward States have not been able to advance relatively. It is precisely because of this that we contest the view that only a strong Centre with elastic resources can reduce regional imbalances.

5.4 We do not agree with view expressed in Q.5.3 above. However, to be in a position to transfer larger resources to the States for their balanced development, the Centre should mobilise resources through tax and non-tax measures, economy in expenditure and only a reasonable and safe deficit financing as a last resort.

2. We consider that the classification of budgets into Revenue and Capital is not so material as the overall picture. The Centre may be having Revenue Account deficits but its Capital Accounts has always been a surplus. Further, the deficits on Revenue Account are not simply because of transfer of resources to the States, but also in a large measure due to heavy non-plan expenditure (defence, etc) and encroachment into development sectors which are best left to the States for planned development. In view of this, the Centre can avoid a large measure of deficit financing by rearranging the priorities between the States and the Centre and economies in expenditure.

5.5 (a) We have already indicated our views in this regard in our Memorandum to the Eighth Finance Commission.

(b) The present formula is acceptable.

(c) Non-plan assistance should be limited to Natural Calamities Relief and a few other items. These discretionary transfers should be strictly limited.

5.6 We are not in favour of a 'special federal fund'. The existing institutions i.e., Finance Commission and Planning Commission are adequate, provided these instruments are utilised in the proper spirit.

5.7 The States have not been asking for transfer of certain taxation powers from the Centre to the States. The 3 principles of taxation mentioned in the Questionnaire are unexceptionable. What we are submitting is that the existing Constitutional provisions should not be nullified through Centre's unilateral actions, and a large measure of financial strength should be injected into the States for performing the tasks assigned to them under the Constitution.

5.8 We agree with this view except for the inclusion of Sales Tax. The Constitution had already allocated various taxes to the Centre and the States on the basis of sound principles of taxation, Sales Tax, which is the sheet anchor of States tax revenues and is an instrument of States' economic policies, should remain with the States. A Council of Central and State Finance Ministers exercising control over 4 Central taxes will go a long way in curbing the tendency of the Centre attribute to itself resources from surcharge on Income Tax, Bearer Bonds, etc.

5.9 We do not agree with the view that a permanent Finance Commission should deal with all resources transfers. Finance Commission and Planning Commission are meant for different purposes and they should continue to discharge them. A better coordination of their activities, however, is desirable.

5.10 We do not think that transfer of resources from the Union to the States have so far any direct bearing on promotion of efficiency and economy in expenditure and reduction of disparities in public expenditure.

2. We have always been trying to promote administrative efficiency and observe economy in expenditure, more so in the context of paucity of resources due to inadequate transfer of resources from the Centre.

3. Public expenditure includes all expenditure incurred by a Government both under Plan and Non-plan and also capital and revenue accounts. Because of the overall inadequacy of resources transferred and their inequitable distribution among the States, the disparities in Public Expenditure have not narrowed down.

5.11 This view reflects only one side of the coin. Transfer of resources by the Finance Commissions are made not on the basis of the allegedly inflated revenue deficit forecaste by States but on the basis of thorough examination and scrutiny by the Commissions on the basis of actuals for the previous years, firm decisions taken and implemented by the Governments etc. Finance Commission also evolve norms both for receipts and expenditure. To say that States would first waste funds simply because the resources are being transferred from the Centre, is far from the truth. As long as one is a 'giver' and the other is a 'taker', some exaggeration in claims cannot be ruled out. But transfers are made after a thorough scrutiny of the claims only.

2. Ours being a parliamentary democracy, different political parties come into power from time to time on the basis of their manifestos. Perceptions in regard to priorities are bound to differ from party to party and from one Government to another. What may appear populist viewed in one context, may not be perceived in the same manner in a different context. It would be far-fetched to presume that States waste resources only to earn more from the Finance Commissions. At the same time any scheme of devolutions should provide for encouraging financial discipline.

5.12 We have made this proposition before the Sixth and Seventh Commissions. We submitted to the Eighth Commission also that the approach of the Seventh Commission, in this regard should be continued.

5.13 We fully agree with the views expressed by the Seventh Finance Commission.

5.14 Even though the two examples given in the questionnaire appear as non-tax revenues in the Central budget, in essence they are not so.

2. Special Bearer Bonds Scheme was envisaged to mop up at least part of the black money circulating in the economy. The proceeds of the bearer bonds were primarily from the concealed incomes. Had the Government of India's tax collection machinery been more efficient, these incomes would have been subject to Income Tax and the net proceeds shared with the States. Hence we feel that the receipts from this scheme should have been shared with the States.

3. As regards administered prices of petroleum products, coal, iron, etc., being raised instead of excise duties on these items being increased, every one knows that this is only a stratagem employed by the Centre to deprive the States of their due share in resources.

4. Surcharge on Income Tax, Compulsory Deposit Scheme, etc., also come under this category of resources denied to the States.

5.15 No, they are not satisfactory and there is scope for improvement specially under market borrowings.

2. During the First Plan period, the share of States in the total market borrowings was 76% and came down to 63% in the Third Plan. It deteriorated thereafter and stood at 23% in the Sixth Plan period. Since the plan outlays of States and Centre are almost equal, there is every justification for the States' share being increased to at least 50% of the total market borrowings.

5.16 Because of the inadequate transfer of resources on the one hand and the ever incerasing burdens of committed expenditure, D.A. and pay increases to Government employees and teachers rising aspirations of the people, compulsions to undertake larger plan outlays etc., on the other, have resulted in larger deficits in State Budgets. This dis-equilibrium has to be remedied through larger transfer of resources on a permanent basis. Instead of this, the transfer of resources as a percentage of Centre's revenues has been steadily declining. It is this situation which requires urgent remedial measures.

5.17 A periodical review of the States' indebtedness (mainly to the Centre) and the measures suggested by the Sixth and Seventh Commissions, are only fire fighting exercises and do not touch the root causes.

2. We suggested to the Eighth Finance Commission that

(a) Loans and advances from the Central Government consolidated by the Seventh Finance Commission as well as those not consolidated, and outstanding as on 31-3-1984 may be written off. This will give a considerable relief to the capital account as well as revenue account.

(b) Loans and advances from the Central Government advanced during 1979-84 and expected to be outstanding as on 31-3-1984 but excluding special loans for clearing over-drafts may be consolidated and given a repayment period of 30 years for the entire amount.

(c) Plan and non-plan assistance from the Central Government expected to be given after 31-3-1984 may be given in the shape of 50% grants and 50% loans in view of the fact that even the outlays on irrigation and power projects and such other capital assets are not turning out to be productive in terms of finances of the State Government.

(d) The States' share of net small savings collections may be given as loans in perpetuity.

5.18 After nationalisation of major institutions of finance and the commercial banks, the questions of State's capacity does not arise; and the States never had any freedom, since these questions were always decided by the R.B.I. What we would like to see is a more reasonable vertical division of these drawings on private savings and their equitable distribution among the States.

5.19 We do not think the Centre is justified in charging a higher rate of interest from the States than what they were paying to the foreign creditors.

2. Some States are cornering a major portion of the "assistance for externally aided projects" for various reasons. It should be possible in devise a formula, outside the Gadgil formula, to compensate those States who could not avail of the assistance for externally aided projects.

5.20 No. Reserve Bank of India only fixes the total borrowing limits for the country as a whole for any year, based on its assessment of the economy, market conditions etc. It is the Central Government which is fixing the limits of individual States and the Centre. We have been urging the Planning Commission to evolve certain objective criteria for this purpose also to be approved by the N.D.C. But this has not been done so far. A loan council will only be duplication of the existing machinery and will not serve any purpose.

5.21 Doubling or trebling of the Ways and Means limits are not going to rectify the basic imbalance in the States' resources position, which results in overdrafts year after year. What is required is strengthening of the States' resources structure significantly. After this is achieved the States should be able to manage their finance prudently and without getting into overdrafts. Unless the resources based of States is widened and strengthened, no amount of tinkering with it by way of enhancing the "limits" etc. will help.

5.22 No. The Seventh Finance Commission had stated that : "in the matter of additional resource mobilisation the States as a whole have not lagged behind the Central Government and the performance of the States has been on the whole creditable."

(Chapter 9, Para 11)

However, there is always scope for improvements and further exploitation, especially in the rural sector of the economy.

5.23 We fully agree with the view expressed regard ing the Centre. The Centre is obviously aware of these short-comings and is taking remedial measures.

5.24 Yes, we think so.

5.25 We feel that although 34 years have passed since the framing of the Constitution the Government of India has, with the exception of two measures, not taken any action to exploit the levies visualised under Article 269. Even out of these two, the tax on Railway Passenger Fares was abolished long ago and only the Estate Duty remains in operation. The Centre should take urgent and appropriate measures under Article 269 to augment the resources of the State.

5.26 All States have been representing this issue before the various Finance Commissions. Our Government's views may be seen in our Memorandum submitted to the Eighth Finance Commission . We are of the view that the Central Government has been extremely remiss in this regard by limiting the annual grant to Rs. 23 crores, whereas it could be as high as Rs. 125 crores on a conservative estimate. in this connection, reference is also invited to Chapter 7 of the Report of the Seventh Finance Commission.

5.27 This grievance does not appear to have any substance. The budgets of Union Territories (Plan and Non-plan) are approved by the Ministry of Finance and fully financed by the Centre. Hence there is no question of depriving them of their share in the buoyancy in Central taxes.

5.28 Our views on this question were clearly spelt out in our Memorandum to the Eighth Finance Commission. The State Government has every interest in seeing that the amounts are efficiently utilised for the purpose for which they are meant. The financial procedures and evaluation methods applicable to all other expenditure, are employed for this expenditure also.

5.29 We consider that the creation of N.L.C., N.C.C. and N.E.C. is not necessary and they will serve no useful purpose.

5.30 We do not agree. Who collects the funds (or has a right to them) and on which people they are spent are very important for us. We do not want our State Government to be reduced to a non-entity We are equal partners with the Centre in our great endeavour for economic and social progress of our country. We do not welcome the idea of being a mere spending agency, directed and controlled by somebody else. Our Government represents our people and we have to be fully capable of discharging our responsibilities to them. in this connection the following extract from our Memorandum to the Seventh Finance Commission is relevant :

"Our submission is that revenues are not the crux of the matter in some of these issues. Just as man does not live by bread alone. state do not exist by revenues alone. It is not the power to spend that is the *sine qua non* of a State. This power is enjoyed by several bodies by a process of delegation or devolution. The crucial test of the State even of its pale version in a federal structure, is the power to tax. If this power of the field in which it can be exercised is so abridged as to be of little residual significance, the very nature of the State will undergo a change and consequently a basic alteration in the Centre-State balance in our federal structure would have taken place. We are aware of the many arguments for centralisation of the powers for taxation in a federal structure together with decentralisation of functions and the matching of the two through a process of devolution. But in this matter as in many others a stage comes when quantitative change becomes a qualitative change and we would submit that the reduction of the sphere of taxation of the State to only income-tax from agriculture would be such a state."

5.31 (a) We agree, Yes

(b) We consider this criticism is not justified. Attention is drawn to the reply to Q. 5.11.

(c) We do not think that a permanent National Expenditure Commission will serve any useful purpose, besides creating a few more jobs and adding to the existing infructuous expenditure.

5.32 There are no problems in this regard.

5.33 Audit reports contain evaluation audit also in the sense that different sectors are covered through a review of schemes.

5.34 Yes, we think so.

5.35 Yes, Even if there are some gaps, they are covered in the process of PAC's thorough discussions on the audit Reports.

5.36 Expenditure control through exchequer control can be and is exercised by the concerned State or Central Government only and this procedure is correct. C.A.G. has accounting and auditing functions and they should not be confused with expenditure control.

5.37 Yes, definitely.

5.38 We do not think that an Expenditure Commission is required. The existing statutory and legislative bodies are adequate for the purpose.

5.39 The scope of the question apparently covers need for detailed approvals at the level of Government of India for schemes fully or partially funded by them. While it is entirely correct that adequate monitory arrangements should be evolved, there is no need for the Centre to approve the minutes details of the projects. Since the States have adequate apparatus for formulating and approving the schemes, Centre may with advantage limit itself to issuing broad guidelines. Detailed approvals lead only to delays.

As regards Centrally Sponsored Schemes once the broad details of the scheme are finalised by the concerned Ministry the details framing of the scheme should be left to the State Government concerned where the local conditions may vary. There is considerable delay at present in getting sanctions from the concerned Ministries for these schemes. As in the case of State Plan Schemes there is a similar difficulty in furnishing audited figures of expenditure for Centrally Sponsored Schemes. The Central Government should not insist on furnishing of audited figures of expenditure.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 Eventhough "economic and social planning" is an entry in the concurrent list of Seventh Schedule of the Constitution, this also covers a large variety of activities which legitimately fall in the States sphere. As this entry is important for the development of national economy, it has contributed more than any other single entry, to the erosion of federalism and to the disturbance of the equilibrium between the Union and States. People's participation in the political process has increased enormously over the years and being very close to the people, the State Governments have to the very sensitive to the aspirations of the people. But there is inadequate participation of the States in the entire planning process. The Union has been getting involved increasingly in programmes which are within the domain of the State Governments. There have been, therefore, persistent complaints against the process of planning and decision taking at the Union level. The Planning Commission which came into existence, not through the Constitution but through an executive decision, is the all important body which formulates the national as well as the State level plans to conform to the overall objectives of the national plan. The Centrally Sponsored Schemes are conceived and formulated in detail by the concerned Union Ministries and the States are left with the task of execution only. Most of the schemes like soil and water conservation, minor fishing ports, DPAP, etc. are in the areas of States' constitutional responsibilities but are encroached upon by the Central Ministries. After several attempts through the NDC for reducing the expenditure on Centrally Sponsored Schemes, the NDC decided in 1968 that the expenditure of these Centrally Sponsored Schemes, should be limited to 1/6th of the total Central Assistance to States. Even this directive has been ignored in practice. Therefore, we feel that the Study Group of A.R.C. was right in its observations.

The remedial measures, therefore, lie in promoting initiative in the States and secure involvement of the States in the planning process. The national planning process should be witalised as a conjoint and co-operative effort of the Union and the States. This can be achieved by the establishment through a constitutional provision of the National Planning Development Council with the Prime Minister as the Chairman and Chief Ministers as the Members. The Planning Commission will be a technical are to be controlled and directed by the NPDC.

Broadly speaking, the functions of the proposed National Planning and Development Council could be :

(a) formulate the guidelines for economic and Social Planning to be undertaken by the Union and States in their respective spheres.

(b) consider and approve the Five Year Plans from time to time.

(c) mobilise the efforts and resources of the nation in support of the Five Year Plan.

(d) formulate and approve the principles governing allocation of plan resources between the public sector and the private sector, between the Union and the State and among the States.

(e) review from time to time the implementation of Five Year Plans.

(f) review the progress towards balanced development of all the States and to recommend appropriate measures for achieving this objective as soon as possible.

(g) consider and advise on all important policies that have a bearing on the economic and social.

(h) identify major projects in crucial sectors like irrigation involving large outlays with a view to ensuring liberal funding by the Centre to supplement State's resource. (This flexible approach for larger irrigation projects is required to ensure full utilisation of river waters at the same time not imposing undue burden on the State's resources). and

(i) in particular decide on allocation as between Union and the States, of the market borrowings, the external finances, discretionary transfers and advise on all taxation measures that effect both the Centre and the States.

6.2 As stated earlier, we conceive of a body established through a constitutional provision with larger involvement and of greater power than the existing N. D. Council and call it NPDC which is also to be representative both of the Union and States. The Planning Commission is envisaged to advise and assist the NPDC in its planning, process and functioning wholly, under the control and direction of NPDC instead of under the direction and control of the Union Government as hitherto. Indeed, Planning Commission would cease to have independent existence. It would only be technical arm and secretariat of NPDC. NPDC may remit specific matters to *ad hoc* or standing sub-committees constituted with the membership of NPDC itself. It may be noted that the NPDC is deliberately structured to be different from the Inter-State Council envisaged in Article 263.

6.3 The Planning Commission over the years has acquired a strategic position and has been weilding considerable power over the States in economic and financial matters. Since latter half of 60s there have been complaints about the working of Planning Commission, the process of planning and the manner of decision making on important economic matters of interest to States in general. The Planning Commission was originally envisaged to be an expert body which can command the confidence and respect of entire nation the Union and the States alike. Previously all acknowledged experts in the field were at the helm of it. The manner in which its members have been changed in recent past has reduced its credibility as a truely national institution of competence. Though national consensus is an essential desideratum for success of plan, the Planning Commission does not always view itself as a body answerable equally both to the Union and States. Its tone, superiority complex, rigid procedures, dictatorial attitude have given rise to resentment among the State Governments who have over the years developed their own competence and expertise and have become

increasingly assertive of their constitutional position. Some have come to think that it has become an instrument at Union Level to thwart the State programmes and policies. The Planning Commission has come to usurp some of the functions relating to financial devolution which properly belonged to Finance Commission in terms of Constitution. There has been lack of understanding and consultation between Planning Commission and State Governments and some economists observed that under the present system of planning the States tend to lose their initiative, fail in fulfilling the role set for them by the founding fathers of the Constitution—some suggesting even redefining the roles of Union and States in regard to economic Planning reorienting the existing institutions.

The present composition and procedure of Planning Commission provide for arithmetical exercises and to some extent imposing priorities/Schemes through the machanism of M.N.P. earmarked outlays and centrally sponsored Schemes. The Secretariat of N.P.D.C. should take on its rolls officials from the State Government who have had technical background and practical experience in matters relating to the development activities in the States so that the N.P.D.C. can advise the States better.

6.4 This is already covered.

6.5 This is already covered.

6.6 This is already covered.

6.7 At present, Central assistance is being given on the basis of 30% grant and 70% loan, the loan being repayable in 15 years. In view of increasing Central assistance to the States and the above pattern of assistance, the debt burden of the States has been going up, the effect of which is to reduce the quantum of resources actually available to the States for developmental purposes. Recognising this fact, assessment of the non-plan capital gap has also been included in the terms of reference of the Sixth, Seventh and Eighth Finance Commissions. It will be much better to prevent the problem from arising by increasing the grant component of the Central Assistance rather than creating it by attaching unrealistic conditions and then referring it for review by a body like the Finance Commission. Even from the point of view of the schemes included in the Plan, it would be evident that 70% of Plan investments cannot be said to be capable of generating resources for repayment thus justifying the 70% loan component. The grant component should therefore be increased to 50%.

Simultaneously, the terms of repayment of the loan component should be made much softer than they are at present. The loan component should consist of half ordinary loans as at present and half soft loans the repayment periodof which could for instance be 50 years and a reasonably low interest rate on the lines of I.D.A. loans to the Centre. It might superficially appear that this will affect the resources position of the Central Government, but it can easily be seen that in the ultimate analysis this would not be correct. To the extent repayment conditions are onerous and the States have an obligation to pay interest and repay the original the resources of the States for their Plans will be less which would mean the Central assistance for a given Plan outlay would have to be more. By making the terms more generous the States' resources will be released for financing the Plan and to that extent the need for Central Assistance will go down. But achieving this ultimate purpose, by making the terms of Central assistance more liberal, improves the States' own resources position and to that extent strengthens their financial autonomy.

The present pattern of release of Central assistance by the Ministry of Finance is all right and no change is called for in the present pattern.

The present distribution of Central assistance among the States based on the Gadgil Formula, which was evolved after a great deal of deliberation and as a result of consensus among States, has worked well in a field so complicated and so diverse. However, this formula and pattern of releases could continue only till such time the NPDC evolves new criteria on a comprehensive basis covering external finance, borrowing, other discretionary transfers etc.

6.8 It is seen that statutory transfers accounts for 40% while discretionary transfers 60% of total transfers. It is this preponderance of discretionary transfers (which are mostly in the form of loans) that negated the princip'e of viability of State Unit and made States vulnerable in their relations with the Union Government.

Once the Plan is approved, the quantum of assistance to each State from out of the total set aside for States in the Five Year Plan is determined mostly on the basis of the population as per modified Gadgil Formula. But the States under the constitution have a much larger developmental sphere than the union and being in immediate touch with the people they are sensitized to the stirrings at the grass roots. Yet they play no meaningful role in Planning process. The concentration at the Union level of decision making in economic matters in general and planning, in particular field to provide the requisite challenge to bring out the needed response from the States.

Secondly the quantum of resources set aside in the national plan for assistance to State Plans which affects the size of the State Plan is settled by the Union Finance Ministry and allotted to the Planning Commission. There is no known objective basis behind the decision of Finance Ministry.

Thirdly with regard to Centrally Sponsored Scheme States share is shown in State Plans though both Central and Centrally Sponsore Schemes are conceived and planned in detail by the Union Ministries only and the task left for the State is execution. Most of these schemes, as already stated, fall in the areas of States' constitutional responsibility.

The additionality given through the external assistance operates in favour of stronger States only besides the allocation of market borrowing and the investments through institutional finances.

We would therefore suggest that the transfer of resources outside the purview of Finance Commission should be the sole responsibility of the N.P.D. Commission whose constitution we propose.

6.9 This is already covered.

6.10 It is very much true that State Plans are distorted by large number of Centrally Sponsored Schemes. These schemes are conceived and planned in detail by the Union Ministries and not by the State Government. The only action called for is to provide for State's share in the State Plan and the task is to execute the schemes, most of which are in areas of State's constitutional responsibility. Given the complex system of the C. S. S., M. N. P. and earmarked outlays the States have very little manoeuverability to determine their own priorities. Further over the years there have been several changes in these schemes—some schemes transferring to State, some being added. There were therefore several attempts through N.D.C. to reduce the expenditure on a number of such schemes whereupon in 1968 the N. D. C. cleared that the expenditure on these be limited to 1/6 or 1/7 of total assistance of State Plans which is ignored. Further attempts also yielded no results.

6.11 The existing, monitoring and evaluation machinery in the Planning Commission is of very little help to the State Governments. There is need for development of monitoring and evaluation techniques relevant to the nature of the activities in the State Government. Such a technical expertise and guidance by the Planning Commission in the field monitoring & evaluation will be of use to the State Governments also. The State Governments will naturally avail of guidance and expertise if they are worthwhile. Perhaps monitoring and evaluation techniques will have to be designed to suit different sectors and indeed different departments within the State should be encouraged to build their own monitoring and evaluation systems. Trying to centralise monitoring and evaluation has not helped in the past.

6.12 This is already covered.

6.13 The basic problem in regard to the Planning Boards in the State Government is that their effectiveness is very limited since the frame available in determining plan priorities within the State Government is very marginal given the pattern of approval of the State Plans by the Central Government. Further, the relationship between the State Planning Boards and the Planning Commission of India is not at all defined. It may be better to leave each State Government to decide about the type of Planning Boards that they would like to build up. Prescribing the composition and functions of boards on a uniform pattern will not be desirable.

PART VII

MISCELLANEOUS

Industries

7.1 The constitution makers wanted Union of India to limit their control to specific industries and leave the rest to the State Government. However, Industries Development Regulation Act 1951 lists out various Industries which are brought under the purview of the Act and which gives complete powers to the Central and its agencies to control and regulate the development of industries. In actual practice, unless an industry gets the clearance under the IDR Act or is exempted from the purview of the Act by virtue of the Industrial size limit specified it will not be possible for the industries to come up. This has affected promotion and development of industries in the State.

7.2 (i) All industries except those connected with the Defence or National Security or war effort should be allowed to be regulated by the State Governments.

(ii) A large number of industries particularly in the consumer field and light industries will automatically get excluded from the purview of the control exercised by the Industries Development and Regulation Act.

7.3 The Planning Commission can recommend to the National Development Council in each plan period the broad indications of the level to which production can be increased in the different industries and what could be the pattern of specious distribution with reference to demand, transport capability etc., when these guidelines are adopted by the National Development Council each State Government could decide on the number of industries that can be encouraged in the State and what type of encouragement could be given. The normal rules relating to pollution etc. would be observed by the State Government as they are much interested in these as the Central Agencies. The applications for capital goods imports and the raw material from these industries will be dealt with as per the normal rules in force at each point of time.

7.4 The list relating to the import of machinery or raw material for small scale industries should be announced by the Govt. of India from time to time. When once that is done all efforts towards the developmental of small industries should be left to the State Govt. Liberal provisions regarding institutional finance to small Industries will greatly boosted by encouraging small local banks to be established, which would help in mobilising savings and channelising it to industrial investment.

7.5 The States which already have the developed base of industries and enterpreneurship have been able to get better share of the finances available through the Central Financing Institutions. There is need for the Central Financing Institutions to lay greater emphasis in the promotional aspects in so for as industrial backward states are concerned particularly having regard to availability of natural resources.

7.6 & 7.7 It is necessary that the location of Central Sector Public Enterprises—like—Steel Plants of Defence Establishments—shou'd be decided with reference to techno economic, considerations and the approval of location should be a matter that should be decided by the National Development Council. The National Development Council may not be able to discharge this function by itself but it is possible that the National Development Council should set up some arrangements which would enable proper rationable decisions to be taken on this issue.

7.8 The incentive policy has by and large worked well. However, unless the concept of backward area is limited to block or Taluk level the impact of incentive policy is very limited at present.

Trade and Commerce

8.1 Any matter affecting Centre and States or one or more States require a proper consultative machinery and furom. We feel that Inter-State Council contemplated under Article 263 of the Constitution would be an effective machinery for resolving the disputes to a considerable extent. In a growing economy there is always need for adjustment between States and as between State and Centre. Appointment of an authority is not likely to solve the problem by itself. What is really required is the appreciation of the genuine problems of the States and the traders, and practical solutions will have to be found as and when problems arise.

Agriculture

9.1 We would agree with the stand taken by the Study Team of the Administrative Reforms Commission on Centre-State Relations (1967).

9.2 We agree with the stand that Central and Centrally sponsored schemes being implemented through the State agency should ultimately form part of the State Sector and that their number should be kept to a minimum. However in practice this is not happening. At the time of approval of State Annual Plan and Five Year Plan the Planning Commission is obviously approving a lower provision keeping in view the desire of Government of India to have more and more Centrally sponsored schemes.

This is not a desirable practice.

9.3 The role of the State Governments in the formulation of Central and Centrally sponsored sectors of the agricultural plan is only nominal and the suggestions of the State Government in effecting adjustments in the working of the Central and Centrally sponsored schemes are also not given the due weight they deserve. The Central Government should have a dialogue with State Government before formulating any Central or Centrally sponsored scheme and it should also have annual review meeting wherein the State Government's view should be kept in view in making necessary adjustments.

9.4 Confining to fixation of minimum prices and provision of inputs we are to state that the Government of India is observing only a formality in consulting the State Government in the fixation of minimum or fair prices for agricultural items. The State Government's views are called for by the Agricultural Prices Commission through a questionnaire and the Government of India calls for the remarks of the State Government before accepting the recommendations of the APC. Instead of resorting to the paper correspondence it is desirable for the APC to convene a meeting of all Secretaries of State Governments before finalising their recommendations. The Government of India should also convene a meeting of all the Chief Ministers before finalising their decisions in fixation of prices.

In regard to the provision of strategic inputs, the Government of India allots the fertilisers to State Government. The State Government has no control over the distribution of fertilisers by the manufactures through private dealers and co-operatives. Once the Government of India allots certain quantity to a State from a particular manufacturer, the manufacturer is at liberty to allocate it between private dealers and co-operatives. Since the State Government would be interested in encouraging the distribution of fertilisers through co-operative sector, the State Government must have power to distribute the fertilisers given to a State between co-operatives, Agro-Industries and private dealers instead of vesting this power with manufacturers.

9.5 There are no particular problems in regard to agricultural research. So far as NABARD is concerned it is acting more like a wing of Government of India rather than a national autonomous body helping agricultural and rural development. This is clear from the fact that they have not been hopeful at all in assisting the MARKFED of this State in getting cash credit limits even against the Government guarantee from the State Co-operative Bank for undertaking stabilisation operations in cotton and groundnut.

Food and Civil Supplies

10.1 The present arrangements for Centre-State consultations are inadequte and does not help the State Government to discharge their responsibilities in a satisfactory manner.

10.2 Yes. Periodical review is absolutely necessary. (A consolidated note on the above two questions is submitted below).

The Essential Commodities Act is issued by the Government of India and any order issued by the State Government under Section 3 of the Act can only be with the prior concurrence of the Government of India even though it is the State Government that alone is in a position to implement the provisions of this Central Act.

The Rice Mill Levy Order (Andhra Pradesh Rice Procurement (Levy) Order 1984) has been issued under the Essential Commodities Act. According to this order every mill which manufactures rice has to deliver 50% as levy at the procurement prices to the Government agency viz. the Food Corporation of India. In 1974 the A. P. State Civil Supplies Corporation Ltd. came into existence and it was also made a State agency for procuring rice under mill levy. Though the A. P. State Civil Supplies Corporation Ltd. continued to be the procuring agency in the mill levy order, the procurement for Central Pool was only being done through the Food Corporation of India which is a Central agency.

Because of heavy commitment on the part of the State Government to supply rice to the vulnerable sections at Rs. 2/- per K. G. the State Govt. wanted to the supplement the needs of the Public Distribution system through procurement by the A. P. State Civil Supplies Corporation Ltd. also as the quantities that we have been getting from the Food Corporation of India are not sufficient to meet the entire demand of the public distribution system. However, though the Government of India have concurred in our proposal to have the A. P. State Civil Supplies Corporation Ltd. as another procurement agency in the levy order, they have, called upon us not to do any procurement through the A. P. State Civil Supplies

Corporation Ltd., and have mentioned that there should be only one agency for procuring rice *i. e.* Food Corporation of India.

In view of the need to procure more rice, the State Government proposed to increase the levy percentage in 1983-84 from 50% to 62.2/3%. However, the Government of India have not concurred in this and desired that the existing percentage of 50 should be continued. The State Government have also in order to maintain the price of rice at reasonable levels, proposed a clause in the Mill Levy Order to enable the Government to fix reasonable prices for purchase of levy-free stocks available with the millers by the State agencies. The Government of India have however turned down this proposal also and informed the State Government that there should not be any control over the prices of the levy-free stocks held by the millers.

The follwoing prices were suggested for paddy by the State Government for the crop year 1984-85;

Common	Rs. 160/- per quintal
Fine	Rs. 167/- per quintal
Superfine	Rs. 177/- per quintal

The Government of India fixed only the following prices :

Common	Rs. 137/- per quintal
Fine	Rs. 141/- per quintal
Superfine	Rs. 145/- per quintal

Even though the Agricultural Prices Commission had recommended to the Government of India to fix paddy prices at higher levels for the Southern States, the Government of India did not take into consideration the recommendation of the Agricultural Prices Commission but have just fixed support prices uniformly throughout the country.

When the Government of Andhra Pradesh proposed a payment of Rs. 10 per quintal over and above the support prices for paddy by the Rice Milling Industry and the Co-operatives (and not even by the State Government itself), the Government of India instructed that price over and above the support prices should not be paid by the State Government or even arranged to be paid by the Millers and Co-operatives. The Government of India desired the orders in which the millers have been requested to pay Rs. 10/- per quintal over and above the support prices be withdrawn with the result that the State Government had no alternative left except to follow the instructions given by the Government of India, though the State Government wanted to help the farmers by arranging purchases of paddy at a little more than support prices announced by the Government of India through the Rice Milling Industry and Co-operatives. Such restrictions go against the interests of the farmers of the Andhra Pradesh who grow paddy under extremely adverse agro-climatic conditions and whose prices for Kharif paddy, their main production never average the support prices announced by the Government of India.

The Government of India have fixed support prices for coarse grains but have not been undertaking price support operations through Food Corporation of India.

For the open market operations of price to be made through A. P. State Civil Supplies Corporation Limited, the Reserve Bank of India will not provide cash credit accommodation unless it is cleared by the Government of India. For release of cash credit accommodation, even for open market purchases for the public distribution system (not procured parallel to Food Corporation of India) the Reserve Bank of India insist on clearance from the Government of India.

The requirement of the State Government is about 1.75 lakh tonnes of rice per month, in view of the rationalisation of distribution. Despite repeated offers by us to procure more, give more to the Central Pool for Centre's own retention and draw more also for our use, the Government of India have only been making 80,000 tonnes of rice per month and the remaining 9,53,000 tonnes have to be bought from the mills at negotiated prices from levy-free stocks and not at procurement prices in view of Government of India's direction that no agency other than the Food Corporation of India should procure rice. Recently, the Government of India have been taking the stand that higher levels of procurement are unhealthy, even though there is dire need to build up buffer rice stocks in the country and rice is just not available in the international markets, unlike wheat, whatever may be the price of Government of India is prepared to pay for the foreign rice.

The Government of India have not been able to allot palmolien oil to meet our minimum requirements. In order to ensure availability of groundnut oil in the open market and also with a view to making available groundnut oil to the consumers at reasonable prices. We approached the Government of India for giving concurrence for a levy order on groundnut oil so that the State could procure groundnut oil and supply to the vulnerable sections at reasonable prices and to regulate movement of levy free groundnut oil as in the case of rice. However, the Government of India did not permit a levy on groundnut and groundnut oil on the ground that Andhra Pradesh is a deficit State in groundnut production.

Solutions

1. The Government of India may permit the State Government to carry out any amendments in Control Orders issued under the Essential Commodities Act in the interests of ensuring fair and equitable distribution of essential commodities in Andhra Pradesh without reference to Government of India for concurrence. However, the Government of Andhra Pradesh will keep the Government of India informed of the amendments carried out in the control orders under the Essentail Commodities Act.

2. The State Government may be delegated with the powers to have its own agency besides Central Government's agency for procurement of rice.

3. The State Government may be delegated with the powers to fix the prices of levy-free rice also with a view to controlling the prices in the open market, and also for sale to the Andhra Pradesh State Civil Supplies Corporation Limited, of course keeping in

view the cost of production by the millers, less, if any, sustained by him in delivering levy etc. This measure is necessary to ensure that the prices are kept under the control in the open market and also to ensure availability of rice within the State.

4. The Government of India may permit the State Government arranging payment of extra amount than that fixed by the Government of India for paddy by the rice milling industry and co-operatives (Not by State Government).

5. The State Government may also be delegated with the powers to fix the levy percentage taking into consideration the local needs, etc.

6. The State Government may be permitted to draw the rice required for its public distribution system from out of the quantities delivered to the Food Corporation of India as levy by the millers. No ceiling need be imposed on these drawals. The State Government may be given power to deliver to the Food Corporation of India, whatever quantity is possible and draw the quantity after giving the rice meant for Central Pool.

7. The stocks remaining unlifted from the Food Corporation of India of a particular month may be permitted to be drawn in the next month, without imposing restriction that it should be drawn only before 10th of the succeeding month.

8. The Reserve Bank of India may be informed that cash credit accommodation to the State agency may be given without any clearance from the Government of India so long as the State Government is adopting the policy laid down by the Government of India in the matter of procurement.

EDUCATION

11.1 The Criticism does not seem to be justified. In fact our view is that the Central Government should take greater initiative and leader ship provide financial support to the State Governments, in particular, in the following areas :

(1) Status and Education of Teachers.

(2) Universal Elementary Education.

(3) Vocationalisation of Secondary Education.

(4) Equalisation of educational opportunities and improving the levels of educational growth in different States.

(5) Improvement of educational Standards.

11.2 The University Grants Commission with its main objective of co-ordinating, promoting and maintaining educational standards in Higher Education, should ensure fair and equitable distribution of its grant among different Universities in various parts of the Country. There has been a feeling that the funds from this organisation are not reaching the needy Universities to the required extent. It will be worthwhile to consider whether setting up of Regional, U.G.Cs for different regions in the country, could help in more equitable allocation of funds to Universities in different regions or in the alternative a representative of the State Government should be included in the Commission so that the views of the State can be projected. There should be detailed and indepth inspection of Universities by the U.G.C., say, once in three years to assess objectively the development needs of Higher Education and to provide the required financial support.

11.3 The University Grants Commission helps to evolve consensus among the States as well as between the Centre and the States in the field of higher education. There is no such body to achieve this objective as far as primary and secondary Education is concerned. The setting up of a Commission on the lines of University Grants Commission may be considered for evolving consensus among the States as well as between the Centre and the States in the field of Primary and Secondary Education.

11.4 The Constitution of India confers certain cultural and educational Rights to minorities. Art, 30 of the Constitution enjoins that all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice. Further the State shall not in granting aid to educational institutions discriminate against any educatunal institution on the ground that it is under the management of a minority based on religion or language. Various religious institutions and other denominal Institutions have established educational institutions. Some of them are also receiving grants-in-aid. Though the institutions are established and managed by a paticular religions denomination etc., admission into these intitutions is open to all irrespective of the religions or language to which the candidates belong. Taking protection under the guarantees enshrined in the constitution, the managements of these institutions are not following various rules and regulations in admissions, appointments and also service protection to the teaching and the non-teaching staff. At present there does not seem to be any guidelines to determine whether an institution is a minority instituion etc. This Government Feels that it is necessary to define classified minority institutions and their privileges. There have been no specific instances of conflicts.

11.5 Hither-to the issues are sought to be finalised through discussions and consultations, in forms like the C.A.B.E. (Central Advisory Board of Education).

Inter-Governmental Co-ordination

12.1 In India there are agencies like National Development Council, the Planning Commission, Inter-State Councils, etc., which are expected to resolve problems which arise with regard to Centre-State relations. We recommend that a National Planning and Development Council (NPDC) be created through and appropriate consitutional provision. The members of N.P.D.C. should have the Prime Minister as the Chairman and Chief Ministers as Members. The Planning Commission should become a technical arm and Secretariat of the NPDC. In addition to the matters relating Five Year Plans, the NPDC should become a body in which continuous consultations take place on all matters touching the Union-State relations on finance and planning. In particular this should cover the extent of allocation of resources for Plan, borrowing, external finances, discretionary transfers and taxation measures affecting both the Centre and the States. Further the

NPDC should identify major projects in crucial sectors like Irrigation involving large outlays with a view to ensuring liberal funding by the Centre to supplement States resources. This flexible approach for larger Irrigation projects is required to ensure full utilisation of river waters at the same time without imposing undue burden on the States' resources. It should be possible for the NPDC to remit specific matters to *ad-hoc* or standing Sub-Committees constituted with the memberships of the NPDC itself. It may be noted that the NPDC is deliberately structured to be differential from the Inter-State Council envisaged in Article 263. This Council which has to be created by a Presidential order may not have the requisite degree of stability, continuity and immunity from the sudden changes that may be demanded by the Union Cabinet through recourse to Article 74.

In addition, more effective use of Inter-State Councils envisaged in Article 263 will go a long way in resolving inter-governmental problems. This restructuring is in lieu of the present arrangement.

Andhra Pradesh

MEMORANDUM

Federalism in India is a relic of the imperial past. In origin, the British India administration was no more than company management. With the Queen's Proclamation in 1863, the Head of British India became a Crown's Representative. Ever since, the entire political and administrative structures within the country were oriented towards serving the colonial master abroad with the labour of local vassals. Neither the cultural heritage nor other bonds of unity of the Indian people was ever a factor in the delimitation of the British Empire into various federal units. Provincial boundaries were formed to suit military strategy and administrative convenience. Province itself had no meaning as it did not cannote a common clime or culture. In reality, there was no federation.

When India heard the lilting notes of dawning freedom on 15th August, 1947, ecstasy was effervescing over the country. The triumph epiated the most intellectual mind. In their anxiety to proclaim a written constitution, the founding fathers relied heavily upon the Government of India Act, 1935 for spelling out the federal features of the Constitution. Definitely, the fundamental law of the country intended to govern the slaves could not be made the basis for the governance of a free people. The Government of India Act, 1935, could not have anticipated the soaring ambitions and aspiration of a jubilant free people. nor was there any realisation of the importance of finer and subtler influences like language and culture.

It is not proper to compare the Union of a free republican India with an Empire or a Kingdom in India in the pre-British era, and to stress that an Empire or a Kingdom, disintegrated, and India suffered, whenever the central power became weak, the analogy is erroneous. Empires and Kingdoms of earlier times were acquired by force and maintained by force. The Republic of India was established willingly by the people of India. Over centralisation of authority and the unconstitutional accumulation of power by a Union Government are more like the force that is associated with autocratic Empires and Kingdoms. It is that very Central authocracy, and not the rightful claims of our States that can endanger the unity and integrity of the country. It is such danger to the country's interests which requires to be investigated, loacated and guarded against. The Sarkaria Commission is entrusted with that investigation. The language of reference made it clear that it is not just that the working of the Constitution for three decades is to be academically reviewed. Distortions and perversions introduced into the nations, political and economic life by forces not altogether democratic, not altogether untouched by party selfishness and individual selfishness, call for an analysis of those forces, constitutional and extra-constitutional, which hinder-democracy rather than straighten it out, and which stand in the way of development of the people. Also, it is not as if the Union and States are separate solidified political and economic blocks of power or as if the States as solidified blocks of power suffered, at the hands of the Union as another solidified block of power. It is that the people of each State as part of the people of India suffered a set-back politically, economically and socially, in the administrative areas of the States, by the unconstitutional accumulations of power in the hands of the Union Government (so far away) and by the un-constitutional depletion of power in the hands of the State Governments (so near).

The basic feature of the Indian Constitution is cooperative federalism. All federalism is co-operative. Ours particularly is. In the U. S. A., Canada and Australia, for instance, in a matter like Income-tax which both, Union and State can levy against a citizen, there can be said to exist an avoidable form of competitive federalism. Duel citizenship in State and Federation is another example of that competition. The Constitution of India does not countenance competition between Union and State or between State and State. There is an anticipatory elaborateness in our Constitution by the incorporation into the Articles of our Constitution of the import of many classic decisions of the highest courts adjudicating political and fiscal rights in the other three federations. Still, our Constitution takes added care to stress the principale of co-operation between the Union of India and the States of India. It strives to eliminate conflict between the Union and the States, or between State and State. It leaves no possible situation of disagreement really unprovided for. It makes room for constitutional or statutory bodies which are to step in to avoid conflict or confusion of rights and duties, as between the Union and the States. Even then, it must be agreed, first that constitutional hurts and irritations experienced by the federal units in India are real, and scound, that they are not peculiar to India.

If the nature of the Indian Constitution is co-operative federalism, the aim of the Indian Constitution is equilibrium, political, economic and social Parts III and IV. Fundamental Rights and Directive Principles, stress social equilibrium desired as between man and man or group and group. Parts XII and XIII, Finance, Trade and Commerce, decide the economic equilibrium desired as between the Union and the States. The preamble itself first, then Part

XI (Relations between the Union and the States), then the Seventh Schedule, then Chapter IV of Part V and Chapter V of Part VII (the Judiciary) and, in fact, all the provisions of the Constitution define the political and functional equilibrium desired as between the Union and the States, as between the Legislature and the Excecutive and as between them both and the Judiciary. There is no assumption, search where you like in the Constitution, of authority in one creature of the Constitution and of subordination in another creature of it. And yet Reports associated with some eminent men of law and Seminars associated with well-known scholars and administrators proceed on a contrary assumption even when seeking the goal we all seek : a harmonious Union-State relationship under our Constitution. In fact, the equilibrium we speak of as cleraly contemplated by our Constitution is disturbed whenever unconstitutional authority is assumed, or unconstitutional subordination is imposed in the name of the so-called 'quasifederality' of the Constitution of India. Such an imbalance is today's reality. That error, we assert again, is not so much in the Constitution itself as in the working of it differently by different political parties at different times for their own benefit. The dominance of a single political party for three decades between 1947 and 1977, in the affairs both of the Union and of the bulk of the units of the Union was the most important of the reasons for the fall in practical political standards of federality. Political parties and political personalities failed the federal Constitution of India far more than the Constitution of India failed the federal people of India or the federal States of India.

Ineffective or inadequate representation of a State's point of view in the affairs of the Union, however caused, certainly leads to a sense of neglect among the people of that State. State governance touches a citizen far more surely and far more frequently, and directly than the Union governance. It is a familiar constitutional principle of federal distribution of legislative and executive powers that subjects or items of governance (Entries like in the Lists of the Seventh Schedule of the Constitution of India) which bear upon a citizen most in life's routine should, as far as possible be placed and governed nearest to him : for his due appreciation or effective protest in matters political and administrative. For that very reason, a citizen of India, in normal times and in a normal way, identifies himself more than closely with the State to which he belongs or in which he is domiciled rather than with the Union to which he also belongs and of which he is a citizen. His Loyalty to the Union is unambiguous and complete His identification, in a national crisis, with the governance of the Union is total, forgetful of all regional ties and reckless of all odds. The Wars with China and Pakistan have shown that the Indian citizen is Indian to the core. But a citizen's identification with his State in normal times is more spontaneous, and he wears his loyalty to his State nearer his skin : Nevertheless, a citizen of the Union of India who is at the same time domiciled in his State—the State of Andhra Pradesh, in this instance—has no divided loyalty in him. The people of Andhra Pradesh stood formost in the ranks of patriots who fought for Indian freedom, whether India fought the British or fought the stooges of the British. The history of those times both in Andhra and in Telangana, now one Andhra, Pradesh, is replete with instances of man and women who sacrificed their all for their nation and their country, and for nothing lesser.

The idea of 'Federalism' is also inherent in Part XII of the Constitution which deals with financial rights, duties and obligations in matters of taxation, etc., as between the Union and the States. Seventh Schedule proclaims a federation. The desire of the States, expressed vehemently by some of them and not so vehemently by some others that there should be a re-evaluation of the relations in the political, legislative, administrative, fiscal and financial areas between the Union and the States, and that healthier conventions and practices (and even constitutional amendments, if necessary) should be brought about in order to give effect to the new thinking released by a re-evaluation of the existing system is proof of healthy democratic urges in the nation.

We are still a largely illiterate people in all the States of India. The great bulk of our villages are without drinking water. More than half our population literally starves every day for want of a second square meal. Quite a large number go without a satisfactory first. The nation's health is substandard. In cities, towns and villages, one finds that hospitals, doctors, nurses and medicines are notoriously scarce or inadequate. We are a poor nation. Industry and Agriculture are only making the rich richer, and not quite changing the lot of the poor. The greater part of the items of welfare governance are entrusted to the States by the Constitution, and the States are systematically deprived of financial resources of required political power and economic enterprise, by insidious processes. The Union Government prescribes policies and programmes to a State within the State's own sphere. If it is not somebody's Twenty-Point Programme, it is somebody's else's Six-Point Programme, each an encroachment on the jurisdiction of the States. Political Propaganda on behalf of the party ruling the Union and attempting to spread its rule to the States become more important than State activity on its own initiative for its own economic progress. Union Governments steadily expand their Ministries and Departments to include more and more State Subjects. The States become a happy hunting-ground for the Union in crucial political and economic areas of State activity. The State slowly ceases to be a viable political or economic unit.

The powers of Articles 270, 275, 282, etc., are misinterpreted and misused by successive Union Governments. Political parties, with High Commands at the All-India level and with an obedient following in the regions, create a hierarchy of party leadership and party following, encourage the dependence of the men of the regions on the men of the High Command, and imbue the body politic with sub-servience and lack of initiative. Political parties, when they also occupy seats of power in the Union and in the States, tend to confuse their constitutional positions of responsibility, and their 'little brief authority' in the Union and in the States with their own steep grades of party hierarchy, with their Central High Command and their dumb regional following. To them it is a one-party Government ruling an amalgam of their Union and the States, not known to the Constitution. And in their view their High Commands govern Union and State as one monolithic political

structure. The States are treated by successive Union Governments as mere owned subsidiaries and not the equals of the Union. The truth is that their respective powers may be unequal but their power is equal. It is in this spirit that the States of India now seek the restoration of this constitutional equality between the States of India and the Union of India. When a federal constitution, drawn up by the people of India, vests certain powers in a Federal Union and certain other powers in the Federal Unit, the Constitution so drawn up treats both the Federal Union and the Federal Unit equally, as equal creatures of the Constitution. The Constitution is equi-distant from both, looks on both with an equal eye. This Memorandum seeks to assert this Constitutional equality, and to press for this equi-distance of the Constitution from both the Union of India and the Units of that Union.

THE GOVERNOR

Article 153 of the Constitution lays down that there shall be a Governor for each State and Article 154 vests the executive powers of the State in him. Through the personality of the Governor, the Continuity of Administration is expressed. However, most States have grave suspicions about the office of Governor which can be misused and perverted beyond the pale of recognition. A catalogue of mistakes and mischiefs played by the Governors is available in the 'White paper on the Office of Governor' released by the Government of Karnataka. Since the publication of the white paper, many more mechinations of the Governor have come to light. The most despicable and cruel assault on democracy was inflicted by the Governor of Andhra Pradesh when the Telugu Desam majority party leader Sri N. T. Rama Rao and his cabinet was dismissed on an alleged suspicion that the Chief Minister did not enjoy the majority support in the legislature. By virtue of this single action of the Governor of Andhra Pradesh, the office of Governor has forfeited credibility for ever. No effort on the part of well meaning statesman and politicians would convince Andhra Pradesh State that the Office of Governor is of high public importance, invested with dignity and decorum. The State Government is convinced beyond any doubt that the Governor has no useful role to play in the working of the Constitution or in the Administration of the States.

However, noble or moral a Governor may be, however, successful or statesman like he may be, however thoughtful and subtle he may be, he is a marionette whose strings are pulled by the Prime Minister of India.

An objective analysis of the office of Governor will show that he is the last vestige of imperialism, a modified version of the agent of Viceroy. Whatever may have been his importance during British administration, he has no place in modern democracy. An appointee who holds office by virtue of the fancy of the Prime Minister and during the 'Pleasure of the President' cannot but be a servant of the Union. Democratic political systems based on direct elections have thrown up mass leaders who owe an obligation to the people to fulfil their aspirations. The Chief Minister represents the quintessence of popular will in the State and there can be no higher authority in the State than the Chief Minister. It is the responsibility of the Chief Minister who has got elected by the people to run the Administration and to satisfy the people. A Prime Minister's nominee overseeing the actions of the Chief Minister is anachronistic. The least that we can do to such an office is to accord an unceremonious burial. It is strongly recommended that the institution of the Governor be abolished.

THE ROLE OF ALL INDIA SERVICES

At present the top Civil Services posts in the State are held by member of the All India Services belonging to the Indian Administrative Service, the Indian Police Service and the Indi n Forest Service. Prior to 1947 the top Civil posts in the country, especially at the Government level were managed by Members of the Indian Civil Service. The same British tradition has been continued even today and All India Service Officers are appointed to the State Cadtres with the provision for deputation to Serve in the Union Government.

The All India Service Cadre and Recruitment rules and also other basic service rules regarding the discipline, control and appeals are vested in the Union Home Ministry, Even though there is a provision that whenever amendments to these statutory rules are proposed, consent of the majority of States has to be obtained, it has been possible for the Union Home Ministry to secure whatever changes it wanted in the composition and control of the All India Services. It must be appreciated that once an All India Service Officer is allotted to a State Cadre, he has to function under the authority of the State Government which utilises his services.

Recently the Andhra Pradesh State Government has been faced with serious embarrassment by Central interference in disciplinary matters pertaining to Members of All India Services. The State Government had taken action to suspend some of the All India Service Officers on grounds of corruption and lack of integrity but the Union Government had ordered their reinstatement pending enquiry. These Officers against whom the State Government had initiated preliminary action of suspension but have got reinstated by the Centre canot be effective and cannot be entrusted with any responsible position until their enquiry is over. In this context, it becomes imparative to keep these officers virtually under suspension by not giving them a suitable posting. This anomalous situation could be avoided if the Union Government refrains from interfering with the disciplinary action of the State Government until the enquiry proceedings are over. In the alternative if the Union Government feels strongly about the reinstatement of an officer pending enquiry then it should be possible for the Union Government to accommodate such officers in the Union Government's duty posts till such time as enquiry is over.

Under the present grievances procedure a member of All India Service who is suspended by the State Government has a right of appeal to the President who is the appointing authority for such officers. The President, however, acts on the aid and advice of the Union Home Ministry who is a part of the Union Government. In effect, the appeal of the All India Service Officer is decided by the Union

Government and not by the President. Perhaps the States will have greater confidence in the findings and judgements and also the final orders of the President if he were to act as President on the aid and advice of an independent and autonomous body like the Union Public Service Commission. In the absence of such an arrangement it is clear that the State Government's judgement is questioned by the Union Government. This could lead to unnecessary friction between the Union and the States. It is time that the Union Government considered setting up an independent advisory agency to the President to deal with the All India Disciplinary appeal matters. The State Government is of the view that if the President passes an order on the advice of Union Home Ministry, it ceases to have the stamp of impartiality and objectivity.

Considering the fact that a large part of administration is dealt with and even finally disposed off at bureaucratic levels even in the Union Government, it is very necessary that the States' interests are protected by adequate representation of the officers from the States at the various levels of bureaucracy in Union posts. States must have a right to be represented in the Union bureaucracy.

INTER-STATE COUNCIL

The constitutional provision under Article 263 for establishment of Inter-State Council should be effectively utilised. There has been some controversy about the nature of this constitutional body called Inter-State Council and its role. The Article reads :

"If at any time it appears to the President that the public interest would be served by the establishment of a council charged with the duty of—

(a) Inquiring into the end advising upon disputes which may have arisen between States;

(b) Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) Making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject;

it shall be lawful for the President by order to establish such a council, and to define the nature of the duties to be performed by it and its organisation and procedure.

By notification of 8th August, 1952, the Government of India in the Ministry of Health constituted a Central Council of Health with the following duties to be performed:

(a) to consider and recommend broad lines of policy in regard to matters concerning health in all its aspects, suggest the provisions of remedial and preventive care, environment hygeine, nutrition, health education and the promotion of facilities for training and research;

(b) to make proposals for legislation in fields of activity relating to medical and public health matters, laying down the pattern of development for the country as a whole;

(c) to examine the whole field of possible co-operation on a wide basis in regard to inter-state quarantine during time of festivals, outbreak of epidemic diseases and serious calamities such as earthquake and famine and to draw up a common programme of action;

(d) to make recommendations to the Central Government regarding distribution of available grants-in-aid for health purposes to the States and to review periodically the work accomplished in different areas through the utilisation of the grants-in-aid; and

(e) to establish any organisation or organisations invested with appropriate functions for promoting and maintaining co-operation between the Central and State Health Administrations".

Other notifications issued so far relate to Panchayat Raj and Sales Tax and have similar features. These Councils, however, have not been put to objective use for resolving Inter-State or Union-State problems. This forum should be utilised for discussing matters which do not pertain to planning and development and which are mostly administrative in character. The composition, the duration and the functions of such councils could be decided on the basis of local and administrative requirements. It would be a healthy practice to refer all proposed legislations in the Concurrent List to such representative Inter-State Council for eliciting their opinions. A forum where free and fair discussion could take place on issues affecting Inter-State and Union-State relations is not only useful but is also necessary. It shall be a noble constitutional devise for discussing the nations' problems generally before those problems become intractable but particularly to maintain fair and just harmonious constitutional relations between the Union and the States or between State and State

CONCURRENT LEGISLATION

Concurrent Legislation by the Union and by the States on the States on the entries enumerated to List-III of the Seventh Schedule gives scope for controversy between the Union and the States. Parliamentary Legislation in Concurrent List does not require the consent of the States. There is no machinery or process even for consultation between the Union and the States in the manner of Legislation by Parliament on an Entry in the Concurrent List. Nor any convention or practice grown in respect of Concurrent List by the Parliament. This is an unfortunate State of affairs.

Some of the important Entries in the Concurrent List of Seventh Schedule are:

(a) Entry 20, Economic and Social Planning;

(b) Entry 17 (a), Forests;

(c) Entry 34, Price Control;

(d) Entry 33(b) Trade and Commerce in, and Production, supply and distribution of food stuffs, including oil seeds and oils ;

(e) Entry 38, Electricity;

(f) Entry 25, Education including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; Vocational and technical training of Labour; and

(g) Acquisition and requisition of Property.

A glaring example of legislative arrogance on the part of the Union relates to the Entry forest. It was mentioned in the State List and was lifted into the concurrent List as late as 1976 and became effective from 3rd January, 1977 by the 42nd Amendment. As early as 1967, A.P. Act of 1967 (Sec. 28) had provided "No owner of any forest without the previous permission of a District Collector, cut trees or do any act likely to denude the forest or diminish its utility". The same theme was almost repeated by Parliament in 1980 by its Act of 1980 (Sec. 2 of the Act 69 of 1980). The State Government of Andhra Pradesh applied to the Union Government for permission to cuts a few trees in the forests to lay the road and another to lay electric line. One of these related to Telugu Ganga Project. The Union Government raised several querries about the possibilities of alternative courses etc. The Union Governments correspondence with the State Government smacks of dealing with a party rather than a responsible State Government.

On the very encroachment by the Union on the State Powers through the device of concurrent Legislation serious damage has been done to the States' powers even in respect of the State List. Three sets of Entries are important in this context ·

(a) Entries 7 to 52 of List-I and Entry 24 of List-II, which deal with Industries;

(b) Entry 54 of List-I and Entries 23 and 50 of List-II which deal with Mines and Mineral Development and Taxes on mineral rights;

(c) Entry 56 of List-I and Entry 17 of List-II which deal with water and irrigation.

Industries is a subject primarily of the State and they are subjected to some restrictions that may be imposed in the Parliament in the Public interest but as a result of Industries Development and Regulation Act, 1951. State lost their jurisdiction in respect of Industries wholly and completely. Under the pretext of public interest the parliament has emasculated the State Legislatures of its legitimate right to regulate industries. Similarly Mines and Minerals Regulation and Development Act openly ousted the Legislative Jurisdiction of the State in respect of Mines and Minerals. Only saving grace left in the train of destruction of States Powers was a feeble provision under section 15 of the Act by which the State Governments have been given powers to frame rules in respect of Minor Minerals.

It is only worthwhile noting that although Irrigation is a State Subject (Vide Entry 17 of List-III) the competence of the State is limited by the provision of Entry 56 of the Union List, "Regulation and Development of Inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedinet in the public interest".

The main object of including entries in the Concurrent List is to enable the Union to legislate on a matter which prima facie is State's domain, but which in the larger interest of nation do require union legislation. But the indiscriminate use of Concurrent List by the Union and the transfer of entries from State list to Concurrent List has destroyed the spirit of this enabling provision. The Concurrent list has become a convenient tool in the hands of the Union to encroach upon the legitimate spheres of States activities. This should not be allowed to happen. We feel that Union should not have recourse to the concurrent list of transfer entries from State list to Concurrent List unless the subject is of such a national importance and in real national interest which compel such a transfer of Power from the States to Union. Even in such cases there must be a prior consultation with the States before any Union legislation is placed before the Parliament. The Union must take the States into full confidence in dealing with matters relating to concurrent list.

PLANNING AND FINANCIAL RELATIONS

Transfer of Resources

1. The Constitution of India has provided for division of responsibilities between Union and States, and financial powers to meet these responsibilities. The instrument of Finance Commission was devised by founding fathers of the Constitution to meet the changing circumstances. However, a number of developments have taken place in the last 35 years leading to a totally unsustainable level of a symmetry between the resources and the responsibilities of the State Governments. The reasons for the emergence of this situation must be recognised as follows :

(a) The Union Government adopted a number of devices to circumvent the Constitution in the field of taxation affecting the States adversely.

(b) The mechanism of market borrowings has emerged as an important source—the access to which is virtually controlled and allocated by the Union Government.

(c) External borrowings and External assistance have also become extremely important sources of funding public investments and are monopoly of the Union Government.

(d) The discretionary transfers (as distinct from statutory devolution under awards of Finance Commission) have increased in quantum as well as complexity—apart from the terms of such transfers themselves being designed to perpetuate dependency relationship.

(e) Large scale acceptance of the concept of welfare State has resulted in larger responsibilities for the State Government than could have been envisaged by the Constitution-makers.

2. Some of the measures adopted by the Union which are in the nature of circumventing the Constitution and depriving the States of their due share are :

(i) Surcharge on Income-tax levied in 1962-63 as a temporary measure and continued indefinitely (abolished very recently only).

(ii) By an amendment of the Income Tax Act in 1959, the Income-tax paid by the companies was brought under Corporation Tax which is not shareable with the States.

(iii) Additional excise duties on three commodities levied by the Union in lieu of Sales Tax are not being exploited properly. Union is making further attempts to take over 5 more commodities from sales tax.

(iv) Revenues collected under CDS and Special Bearer Bonds, though flow from the same source as income tax, are not shared with States.

(v) Grants in lieu of tax on railway passenger fares are fixed in an *ad-hoc* manner depriving the States of their due share.

(vi) Instead of raising the excise duties, the Union has resorted to raising administered prices, thus depriving States of their due share.

(vii) The Union has been lax in exploiting the levies under Article 269 of the Constitution.

3. Large scale recourse to market borrowings to finance public investments is essentially a phenomena of planned era. The Constitution makers could not have envisaged a situation where all the States will have to be indebted to the Union and all the States will have to get access to the open market borrowings only as dictated the Union Government. Thus, the States share in the open market borrowings had come down from about 50 per cent in the Third Plan to about 22 per cent in the Sixth Plan. In fact, the States should be getting a major part of this recourse. Further in a matter like National Small Savings, The Union Government passed on only 2/3 share of the net savings to the State Governments. Further, the monetary and fiscal policies are invoked to virtually throttle the State Government's initiative to take recourse to borrowings to finance specific developmental projects. Such restricted role to the financing of a development projects in a State Government could not have been dreamt by the Constitution makers.

4. Similarly, with increasing inter-dependance of the World and interest taken by the developed countries in the growth of poorer nations, there has been increasing importance to aid both from bilateral and multilateral (World Bank, IMF, ADB, etc.) Channels. Further, International Commercial banking has become an important instrument of transfer of resources. The Union Government emerges as the sole beneficiary. Only if the donors insist on taking up of projects in the State sector, does the Union Government permit such financing and even here the State Government cannot receive the assistance in full and in any case the terms are standardised to be consistent with plan assistance.

5. The discretionary transfers between the States and Union Government exceed the amount of statutory transfers. The primary reason for this situation is the transfers made to the States on Plan account. While there has been an agreed formula for distribution of Plan assistance as between different States, in practice, the Union Government has been unauthorisedly (i.e. violative of the decisions of the NDC) increasing project/programme under central sector or centrally sponsored schemes. More important, the terms on which most of the discretionary transfers are made involve a larger proportion of loans than of grant. To the extent the Plan investments themselves are increasingly meant to finance welfare activities such as Education and Health, the pattern of financing such investments by a major share of loans has resulted in a State of perpetual indebtedness of the States.

6. The adoption of socialistic State with emphasis on welfare has resulted in large amount of recurring expenditures on scholarships and hostels for weaker sections, schools, hostels, etc. Apart from the fact that these are inelastic, involve recurring expenditure and staff-intensive, there are no mechanisms by which the States, in good conscience can contract their obligations in this regard. Any State which intends to carry out its obligations to the people by appropriate level of welfare activities is unable to do so within the rigid financial constraints imposed. The States are particularly frustrated by the fact that the Union territories such as Delhi, Chandigarh are able to provide a far higher level of services and are also permitted to subsidise essential items (like transport, water) on a very liberal scale. Similarly, the Union Government's effort in mobilising resources in areas within its jurisdiction but totally analogous to the States' sales tax (viz., Central Sales Tax and additional excise duties in lieu of sales tax) is strikingly inadequate compared to the effort of the States. The record of Union Territories in this area is no better.

7. In this light, instruments have to be conceived and developed so that a fundamental reform and restructuring of Union-State financial and planning relations is brought about. The restructuring should be able to capture the current realities of the asymmetry between resources and responsibility, providing at the same time, mechanisms to meet the changing and dynamic situations of socio-economic growth and roles of Governments. Major elements of the proposed reform can be summarised as follows :

(a) The Union Governments' recourse to the tax measure that might affect the tax revenues of the State should be subject to consultations involving the State Governments. Some of the measures that have been taken by the Union Government such as surcharge, Corporate tax etc. should be remedied.

(b) The relative shares of the Union and States in recourse to market borrowings should be determined by either an independent body or preferably a body having representation of both Centre and the States. Such a body should have a close involvement in the process of financing of Planned development.

(c) The States should be enabled and in fact encouraged to raise local resources through borrowing for financing specific projects. The broader issues like monetary and fiscal policies are certainly not inconsistent with efforts for local resources-mobilisation. For instance, specific

projects can be financed through issue of project-related savings Bonds on the same terms as National Savings Certificates. In other words, these project-related Bonds will be analogous to small savings : except that those Bonds are related to specific local project and 100% amount will be available to State's project rather than 2/3rd of the net as in the case of small savings now.

(d) Similarly, in respect of external assistance and external borrowings, the monopoly of the Union in the actual disposition of the resources as between different States and projects within the country is untenable. While external finance is rightfully the domain of the Union Government, the allocation of such financial resources available to the country as a whole should be a matter of joint consultations between the Union and the States.

(e) The discretionary transfers which are currently funnelled through a variety of channels should be replaced by a more equitable and continuous arrangements of transfers through institutional mechanisms for consultations. The package of measures should involve assessment of the welfare needs and responsibilities, the relative shares of loans and grants, the *inter-se* allocations among the States etc. Further benefits of Central sector investments are allocated arbitrarily by Union Government (such as Power from Kalpakkam). These are also in the nature of discretionary transfers.

(f) It would be necessary to appreciate the link between International Trade, Commerce and Development in the light of increasing role of exports and imports in the process of growth. It will not be easy for the State Governments to perceive and participate in the developmental process if they are not involved in handling the exports and imports. For instance, State level institutions must be given a greater role in export trade.

(g) Major Irrigation projects involving huge outlays which ultimately benefit the nation as a whole should be liberally funded from the national resources. Starving these state projects will be to the detriment of the nation.

8. To meet the above requirements, it is suggested that a National Planning and Development Council (NPDC) be created through an appropriate constitutional provisions. The members of NPDC should have the Prime Minister as the Chairman and Chief Ministers as Members. The Planning Commission should become a technical arm and Secretariat of the NPDC. In addition to the matter relating to Five-Year Plans, the NPDC should become a body in which continuous consultations take place on all matters touching the Union-State relations on Finance and Planning. In particular, this should cover the extent of allocation of resources for Plan, borrowings, external finances, discretionary transfers and taxation measures affecting both the Centre and States. Further the NPDC should identify major projects in crucial sectors like Irrigation involving large outlays with a view to ensuring liberal funding by the Centre to supplement State's resources. This flexible approach for larger Irrigation projects is required to ensure full utilisation of river waters at the same time without imposing undue burden on the States' resources. It should be possible for the NPDC to remit specific matters to *ad-hoc* or standing Sub-Committees constituted with membership of the NPDC itself. It may be noted that the NPDC is deliberately structured to be different from the Inter-State Council envisaged in Article 263. This Council which has to be created by a Presidential Order may not have the requisite degree of stability, continuity and immunity from the sudden changes that may be demanded by the Union Cabinet through recourse to Article 74.

MEDIA

In a democracy, media plays an important role. At present, the Government media like Radio and Television (T.V.) are with the Union. Unlike some of the western countries where even private bodies control these media, in India, even the State Government do not have these media under their control. For a variety of reasons, we feel that the State Governments also must be permitted to have their own media and also have a fair share of time in the Union Government's Radio and Television (T.V.). We recommend that law be made, or the present law be amended, to enable State Governments, wherever feasible, to set up their stations, subject to such conditions or restrictions as may be necessary in the national interest. A statutory body may be set up to administer this law so as to inspire in the State Governments the confidence that any restriction which is imposed is really in the interests of the nation as a whole. It is also recommended the All India Radio and Door Darshan should function as autonomous corporations and not as departmental units.

GOVERNMENT OF ASSAM

(a) Replies to the Questionnaire

(b) Modified/Additional Replies

Assam

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 The Constitution of India is a quasi-federal one suited to its geo-political requirements. It is not a federal one in the classical sense as applied to the Constitution of the United States of America. It cannot also be called unitary in as much as it provides for a duel polity with the Union Government at the Centre and States Governments at the peripheral levels with the added features of Union Territories. The quasi-federal character of the Constitution is highlighted by the fact that while on the one hand, as Article 1(1) of the Constitution stipulates, India is a Union of States, on the other hand, the areas or boundaries of the States can be altered by the Parliament, as laid down in Article 3, by law made by it and the distribution of legislative powers in Chapter I of Part XI of the Constitution provides for a Union List, a Concurrent List and a State List with the stipulation that the Parliament has exclusive power to make any law in respect of any matter not enumerated in the Concurrent or State List. Thus, while the States forming the Union of India have their governments with well defined and independent powers in the spheres allotted to them to give the Constitution a federal structure, the operation of the Concurrent List and the residuary powers apart from those in the Union List, provides for a role more akin to a unitary system. This feature of the Constitution though demanded and justified by the Indian situation, brings in a unitary bias away from the principles of orthodox federal Government. As, however, the unitary bias becomes manifest more in an emergency or in particular situations without undermining the functioning of the State Government at the local, regional and peripheral levels in their allotted shperes as in a federation, our Constitution as a whole is a federal one in normal times with provisions to convert itself into a unitary one in emergency to justify its being classed as a quasi-federal one.

1.2 The Rajamannar Committee advocated the classical form of federalism to make the Indian polity closer to that of the United States of America in the distribution of powers between the Centre and the States. Such an approach is not germane to Indian soil. Apart from the wisdom of the framers of our Constitution, based on the history of the Indian polity over hundreds of years, the experience we have gained during the last thirtyfive years on the functioning of our Constitution leads us to the conclusion that the approach of the Rajamannar Committee cannot be accepted on the basic logic of integrity of the Union of India. No Modification in the basic frame-work of our Constitution is called for. There is, of course, a need for continued review of some of the provisions of the Constitution particularly in the matter of devolution of the overall national resources. This, in fact, is being done not only during the debates in the Legislatures at the Union and the State levels but also through the working particularly of the Finance Commission. In view of this, we cannot subscribe to the view of the Rajamannar Committee.

1.3 The view that for our country there is a need for substantial decentralisation with adequate safeguard for considerable centralisation in times of emergency cannot be disputed. This, however, does not call for any major amendment to our present Constitution. The existing provisions in the Constitution are adequate to provide for the necessary institutional arrangements for a constant dialogue between Governments at the Union and the State level to facilitate the right pattern and degree of administrative decentralisation, both vertical and horizontal, the interest of development administration and balanced regional development.

1.4 The "traditional" type of federation as mentioned does not seem to exist anywhere in the modern world.

1.5 The Constitution of India as it stands amended now is basically sound and flexible enough to meet the requirements of Indian polity as it has emerged over the last 35 years. The evolution of our polity and the amendments made so far in the Constitution have been in a healthy democratic direction. The framework has provided for a viable socio-economic system as enshrined in the Directive Principles of the Constitution. For the problems and issues which are bound to arise in the working of a developing economy with a democratic form of Government, having by and large a federal frame work as ours, the mechanism of a Standing Council like the Inter-State Council, as envisaged in the Article 263, for coordination between States should be adequate. It can take care of all issues of national importance arising out of relations between States or the Union and the States. The composition and function of this Council may, however, be formalised either through enactment or through development of healthy democratic conventions.

1.6 We wholly subscribe to the view that the protection of the independence and ensurance of the unity and integrity of the country are of paramount importance. The structuring of the distribution of legislative powers in Chapter I of Part XI of the Constitution as reflected in the three Lists in the Seventh Schedule; and in particular, Articles 3, 11, 256, 257, 258, 260; and, the emergency provisions in part XVIII of the Constitution i.e. in Articles 352 to 360 and Articles 365, are designed to provide ample safeguard for this basic national objective. These provisions have armed the Union Government with

adepuate power and cast on them the responsibility of playing the paramount role for achieving this end.

1.7 We are of the view that the extent provisions in the constitution in this regard are reasonable. This can ensure achievement of the end mentioned in question 1.6 above. The Articles mentioned in the question are to be interpreted in a spirit of mutual trust so essential to the functioning of a democracy and should also be viewed in the context of the unity and integrity of the country. In such a view, these Articles are reasonable.

1.8 The view that the provision in Article 3 requires re-consideration deserves attention. The virtual unfettered power enjoyed by the Parliament in formation of new States and alteration of areas, boundaries or names of existing States, with a token requirement of taking the views of the Legislature(s) of the concerned State(s), may be modified to provide that the concurrence of the concerned State(s) Legislature(s) would be obtained or, in the alternative, the concurrence of a majority of the State Legislature(s) would be required.

PART II

LEGISLATIVE RELATIONS

2.1 While there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States, the Lists in the Seventh Schedule to the Constitution call for a further review in the context of the experience gained by us over the last 35 years. Such reviews have of course taken place because of national debates on issues like Education and Forest leading to items in the State List being brought to the Concurrent List. Similarly, an entry 92 A was inserted in the Union List bringing taxes on the sale or purchase of goods under the control of the Parliament and making the hither to befo e existing entry 54 in the State List subject to the provisions of entry 92A of the Union List. The entries pertaining to distribution of legislative powers on economic and financial resources governing the development efforts of the State Governments should be re-examined in the light of corresponding provisions which exist in the Government of India Act, 1935 and the submissions made by the State Governments before the successive Finance Commissions.

2.2 We do not propose any change in the basic scheme of distribution of legislative powers as well as the details of the subjects entered under the three lists in the Seventh Schedule. The State Government would however, suggest that where there is a necessity for central enactments on subjects otherwise included in the State List, such enactments should be made only after consultation with the Standing Inter-State Council as mentioned in our reply to Q. 1.5.

2.3 The adoption of the system of consultation as was envisaged under the Government of India Act, 1935 and as already mentioned in our answer to Question 2.1 above, would be desirable for ensuring a better working relation between the Union and the State Governments.

2.4 In view of the answer given to Question 2.1 above such declarations should be subject to periodic review by the standing consultative body.

2.5 None.

PART III

ROLE OF THE GOVERNOR

3.1 The role of the Governor as envisaged in the Constitution and established by conventions is ideal and suitable for the Indian conditions.

3.2 The role of the Governor should be that of a friend, philosopher and guide even in the discharge of the discretionary functions. The Governor should consult the concerned State Ministry though the opinion given by such State Ministry may not be binding either on the Governor or on the Union Government.

3.3 While making report to the President suggesting action under Article 356(I), the Governor is to make report in his discretion. Since the provision is intended to be used only in emergency, the desirability there of is beyond doubt; but there should be certain additional safeguards. The exercise of such power for purposes other than constitutional should be prevented.

In regard to the appointment of Chief Minister, the role of the Governor should be akin to that of the President of India.

In regard to the prorogation or dissolution of the Legislative Assembly, the Governor should act in accordance with the advice tendered by the Council of Ministers.

3.4 Articles 200 and 201 give general power of reservation of the bills for consideration by the President. In this respect, no guidelines have been given to the Governor. It will be adviseable to have an Instrument of Instructions to the Governor giving them certain guidelines in this matter. The power, though discretionary in nature, cannot be exercised in an arbitrary manner. In so far as this State is concerned, such a situation has not arisen.

3.5 No comment.

3.6 The Governor is not an agent of the Centre and may not exactly be described as an ornamental head of the State. He is undoubtedly "a close link" between the Centre and the States. But the position of the Governor is not an independent one. Alike the President of India, he should also act in accordance with the advice tendered by the State council of Ministers except in the sphere where he is required to function in a discretionary manner. There should be a clear demarcation between the functions where the Governor is expected to work in his discretion and the functions where he is expected to work in accordance with aid and advice of the Council of Ministers. The more precise this demarcation is made, the less will be the chances of confusion and ambiguity. The confusion has arisen mostly in cases where the Governors have been designated as the ex-officio

President of Corporations, Public Institutions or other bodies which are not directly within the control of the State Government. In such cases also, the functions of the Governor should be exercised on the aid and advice of the Council of Ministers. Sphere of discretionary powers should be kept limited to the cases covered by Articles 356 and 365, and in the matter of selection of the Chief Minister under Article 164. In regard to other functions, the Governor should be bound to act in accordance with the advice of Council of Ministers.

3.7 The functions of the Governor are different than that of the High Court Judges and as such, the tenure of his office and the manner of his appointment or removal cannot be the same as prescribed in the case of a Judge of Supreme Court or of High Court.

3.8 The position of the Governor is that of the constitutional Head of the State. The frame work of the Indian Constitution is such that question of empowering him in this manner cannot be recommended. The position of the Governor in this regard is not in any way different from that of the President of India except only in the cases where he is to discharge his duties in his this discretion. Even though some amount of discretion is inevitable in the matter of appointment of the Chief Minister under Article 164, the same power for the purposes of checking and verifying the loss of majority in the legislature cannot be given to a Governor who might elect to act as an Agent of the Union Government. Such power, if given, would be contrary to the principles of federalism.

3.9 The system introduced in the Republic of Germany by Article 67 of the Basic Laws may not be suitable under the Indian Constitution where there is shifting of allegiance amongst the political leaders and Members of Legislative Assemblies and Parliament. Even though the solution offered by the Republic of Germany appears to be idealistic in nature, it cannot be treated as practical in the Indian context.

3.10 The guidelines regarding the manner in which discretionary powers of the Governors are to be exercised should be formulated in consultation with the States by the Union and these guidelines could be contained in an Instrument of Instructions in a similar manner as they were adopted under the Government of India Act, 1935.

PART IV

ADMINISTRATIVE RELATIONS

4.1 While on such instance of any direction issued under these Articles has come to the notice of this State Government, the provisions are in the interest of national security and unity and to be used only when the dictates of an emergent situation made it unavoidable for the President in the national interest.

4.2 In consonance with our replies to Q. 4.1 above, we are in agreement with the latter of the two views indicated in the question. In our view, no country with a federal type of government can uphold its sovereignty and integrity if the directions given by the Union Government in the national interest, as determined by the Parliament through enactments, can be disregarded by a State Government. The Union Government cannot remain helpless because of absence of any reserve provision in the Constitution enabling it to enforce such directions. Articles 355 being such and enabling reserve provision should, therefore, remain as it is.

4.3 While the recommendation of the Administrative Reforms Commission as quoted here would help sound Centre-State Relations, the State Government are not aware of any instance of issue of directions under these Articles by the Centre to a State.

4.4 This State has no experience of any arbitrary invocation of the provisions in Article 356. It would, however, be desirable in the interest of sound Centre-State relations to provide for some safeguards in the Article itself in the form of specific conditions president which must be satisfied before the President can take over the administration of a State on the ground of failure of the Constitutional machinery. Such conditions precedent may be say, a loss of majority in the State Legislature by the party in power and the like.

4.5 The logic of any time-limit to be prescribed under Article 356 is that of an emergency created by a failure of the Constitutional machinery in State. As emergency situations of this nature are bound to differ from State to State or from time to time in a given State, it is difficult a *priori* to say what time-limits would be adequate for restoring normalcy in any one case. At the same time, to do away with any time limit in clauses (4) & (5) of the Article would be against the very spirit of the Constitution providing for an elected Government in every State. The President's Rule is not in itself a solution to the problem but provides only a stop-gap arrangement till a solution is found. No change or modification in the existing provisions in clauses (4) & (5) of the Article is, therefore, necessary.

4.6 The present arrangements are working satisfactorily. However, the arrangements in this regard can be improved further to remove the feeling that while the State Administration is extending all co-operation in this regard, the relationship is one-way only. The Central agencies should have regular and prior consultations with the State Government and administration before issuing directives to their State units for smooth conduct of the functions like in the matter of deployment of State Government staff and Police Force for election work.

4.7 These agencies are undoubtedly functioning as nodal organisations in the national economy as a whole and are assisting the States in fulfilling obligations cast on them by the Constitution. They have a role to play in removing regional disparities in development and supplementing the efforts of the State Governments whose resources are inadequate to fend for themselves even if the subject dealt with by these Central agencies are enumerated in the State List. Therefore, it would not be appropriate to criticise the role of these Central agencies or to undo the arrangement merely on the ground that

through these agencies, the Union has made inroads into the States autonomy contrary to the scheme of distribution of powers, or of subjects in the Seventh Schedule to the Constitution. What is, however, necessary is that the policies in pursuance of which the agencies continue to function are reviewed regularly by the Union Government in Consultation with the State Governments preferably through the Standing Inter-State Council suggested in our replies to Part-I of this Questionnaire. As these agencies are designed to deliver the goods more effectively and if in f·ct they do so, the Seventh Schedule itself can be re-fashioned to give them the Constitutional cover instead of deriding them as Union agents against State autonomy. These agents would, however, be effective only if the Union Government ensure that these are responsive to the problems and requirements of the States. It would also be advisable that as a matter of national policy it should be discussed in the agencies like the National Development Council as to at what level such Central agencies should function when their role extends to subjects covered in the State List. These agencies would even be more effective for supplementing and not supplementing the role of the corresponding State Agencies as for instance in the case of food procurement and distribution. In other subjects also it would be desirable to suggest that the Central agency should be concerned only with projects or programmes having above a certain minimum resources or outlay level or when it has Inter-State Implications.

4.8 The State Government are of the view that All-India Services have been serving the purposes for which these were created. There is no need for further control by the State Government in addition to what is already provided now under the All India Services Act and the Rules made thereunder. The State Government have control over the members of the I.A.S. in all matters except that no major punishment can be inflicted on them without concurrence and approval of the Union Public Service Commission and the Government of India. This limitation on the power of the State Government is essential to retain the All-India character of the Services.

4.9 Maintenance of law and order is a State matter and the State Governments should be given total freedom in controlling any situation arising in their respective States. The duty of the Union as specified in Article 355 should be so construed as to mean making available the Central Reserve Police and other armed forces in aid of civil power in any State. The assumption of direct control in regard to maintenance of law and order by the Central Government is neither desirable nor can it be assumed under the existing provisions because the Article 355 will have to be read with Schedule VII, List II (Entry-1).

4.10 Television & Radio should continue in the Central List in the interest of national intergation but the State Governments should be allowed to have a share in the broadcasting programmes on a fair and re-sonable basis to meet their problems of mass communication in the interest of administration and development. This does not require any amendment in the Seventh Schedule but a healthy convention of National Policy to be evolved through consultations by the Union Ministry of Information and Broadcasting with the State Government through Inter-State Councils or a consultative body in the Ministry comprising all State Ministers in charge of Information and Public Relations.

4.11 The Zonal Councils have become virtually non-existent now. In view of the replies given to Q.4.12 below these agencies would be superflous now especially for the States in the North Eastern Region which has an additional agency of the North Eastern Council.

4.12 The State Government are of the view that an Inter-State Council under Article 263 of the Constitution should be established. Its roles and functions should be designed after taking into consideration what has been stated in our replies in Part II of the Questionnaire about the role of such a Council. It should encompass the matters of institutional planning and development policies and may even take over the role of the National Development Council if it is constituted in the pattern suggested by the Administrative Reforms Commissions with Prime Minister as its Chairman and Union Minister of Finance and Home, Chief Ministers of States and the Leader of the Opposition of the Parliament as regular members with provision for co-option of any other Central or State Ministers whose subjects come up for deliberation on a particular occasion. The functioning of such a Council, therefore, should be detailed in laws to be enacted by the Parliament after consulting the State Legislatures. It should also be serviced by a permanent Secretariat which may be that of the Planning Commission. This device may also make planning a more co-ordinated and co-operative exercise between the Union and the State Governments.

PART V

FINANCIAL RELATIONS

5.1 The Constitution allocated to the States subject such as agriculture, medical, public health, law and order etc. that touch intimated the lives of the people. Such subjects can be efficiently administered only by the States who are closer to the people and are more keenly alive to their problems and needs, with the advent of planning there has been a shift in strategy and national priorities. The fiscal burden of the newly devised development strategy and the reordering of plan priorities has fallen relatively heavily on the States compared to any time in the past. The gradual shift towards emphasis on social justice calls for a realignment of resources in favour of the States because services and programmes that favour more equitable social order come within the purview of the States. There can be no doubt that having regard to the growing responsibilities of the States, the distribution of taxes and revenues is very unfare to the States. This has resulted in a chronic and winding gap between the States' own resources and their expenditure necessitating dependence on the Centre for financial assistance to meet growing obligations. Of late, this has generated a persistent demand from the States for larger transfer of funds from the Centre.

The existing scheme of fiscal transfer from the Centre to the States is marked by the prevalance of a parallel assessments of needs of the States by the Finance Commission and the Planning Commission. This new element in fiscal transfer was not envisaged by the framers of the Constitution. To a certain extent there might be overlapping of efforts if two independent agencies are simultaneously responsible for recommending assistance to the States. This overlapping situation is sought to be corrected by a distinction between plan and Non-Plan expenditure on revenue account. While the Finance Commission confines itself to tax sharing and grants-in-aid covering non-plan revenue account of the States, Plan assistance is channelised through the Planning Commission in the shape of both loans and grants. The tax sharing is regarded as a matter of right and can leave the States with surpluses which they are free to spend. The grants under Art. 275 are generally unconditional and not on a matching basis. They have also never exceeded the Non-Plan deficits of the States though the terms of reference do not seem to prevent the Finance Commission from recommending grants to poorer States in excess of their non-plan deficits. On the other hand the scheme of tax sharing leaves some States with large non-plan surpluses. Since the States contribution for plan should generate from non-plan surpluses and additional resource mobilisation undertaken by the States, the poorer States fined themselves in a weak bargaining position in the matter of plan finalisation. In this context, the Finance Commissions might accord a developmental orientation to the flow of funds recommended by them considering the existing disparties in the provision of State Services as between advanced States and others. There seems to be no need for a change in the present system or the establishment of a single body to recommend all financial assistance from the Centre. The Planning Commission may recommend assistance for plan projects. This will divest the Commission of the responsibility of finding resources and enable them to discharge planning functions in a better way.

5.2 The observations of the A.R.C. Study team are not only valid even now but by and large financial dependence on the Centre has been growing over the years. This process cannot be halted or reversed by a mere redistribution of taxing powers in favour of the states. There can be no controversy on the need to enlarge the size of the national kitty in terms of tax resources. Nor can the advantage of a vast all India market with free mobility of capital & skill be lost sight of. Having regard to all these aspects the present division of tax resources given in the Constitution appears to be by and large well conceived and needs no radical change except to the extent indicated below.

By virtue of entry 46 of list II of the 7th Schedule to the Constitution of India tax on agricultural income is a State subject. On the other hand, Article 366 of the Constitution defines agricultural income as such income as defined for purposes of the enactments relating to Indian Income Tax. The Income Tax Act, 1961 includes income derived from the performance of any process to render the produce marketable within the purview of agricultural income. The Supreme Court has recently held in the case of Commissioner of Sales Tax, Lucknow, Vs. D. S. Bist (44 STC 392) that the process of converting green tea leaf into manufactured tea is a process necessary for rendering the green tea leaf marketable. In view of this judgement of the Hon'ble Supreme Court, income derived from manufacture of tea should be treated as agricultural income. On the other hand, however, rule 8 of the Income Tax Rules, 1962 lays down that 40% of the income derived from cultivation and manufacture of tea shall be treated as non-agricultural income. Consequently, the States cannot levy tax on the income derived from manufacture of tea which is contrary to the views expressed by the Hon'able Supreme Court in the aforesaid case. The Central Income Tax Rules, should therefore, be amended so as to enable the States to treat income derived from cultivation and manufacture tea as fully agricultural income and to tax it accordingly. It may be observed that through this is not a matter relating strictly to the division of power under the Constitution as between the Union and the States, the aforesaid rule under the Income Tax Act made by the Central Government on the strength of Article 366 of the Constitution constitutes an in-road on the powers of the State to levy tax.

Another matter which needs attention is the provision of Article 276 of the Constitution under which the total amount of tax payable in respect of any one person to the State or any one Municipality, District Board or other Local authority in the State by way of tax on professions, trades, callings and employments shall not exceed Rs. 250 per annum. While this provision might have been reasonable at the time of framing the Constitution the ceiling imposed by this provision constitutes an unreasonable restraint on the powers of the States to levy and realise tax from this source. With the escalation in the general price level and the inflation that has taken place in the country since the early sixties a change in this limit has become necessary so as to enable the States to augment their resources. It is felt that the ceiling should be suitably raised from Rs. 250.

It is also necessary to bring about changes in in the distribution of nationally collected taxes, inclusion of the proceeds of new items like Corporation tax, Surcharge on I.T. Custom Duty etc. in the divisible pool full implementation of the tax powers given to the Union for exclusive distribution to the States. Apart from devolution of taxes, grants-in-aid on the basis of the principle of equalisation will serve to restore the financial imbalance of the States particularly of the backward areas. That apart, huge financial resources at the command of the Centre through its control over the nationalised banks, financial institutions, domestic loans, foreign aid and deficit financing need to be shared with the States with a view to reducing growing dependence on the Centre.

5.3 While the need for a strong Centre is not denied, a strong Centre is in no way inconsistant with strong States. On the contrary, a strong Union can only be a Union of Strong States. The Indian Constitution provides the Centre with much greater powers than the States in the legislative, administrative and financial spheres. The Constitution provides for the levy and administration of taxes with wider economic base such as Income Tax, Corporation Tax, Union

Excise Duties and Customs Duties by the Union Government, whereas the resources allocated to the States are comparatively meagre and have only limited growth potential. Apart from elastic sources of tax revenues the Centre has at its command all resources mobilised through nationalised banks, financial institutions domestic and foreign loans and deficit financing. While the present division of resources provided in the Constitution is not sought to be disturbed, the pattern of transfer should be such that the resources are applied at points where they are most needed with a view to reducing regional disparties and attaining social and economic justice.

5.4 In order to attain the objectives, the Centre may take recourse to better administration of existing taxes as well as implementing the tax power given to the Union for exclusive distribution to the States which has had hitherto remained unexploited. Secondly, there need to be proper vigilance over the magnitude, propriety and efficiency of Union expenditure. Better administration of public undertakings is one of the many measures that can be taken for achievement of better control over expenditure. Deficit financing to a limited extent may be adopted as a last resort. So long at it boost up effctive demand there may not be adverse affect on the economy. The Indian economy is marked by high rate of unemployment combined with inflation. In such a situation inflation tends to get aggravated if massive dose of deficit financing is pursued.

5.5 The objective criteria that should be used for determining the share of taxes may be as follows :—

(a) **Share of taxes**

Income Tax:—The divisible pool of income tax should be stepped up from the existing 85 p. c. to 90 p. c. The distribution of the net proceeds of income tax may be on the basis of 90 p. c. population and 10 p.c. backwardness.

Surcharge of Income Tax:—Surcharge of income tax has been levied year after year and raised from 10 p. c. to 15 p.c. but its proceeds have been retained exclusively by the Centre. The estimated yield from surcharge is Rs. 219 crores in the budget for 1984-85. A surcharge is levied for meeting the requirements of some unexpected events and it should remain for the limited period of such requirements. But a surcharge continued indefinitely could well be regarded as an additional income tax shareable with the rest of the proceeds of income tax. It should be merged with the basic rates and made shareable with the States.

Corporation Tax:—The growth of Coropration tax over the years has been phenomenal. In 1952-53, the income tax realisation was Rs. 143 crores and that of Corporation tax about Rs. 44 crores. The position has considerably changed since then. In the budget for 1984-85 the income tax revenue is estimated at Rs. 1801 crores and the Corporation tax revenue at Rs. 2588 crores. Thus in the past 32 years while income tax has grown by 1159 p.c., Corporation tax has grown by 5782 p.c. The exclusion of Corporation tax from the divisible pool has deprived the States of a source of revenue that is more buoyant than income tax. It is suggested that 50 p. c. of the Corporation tax which is only a form of income tax, should be brought into the divisible pool by appropriate amendment of the Constitution and distributed among the the States in the same manner as income tax.

Union Excise Duty :—The States' share in the net proceeds of Union Excise Duties should be raised to 50 p.c. in place of the existing 40 p.c. *Inter se* distribution among the States may be on the existing basis.

Additional Duties of Excise:—The incidence of additional excise duties as a perentage of the value of clearance should be raised to 10.8 p.c. and should not be allowed to fall below this level in future and a ratio of 2:1 should be maintained between the yield from the basis and the additional duties. Distribution of net proceeds among the States may be on the basis of 70 p.c. weightage for population, 20 p.c. for State domestic product and 10 p.c. for production.

Estate Duty in respect of property other than agricultural land: Distribution of net proceeds should be on the basis of location of property in respect of immovable property and on the basis of population in respect of property other than immovable.

Grant in lieu of tax on railway passenger fares. The quantum of grants should be increased to match the buoyancy of the passenger fares from the present static level of Rs.16.25 crores. The quantum of grants should be redetermined with a view to compensating the loss that the State Governments are sustaining over the years. *Inter se* distribution among the State may continue on the existing basis.

(b) **Plan Assistance**

Prior to Fourth plan, assistance was mainly schemaatic being tied to particular projects or schemes and thereby assumed a character of conditional grants. The Gadgil Formula made it more general through its recommendation of block loans and grants. To a large extent such assistance was freed from the string attached to it. The whole plan assistance, however, depends on approval by the planning Commission of the plan as a whole.

Even now on some items the assistance is tied to some earmarked sectors and a spending shortage in such sectors could invite a proportionate cut in assistance. The pattern of assistance under the present system is 70 p.c. loan and 30 p.c. grant. For the purpose of distribution of Central assistance, eight States are kept outside the purview of Gadgil formula and termed as Special category States. These are Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Nagaland, Sikkim and Tripura. Central assistance to special category States is determined in terms of their actual need and past performance. The pattern of assistance is 70 p. c. loan and 30. p.c. grants for general areas and 10 p.c. loan and 90 p.c. grant for hill areas. The present system and procedure of channelising Central assistance through the planning Commission may continue. Assam may be allowed to retain its special status outside the Gadigil formula. However, in recognition of the special a position accorded to Assam, the pattern of Central assistance may be changed to a uniform pattern of 90 p.c. grant and 10 p.c. loan abandoning the existing distinction as between general and hill areas.

(c) Non-Plan Assistance

The States are receiving statutory assistance under the provision of Art 275(I) as per recommendations of the successive Finance Commissions. Besides, Assam is receiving a small sum under clause (a) of the second proviso to Art. 275(I) for administration of the Tribal Areas. Apart from the statutory assistance, the States are also receiving from the Centre non-plan assistance channelised through respective Ministries for other purposes, the more important being (i) relief and rehabilitation of displaced persons, (ii) relief necessitated by hostilities, (iii) construction and maintenace of border roads, roads of strategic impoartance and national highway, (iv) modernisation of police force, (v) labour and employment, (vi) Education, (vii) Social Welfare and (viii) C. R. F.

So far assistance under the provisions of Art 275 (i) is concerned the non-plan revenue gap should be ascertained haveing regard to backwardness, special problems and matters of national concern. The non-plans grant sh uld not only cover the gap so assessed but should leave the backward States with sufficient surplus on revenue account which can be ploughed back for fresh development.

The composite State of Assam was receiving a sum of Rs. 40 lakhs as grant under clause (a) of second proviso to Art 275 (1) which has been reduced to Rs. 13 lakhs following the reorganisation of the State. This amount has been fixed on the basis of the average excess of expenditure over the revenue in Tribal Areas during the two years immediately preceding the commencement of the Constitution. The expediture in in the Hill District in recent years has grown considerably above the preconstitution level though income has not gone up proportionately. This situation needs to be reviewed.

Most other non-statutory assistance takes the the form of reimbursement of expenditure on a limited number of specific items combined with advance assistance for which provision is made in the State budget. Though there is no complaint with regard to the procedure adopted for this purpose, it is increasingly being felt that some more items of expenditure should be fully reimbursable for instance of late, the the State Government has received a substatial amount for relief necessitated by hostilities but the pattern of assistance adopted by the Central is 70 p.c. loan and 30 p.c. grant. The nature of such assistance calls for a revision of the pattern of assistance by treating the entire amount as outright grant. So far as expediture on outside BNS is concerned, the States do not receive any non-plan assistance. The MHA charges Rs. 24 lakhs per annum per Bn of CRPF/BSF, plus actual cost of transportation, movements, accommodation, water supply etc.

Though maintanance of law and order is a State subject yet in abnormal situations large scale delpoyment of Central Bns. becomes necessary in addition to full deployment of State forces. If the Centre insists on payment for such services this will have disastrous effects on State finances particularly considering the abnormal situation that calls for such deployment. In this context the observation of the Sixth Finance Commission is of special relevance. That Commission urged the Government of India to waive payment altogether for the services of CRPF made available to the State for maintenance of law and order. They further observed that the Government of India would continue to have a decisive voice in determining whether or not the law and order situation in a State warrants supplementary support in the form of CRPF and there is no reason to apprehend that the State Government may invoke assistance of the CRPF on a large scale if payment for the same is waived. After all the Government of India have an equal stake with the State Governments in the maintenance of law and order throughout the Country This aspect need consideration.

5.6 The existence of inter-regional and inter-State disparities in the rates of economic growth even after sustained efforts of over three decades by FC and PC clearly shows the inadequacy of measures taken in this regard. With a view to reducing inter-State disparities and ensuring social justice a part of the share of taxes may be set apart and credited to a special fund exclusively for distribution among the backward States. The Fund so created may be financed out of any increase in States share of taxes and suggested incorporation of Corporation Tax and surcharge in the divisible pool. This would narrow down inter-State disparities and the backward States will be left with adequate surplus for investment in development activities.

5.7 & 5.8 The framers of the Indian Constitution have adopted the principle of separation and clearly demarcated the spheres of taxation both the Union and the States and two separate lists of taxation were drawn up for the purpose. While allocating the taxation functions to the Union and the States due regard was paid to the principles enumerated for a sound taxation system.. As a result, the Union was vested with the powers to levy broad-based taxes both direct and indirect like IT, CT, Customs and Excise which satisfy the canons of economy, efficiency, convenience, etc. The States were left with the powers to levy taxes on consumption and localised items of income and wealth. Judging from the stand point of economy, freedom of trade and commerce and equity, it may at this stage, perhaps not be possible to transfer any item of taxation from Union list without adversely affecting internal trade and economy. There is no denying the fact that major taxes like IT, CT, Customs Duty, Excise, etc. have a profound bearing on the economy of the country as a whole and as such the present division of tax resources in the Constitution need not be changed. Nevertheless, any concession, exemption and incentive that the Centre is now giving or propose to give which have the effect of reducing the divisible pool and other relevant matters the fiscal effect of which fall on the States, should be reviewed in depth by a Committee on which Centre and State Finance Ministers are represented. This State has already extended support to the proposal for replacement of sales tax by additional excise on five commodities provided that not only the current revenues from sales tax on these commodities be protected but special consideration is extended to the State. Any way, sales tax being the most elastic and bu yant source of revenue to the States any further incursion in this field will take away the limited flexibility the States now enjoy in the matter of augmenting their revenues.

5.9 For the purpose of transferring resources to the States to cover non-plan gap, the Centre appoints a F.C. every year. Over a period of five years many unforeseen liabilities might arise which the Finance Commission will not be in a position to provide for. Thereby the States are left to the mercy of the Finance Ministry and the Planning Commission. Besides, each Finance Commission is required to take the levels of State expenditure obtaining upto a particular date as stipulated by its terms of reference. The choise of a date prevents the Commission from taking cognisance of any liability adopted by the States after that date. Such an approach is designed to curb the propensity of the States to rush ahead with fresh expenditure proposals along with the announcement of a F.C. Consequently, many pressing non-plan needs are either shelved or taken up with severe strain on State finances. There is however, no genuine reason to feel that the appointment of a F.C. will ring a signal for the States to go ahead with fresh expenditure simply to take advantage of the award. Such short-comings of the Five Year Finance Commission system can be averted by a permanent Finance Commission type body with wide powers of annual allocation to the States. The plan is to be financed through any surplus on non-plan revenue account, additional resources raised by the States and plan assistance given through the Planning Commission. Once the Finance Commission is made a permanent body freed from simple gap filling approach, the Planning Commission will be relieved of the burden of finding resources for bridging non-plan gap and can perform its role of investment planning and decision making in more effective manner.

5.10 Sound fiscal management is dependent, among other things, on economy in expenditure consistent with efficiency. The manner in which the States deploy the resources allocated to them so as to get the best possible results from the expenditure incurred gives an idea about the level efficiency and of economy exercised by the state. Each Finance Commission adopts certain norms on an all-India basis for maintenance and upkeep of assets. It is, very often, not possible for the States to adhere strictly to such norms due to localised factors and abnormal price escalation. However the State Governments in their eagerness to conserve resources for the plan have been impelled by motives of economy in public expenditure very often have to curtail expenditure at the cost of essential services. Fiscal transfers from the Union have not so far been able to reduce significantly the disparties in the level of public expenditure among the States. Disparities between the States still persist particularly in backward States in terms of essential administrative and social services. Imbalances also exist among different areas within the State. Far greater priority needs to be assigned in providing essential administrative and social services in the backward States. This calls for larger allocations for education, medical cares, public health and welfare of SC/ST and OBC. A beginning has been made in this respect by the Sixth Finance Commission, while the earlier Commissions had assessed the requirements of States largely on the basis of maintenance of administrative and social services at the level obtaining in the base year, the Sixth Finance Commission for the first time made a departure from this norm. They sought to raise the provision for some of the administrative and social services in backward States with a view to bringing them up to the national average and recommended grants for the purpose. The Seventh Finance Commission also adopted a similar approach and recommended extension of this benefit to some other selected services. Such an approach should gradually be able to narrow down existing disparities in the standard of service and level of public expenditure among the States. The approach adopted by the Sixth Finance Commission and followed by the Seventh, if pursued with vigour, is likely to promote over a period of time efficiency in administration and remove disparities in this regard.

5.11 In India fiscal transfers from the Union to the States is performed mainly by two separate agencies, the Finance Commission and the Planning Commission. The Planning Commission is entrusted with the task of recommending plan assistance. While the role of Finance Commission is limited to making recommendations for meeting the fiscal requirements of the States arising from their Non-Plan revenue account, the grants-in-aid recommended by the Finance Commission under Art 275 after considering the tax devolution to the States have been used to bridge the residual gap. A view is sometimes expressed that this has encouraged the States to exaggerate their revenue requirements in the hope of qualifying for the grant. The elaborate terms of reference of the Finance Commission should be able to curb such propensities if any on the part of the States. If necessary the terms of reference may be suitably amended to secure this objective.

A distinction, however, need to be made here as between the weaker States and others. It will not be correct to say that the weaker States also exaggerate their revenue requirements ignoring all norms of financial discipline. In fact, in their bid to extend to their people the level of administrative and other services obtaining in the advanced States, the weaker States project their revenue requirements in a manner which may not satisfy certain norms. They, however, do so not because of a propensity towards financial indiscipline and improvidence but becuase of their anxiety to secure for their State a minimum level of service.

5.12 The State Government also feels that the Seventh Finance Commission has quite appropriately preferred the modality of devolution of taxes and duties to grants-in-aid for transferring resources to the States. This would enable the States to share the benefits or buoyancy in the tax receipts of the Centre and of additional taxes raised by it. But such an approach may work to the detriment of weaker States having a poor tax base due to low degree of urbanisation and industrial backwardness and tend to aggravate the existing disparities among the States. This hindrance can be overcome if grants-in-aid are relieved of gap filling approach to maintain the budgetary equilibrium of the States. Instead they may be used as a tool to reduce the level of disparities among the States and to ensure distributive justice.

5.13 The State Government is fully in agreement with the principles enunciated by the Seventh Finance Commission about the role of grants-in-aid in the scheme of fiscal transfers from the Union. First of all, requirements of the States may be assessed on

the basis of maintenance of administrative and social services at the existing level and thereafter provision may be made for the improvement of administrative and social services in backward States where marked deficiencies are noticed in terms of per capita availability of such services with a view to catch up with the national average. Lastly, weightage may be accorded on matters of national concern. In case of Assam the State has a special responsibility in the matter of border security being located on or near the country's international borders with China, Bangladesh, and Bhutan.

Moreover the State has a long common boundary with the neighbouring States of Meghalaya, Nagaland, Manipur, Tripura and Mizoram. The presence of different ethnic groups alongside the borders had resulted in occasional tensions needing establishment and maintenance of border police outposts at considerable cost. The State Government are of the further view that grants-in-aid should not only cover the revenue gap of the States in the manner assessed by earlier Commission, but should leave the States, particularly the less developed ones with sufficient surplus on the revenue account which could be ploughed back for fresh development. In assessing the needs of the State for grants-in-aid all those aspects deserve special consideration.

5.14 The decision of the Government of India to float Special Bearer Bond implies reduction in aggregate revenues from taxes on income. Similarly, raising of administered prices of items like petroleum, coal, etc. with a view to mobilising additional resources for the Centre deprives the States of any share of such accrual. Instead of raising administered prices had this been done through revision of rates of Excise duty on such items the States could get their due share. It is, therefore, in the fitness of things that yields from such levies should be brought under the divisible pool for distribution among the States.

5.15 The savings generated in the Indian Capital market are at present distributed between the Centre and the States in the shape of market borrowings, loans against share of small savings collection and negotiated borrowings from financial institutions and LICI. Under the present system the States can borrow funds only within the Country and subject to the limitations imposed under Art. 293 of the Constitution.

In recent years the total amount of market loans have been allocated among the States broadly on the same principles as those adopted for distribution of central assistance for plan. However, the shares so determined have been allowed to vary upward by 10% in a year to all the States. In other words market borrowings have been allocated to different States by the RBI on the advice of the Planning Commission and the Union Ministry of Finance. If this principle is substituted by allowing market loans to be floated by the States on competitive basis this will enable the richer States to get more funds offering competitive interest rates at the cost of the poorer States which would be extremely unfair. The State Government subscribe to the view that the economically weaker States should be assisted with more grants than loans therefore, more Central loan and market borrowings may be allocatted to the richer States and more outright grants to the weaker States.

At present two-thirds of the net collection of small savings is advanced to the States as loan. The State Governments are of the view that such loan should be treated as loan in perpetuity. Institutional borrowings like State Governments borrowings from NCDC, RBI, IDBI, LIC. etc. occupy an insignificant role in the scheme of public debt of States like Assam. It is felt that such borrowings should be distributed on the basis of investmet priorities for specific self liquidating projects which should be able to take care of the obligations arising out of servicing and repayment.

5.16 The budgetary deficits of the States are no doubt growing at a much faster rate than that of the Centre. The Combined budgetary deficits of the States in 1983-84 was Rs. 750.00 crores and that estimated for 1984-85 is Rs. 1312 crores. In the same period the dificit of the Centre is estimated to grow from Rs. 1695 cores to Rs. 1762 crores. It is also true that inspite of a substantial increase in transfer of resources from the Centre in absolute terms, the percentage of the Centre's revenue receipts being transferred to the States is declining. This trend is partially reflected in the quantum of central transfers channelised through the Finance Commission. During 1974-79 transfers to the States on the basis of the award of the Sixth Finance Commission aggregated to Rs. 11,168 crores out of the total revenue receipts of the Union amounting to Rs. 43,976 crores or 25.4 p.c.

In terms of the recommendations of the Seventh Finance Commission, the overall devolution of resources during 1979-84 is estimated to be Rs. 20,843 crores out of Rs. 80,126 crores, or 26 p.c. recording hardly any increase. While the needs of the States are growing fast in volume, the resources allocated to them lack the needed flexibility resulting in fiscal imbalance and growing indebtedness of the States. The total outstanding debt of the State Governments rose to Rs. 27449 crores in 1981-82 from Rs. 8,718 crores in 1970-71. The situation warrants urgent corrective measures to bring about better correspondence between resources and responsibilities of the two tires-the Centre and the States in our federal set up.

5.17 Over the years the problem of indebtedness of the States has attained enormous proportions as a result of economic planning. The outstanding public debt of the States has risen from Rs. 8,718 crores in 1970-71 to Rs. 27,449 crores. Considering the magnitude of the problem an annual review of indebtedness instead of a periodical one as at present might be undertaken. A permanent Finance Commission type body shall be able to look into the problem effectively. As observed by the ARC study team, among the various components of public debt of the States, the loans from the Central Government occupy a predominent place. An analysis of the debt position of the States as on 31st March, 1982 shows that of the outstanding debt of Rs. 27,449 crores loans from the Centre constitutes Rs. 19,967 crores and accounts for 72.7 p.c. of the total indebtedness. Along with the growth of public

debt, apart from repayment liability on the capital account the burden of interest charges on revenue account of the States has also become progressively heavier and is causing serious concern to the States. The average rate of interest on outstanding debt has also risen from year to year. This is evident from the debt servicing and repayment liability of Assam. Estimated interest payment of the State in 1984-85 is about Rs. 94 crores and repayment of principal to Centre Rs. 78 crores whereas estimated revenue from State taxes is about Rs. 134 crores. This shows that State's own tax revenue can not even meet the debt servicing and repayment liability. With the advent of economic planning public debt has assumed a serious proportion because loans predominate over grants in the compositon of central assistance for plan. The growth of public debt need not cause any concern so long as borrowed funds are utilised in self liquidating projects. But under the compulsion of economic planning and priorities accorded large portion of the borrowed funds have to be utilised for building up economic and social over heads. A shift in favour of grants in the pattern of central assistance for plan as well as removal of deficiencies in the present scheme of devolution is called for to remedy the financial instability of most of the States.

5.18 In India, the States are given powers to borrow within the Country and external borrowing is reserved exclusively for the Union. The State's borrowing powers are also subject to such limitation as may be imposed by State Legislatures and further a State may not raise loans without the consent of the Government of India if there is still outstanding any part of a loan which has been made to the State by the Government of India. Since all the States are indebted to the Centre in varying degrees, there cannot be said to be any freedom left with the States even in the matter of raising internal loans. These constitutional restrictions are placed on the States internal borrowing with a view to avoiding adverse monetary and fiscal affects arising from competitive and unbridled borrowing powers of the States. Under the present arrangements, the total quantum of public loans to be raised by the Centre and also its allocation between the Centre and the States is decided by the Government of India. Without affecting the basic principles of sound finance such decision can be taken in consultation with the States and having regard to their actual requirement in the context of development.

5.19 It is true that on foreign borrowings the Centre charges from the States a higher rate of interest than what it pays to the foreign lender. So far as this extra amount is chargd to defray the expenses of handling such aid it can not be said to be unjustified. In any case, the relending rate of interest should not exceed the expenses incurred by the Centre for contracting and relending such funds. Since the weaker States are not in a position to draw up projects which satisfy the specifications of the external agencies, certain percentage of rupee equivalent of net external borrowings contracted each year may be disbursed to the Statse as special credit.

5.20 States cannot be allowed to borrow as much as they like from the capital market since the richer and more developed States would avail the larger proportion of available funds at the cost of weaker States by offering competitive rates of interest. The Centre would then have to enter the market on behalf of the weaker States. Anyway, the case for larger volume of loan is not justified for the poorer States. Rather they deserve larger amounts of grants. Nevertheless the idea of a loans council appears to be a welcome step in the sense that it would be able to dispense with the misgivings in the minds of advanced States about the manner in which loans are being distributed at present between the Centre and the States. This council would recommend the maximum amounts that can be borrowed by the Centre and by diffrenet States on the basis of the principles approved by the NDC.

5.21 The inherent inadequacy of the States' finances to met their essential obligation get reflected in their over draft with the Reserve Bank of India. The gap between receipts and expenditure is the real cause of the ailment of which over draft is a mere symptom.

The ever increasing gap is caused by a multiplicity of factors. On one hand the State has to incur heavy expenditure on law and order, social services and debt servicing. On the other hand, failure to invest adequately in self liquidating projects has resulted in a situation where the revenues yielded are not even sufficient for the maintenance of assets already created. Mere doubling of the entitlement of ways and means advance will not ease the situation. Unless, the disease itself is cured the symptoms will persist. Liability for servicing and repayment of debt for a backward State like Assam amounts to about Rs. 187 crores which is far in excess of its own tax revenues. Remedial measures call for a change in the present patten of central assistance for plan reducing the predominance of loans over grants, reduction in rate of interest, rescheduling of outstanding debts annually instead of after every 5 years as at present and a more liberal scheme of devolution. Besides, the distinction between normal and special ways and means advances may be dispensed with and the over all limit of ways and means advances should not be lower than the aggregate of the existing limits of the two kinds of advances. The existing practice of demanding security in respect of special ways and means advances causes severe hardship and mey, therefore be abandoned. Further, the existing rate of interest, applicable to ways and means advances and overdrafts should be lowered to the level of that applicable to plan assistance and to other forms of assistance extended by Government of India. The additional liability on account of interest would itself act as a deterrent to improvidence on the part of the States.

5.22 Performance of the States in terms of resource mobilisation should be viewed in the perspective of the powers conferred on them by the Constitution and the available base for mobilisation of resources. Most of the taxes left with the States, with the exception of sales tax, are inelastic. In sales tax again most of the States have reached a saturation point and there is little or no scope to raise further resources through modification of sales tax rates.

Inspite of the constitutional limitations it will be seen that some States show a higher tax effort per capita than others. This is due to uneven level of industrialisation and urbanisation prevalent in the States. Low degree of urbanisation and industrial backwardness prevants the weaker States to catch up with the advanced ones in terms of per capita tax effort. In our country the major portion of national income originates in the agricultural sector and hence this sector should bear a large part of the burden. This is equally true of the States where major portion of SDP represents agricultural income. In this State the revenue collected from agricultural sector comes mainly from the tea plantations. Here again the assessment is done by the Income Tax authority and 60 per cent of the income is treated as agricultural income which can be taxed by the State and the remaining 40 per cent is treated as non-agricultural income and can be taxed by the Centre. The State Governments' efforts to get the whole income accrued from tea to be treated as agricultural income did not find favour with the Centre and this has stifled States initiative in the matter of realisation of agricultural income tax. This aspect has been discussed in greater detail in reply to Question No. 2 of this part.

Apart from tea, the farm sector in the State is highly scattered and unorganised and presents little scope for tapping of resources. In consonance with the accent on removal of poverty land holdings up to a certain limit is exempted from land revenue. In spite of the limited scope the State Government is alive to the need of exploiting its own sources of revenue adequately.

In fact, the States cannot avoid this responsibility since their performance in the matter of mobilisation of resources is constantly and regularly being reviewed by the Planning Commission and the Finance Commission.

5.23 The Central Government failed to raise the incidence of additional excise duties as a percentage of the value of clearance to 10.8 p.c. as agreed to with the States in 1970 in respect of items where sales tax has already been replaced by additional excise duties. Moreover, taxes and duties listed in Art. 269 have not been fully tapped by the Centre to raise resources for the exclusive purpose of the States. The State Governments are, as a result being deprived of revenues which legitimately belong to them. Besides, huge arrears, taxes and tremendous increase in investment in public enterprises even for meeting their losses has created a situation which needs to be reversed to increse the size of the Central surplus.

5.24 There is no doubt that much of the present distortion in Union-State relations would not perhaps have grown as it has over the years had the States been provided with opportunity for full and free discussion with the Centre before taking decision on matters affecting revenues of the States. Much of the discontents could either have been avoided or dissolved through the process of consultation between the Centre and States. The views of the State Governments should be ascertained while moving a Bill to levy or vary the rate structure or abolish any of the duties and taxes enumerated in Art. 268 and 269.

5.25 Art. 269 of the Constitution lists the taxes levied and collected by the Union and lay down that the net proceeds therefrom are to be assigned to the States. Under this Article no tax except estate/succession duty in respect of property other than agricultural land has been levied by the Union. Tax on railway fares and freights was once levied in 1957 but subsequently repealed in 1961. Art. 269 has not, so far, been fully availed by the Centre to raise resources for the exclusive purpose of the States.

5.26 The State Government feel that by freezing the total amount allocable to the States for many years at the static level of Rs. 16.25 crores the Centre has treated the States in a manner less than fair in the matter of grant in lieu of the repealed tax on railway passenger fares. The quantum of grant should be redetermined immediately to compensate fully the loss that is being substained by the States over the years.

5.27 No comments.

5.28 The present arrangement in regard to financing of relief expenditure is that as recommended by successive Finance Commissions, an amount referred to as the margin money is provided and when a calamity occurs necessitating expenditure on relief measures, the States have the margin to draw upon immediately. In determining the margin the successive Finance Commission considered the actuals of relief expenditure of the States for a few years and adopted the average of such expenditures as the margin for each State. Prior to the Seventh Finance Commission the margin did not provide for any element of repairs and restoration of public assets but included only items of direct relief like gratuitous relief, drinking water, fodder arrangements as well as relief works. The Seventh Finance Commission for the first time provided for repair and restoration of public assets over and above direct relief in the calculation of margin on the basis of 9 years' average expenditure with suitable price escalation. In our view the adoption of 9 years average of actual expenditure does not truely reflect the need of the States and its substitution by 3 years would be a more realistic indicator.

In case of natural calamity of more than moderate severity necessitating relief expenditure in excess of margin money, a Central team makes an on-the-spot assessment of the extent of damage caused and recommends the ceiling of expenditure above the margin. In regard to the expenditure of a state on relief and repair/restoration of public works following a natural calamity, Central assistance is made available as non-plan grant not adjustable against the plan or Central assistance for plan of the State to the extent of 75% of the total expenditure in excess of the margin. The remaining 25% is left to the States to meet from their own resources. But in case of Assam with its slender resource base and fury of floods manifesting itself practically every year, it becomes impossible to bear the burden of 25% in excess of the margin. Assam's case should be considered on a special footing and the entire expenditure in excess of the margin should be fully borne by the Centre. In order to ensure optimum utilisation of relief assistance the States should be free to incur expenditure on any item of relief and repairs subject to the overall ceiling.

5.29 It is felt that creation of too many agencies may lead to over-lapping of jurisdiction and functions. The proposed loans Council should be able to look into the distribution of loan and its utilisation for productive purposes and also the credit requirements of the States. However, a National Economic Council might be established to serve as a forum for consultation between the Union and the States in matters of economic, commercial, fiscal and monetary policies.

5.30 Collection and distribution of fund must conform to certain norms or else they will frustrate the basic purpose of how best the funds can be collected and employed for the benefit of the people so as to ensure distributive justice. As such, collection of funds must satisfy the cannons of economy, efficiency, convenience etc. So also spending of funds should conform to national policies and priorities so that they can be applied at points where they are more needed in order to secure social justice and removal of regional disparities.

5.31 At present there is no organisation except Parliament and its statutory committees that can exercise vigilance over the magnitude, appropriateness and efficiency of Union expenditure. Apart from the enormous increase in Central expenditure in recent years on subjects within their sphere, there has been tremendous increase in the expenditure on financing public enterprises as well as on subjects included in the concurrent list, which ultimately has the effect of depriving the States through diminution of surplus transferred to the States. A National Expenditure Commission was experimented within 1979 but it was wound up. The Finance Commission may be assigned the task of looking into the receipts and expenditure of the Centre and a permanent Finance Commission type body may dispense with the requirement of a National Expenditure Commission.

On the other hand, the State Government with limited resources at their disposal do not have the capacity to indulge in fiscal indiscipline in a big way. In any case, the State's expenditure proposals are reviewed annually by the Planning Commission besides periodic review by the Finance Commission. In the circumstances, a National Expenditure Commission for the States does not seem to be necessary.

5.32 The present system of compilation and submission of accounts involves a lot of delay at various stages and as a result the overall financial picture of State pertaining to a particular financial year emerges after a considerable lapse of time. By the time, the final account of a year is obtained, effective steps to plug the loop holes or any remedial measures become meaningless due to the time lag. Moreover, accounting delay serves as a serious impediment to regular flow of funds from the Centre where release of Central assistance is dependent on audited figures of expenditure.

5.33 The desirability of evaluation audit is not denied but while conducting such audit due emphasis needs to be given on achievement rather than pointing out defects alone. Unless suggestive remedies are focussed evaluation audit shall not serve any meaningful purpose. Left to C & A .G. the conducting of evaluation audit might lead to direct interference with the executive. Considering the desirability of evaluation audit it should be entrusted to an agency consituted by the State Government itself.

5.34 No comments.

5.35 At present C & A. G. does only test audit. The periodicity of such audit is biennial, triennial etc. Though the reports are often delayed they serve a useful purpose to the extent the State Government want to take remedial action on the basis of the audit report for bringing the erring officials to book and for plugging procedural and other loopholes.

Since, in the nature of things, the C & A. G.'s report is always likely to be delayed a useful improvement could be supplementing the C & A. G.'s audit by a extensive system of internal audit.

5.36 Internally, there is the Ministry of Finance with its Financial Advisers in every Ministry to check improper spending and externally, there is Parliament with its committee assisted by the C & A. G and between them they are expected to keep a wacth on Union and State spending. Though the Public Accounts Committee and the Committee on Public Undertakings have done very useful work.

5.37 Yes, the Estimates Committee should go into the wider aspects of policies and programmes and advise the Government on improvements necessary.

5.38 No separate Expenditure Commission is considered necessary in view of the existing provision in the Constitution empowering the C & A. G. to play this role and the periodical scrutiny of the expenditure of States as conducted by the Planning Commission and the Finance Commission.

5.39 We share the views expressed by some State Governments in this regard. In order to avoid such irritants and consequential delay leading to lapse of funds, the proper implementation of schemes and evaluation thereof should be left with the respective State Governments. There is no reason to apprehend that the State Governments will indulge in improper spending. The State Governments are equally interested in achieving economic and social objectives at a minimum cost.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 Plan formulation passes through at least four stages. The Planning Commission prepares basic documents which are at each stage discussed by the N.D.C. Prevailing economic situation and performance of the current plan is reviewed through mid-term apprisal of the plan performance. In the light of this appraisal N.D.C. formulates the objectives/outlines for the next plan. The approach paper is prepared by the Planning Commission. Thereafter, it is again approved by the N.D.C. Then guidelines are issued by the Planning Commission to the States for preparation of draft plan. In the whole process State involvements are only during the N.D.C. mee-

tings which is considered as inadequate. Planning Commission or its Working Groups may involve State representatives at the formative stage, preparation of basic documents wherein the State's development aspirations for the period may be reflected. The State's participation at the subsequent stage of plan formulation may obviate, to a great extent, any tendency towards imposition of the schemes formulated by the Central Ministries.

The present system of sending guidelines to the States and asking them to work out their plan scheme in a hurry gives no time for reflection and scrutiny. This should be remedied by sending the guidelines well in advance. Discussions with the States by the Working Groups may be spread over longer periods doing away with the present system of calling all the States together and hurriedly going through each State's programme in a single day which results in rushing to decisions through bargains rather than any fruitful discussion. Invariably Working Groups have most of the say in the bargain.

6.2 Owing to their poor finances and due to inadequate planning machinery the States are landed in a situation where they can take few terminal decisions on the development of their own States. Irrigation, Power, Education and Health Scheme are conceived, planned, financed and implemented by the State Governments. Requirement that the Schemes conform to national schemes of priority takes away the marginal decision making power from the States. When, as have been mentioned earlier, finances of the State is in a bad shape, involvement of the Centre is complete. The sectors mentioned above, though essentially State subjects, by their very nature need huge capital outlay compelling the States to look to the Centre for finance and materials resulting in increasing Central encroachment on State subjects. The remedy lies in strengthening the State Planning machinery and actual financing of major projects through Central loans or grants.

It is not considered necessary that the N.D.C. should be a statutory body unless the changes suggested in our replies in Part I and Part IV are given effect to for the Inter-State Council. As at present the basic documents should be prepared by the Planning Commission in consultation with the States at every stage in the absence of the statutory Inter-State Council. The N.D.C. will continue to prescribe objectives, lay down guidelines for the Planning Commission and finally approve the Plan p repared by the Planning Commission in the light of the guidelines. Once the development plans are approved by the N.D.C., the States should be free to implement them dispensing with further discussion with the Planning Commission which will, of course, continue to provide adequate financial resources to implement the schemes.

The prevalent system does not enable the States to have any say in shaping the national policies. The agenda papers not related to the State's Plan do not reach the State capital before final decision. This omission may be rectified and participation of States in formulating national policies should be ensured.

6.3 The resolution constituting the Planning Commission invested the Commission with certain responsibilities. The Commission is supposed to act as an independent body. It may consult the Central and the State Governments and act in close understanding with both. Notwithstanding the resolution defining its responsibilities, the Planning Commission in its present form is essentially an agency of the Central Ministries. States are seldom taken into confidence in the formulation of schemes of national importance. The Central Ministries, through the Planning Commission, are in commanding position in formulation of schemes particularly the Centrally sponsored schemes or in schemes in respect of which the Central Government shares expenditures though the schemes fall under State subjects.

The remedy lies in cutting across the tendency on the part of the Planning Commission towards dependence on the Central Ministries in formulating its decisions. Interaction should at best be limited to consultation with the Ministry and the State and not beyond that.

6.4 The Central Government is vested with virtually unlimited economic powers. Not to speak of the Union List and those not specified in the Seventh Schedule, the Central Government has over-riding powers in respect of the Concurrent List. Since economic planning involves decisions of wide dimensions and of serious consequence in the socio-economic fabric of the country, it is proper that the nation's highest planning level should consists of eminent experts in the sphere of Economics, Science, Technology and Management. This body should be of the highest status and responsible only to the National Development Council. it should be Free from other influences and act directly under the guidance and direction of the nation's highest Development Council. This will ensure at least optimum utilisation of the potential towards achievement of the nation's aspirations, working within the guidelines set up by the National Development Council.

6.6 The Planning Machinery at the State level is not at all equipped to guide the State Government on the national priorities. Until the State Planning Machinery is strengthened, the Planning Commission will continue to be in a commanding position. The States, due to their poor finances, are dependent on Central decisions and have to determine their priorities and selection of schemes well within the bound demarcated by the Centre through the Planning Commission. The requirement that it should conform to the national scheme of priorities take away even the marginal decision making powers from the State. As centrally sponsored schemes of education, health, employment, irrigation etc. constitute part of the State Plan, these are conceived, formulated and sponsored by the Central Government. Even the outlays are included in the Central Sector Plan, the only task left to the State being to implement it. The States are compelled to accept it even though such schemes do not fit in their scheme of Priorities. This they are obliged to do only because the State's resources are limited. This involvement in every detail has resulted in the erosion of the State's autonomy. Once the outline is approved by the highest body *i.e.*, N.D.C. State should be free to work out how to implement the detailed schemes without any interference by the Centre.

6.7 The present system of channelising Central assistance through loans and grants, seems to be working satisfactorily. Divested of the responsibility of finding resources the Commission may devote itself solely to the evaluation and guidance of the plan scheme and to be instrumental, as it should be, in economic transformation of the country. This channelisation should conform to certain criteria outlined by the N.D.C. viz., backwardness of the State and their resource constraint. The basic objective should, of course, be balanced development of all the States, taking into consideration the special problems confronting each particular State. There should be check against too much inroads into the State schemes based on the special needs of the particular State in an effort to make them conform to the national priorities. Allowance should be given to the State Planning Machinery to handle the Special Regional Problems on its own. The Planning Commission may, however, oversee that the scheme is not too ambitious so as to be beyond the realm of practical implementation.

6.8 As stated in reply to Q. 565 (b), Assam may be allowed to retain its status as a special category State outside the Gadgil formula. The pattern of Central assistance may be changed to an uniform pattern of 90 per cent grant and 10 per cent loan, doing away with the existing distinction as between General and Hill Areas

6.9 The criteria evolved by the N.D.C. for allocating central plan assistance to States places the backward States at a great disadvantage. Advanced States with more resources could go for bigger State Plans. Added to this, private investments are attracted mostly by advanced States, and are extremely shy in the less developed States. This cuts at the root of balanced development of States.

Assam being a special category States outside the Gadgil formula and inr ecognition of the special position accorded to Assam there should not be different pattern for General, Hill and Tribal Areas. The existing distinction may be abandoned and the whole State may be governed by the uniform pattern of 90 per cent grant and 10 per cent loan. Determination of priority sector may be left to the State. The present system of allocation of 50% on population and 50% on area basis has not resulted in any perceptible forward step on the part of hill areas of weaker States towards their goal of removal of poverty apart from the avowed object of balanced regional development. The quantum of special Central assistance should be in conformity with the special need for accelerated development in certain spheres e.g. high incidence of poverty and under development prevalent among the Tribal and the Other Backward Classes of the North Estate Region. The State Government should be given a free hand in the drawing up and implementation of priority sector schemes without any string attached to it.

6.10 Most of the Centrally Sponsored Schemes are conceived, formulated and sponsored by the Centre. Schemes of this category, coming under Primary Education, Public Health and Social Welfare constitute part of the State Plan. The States are obliged to implement them even if such schemes do not get integrated with the rest of the State Plan and remain attached as appendages. The Centre may consider these schemes necessary from the national point of view while the States are tempted by the inducement of Central assistance in the initial stages.

But under the federal policy and prevalent distribution of fiscal powers, any change in this regard cannot be visualised. As long as the State continue to suffer from the chronic illness of financial weakness and resource constraint, the Centre will continue to use its power more effectively reducing the limited decision making power enjoined on the States by the Constitution.

6.11 The State Evaluation and Monitoring machinery in Assam established in the year 1965 to watch the implementation of plans is not adequate to cope up with the increasing workload. At present, the evaluation organisation has been able to take up only evaluation schemes of experimental nature and few important schemes from the point of view of the State. Again, in respect of monitoring of plan schemes the organisation has not been able to achieve much due to inadequate staff in the organisation.

In order to examine that the Central and State funds invested in the development plan yield the desired results, the State Evaluation and Monitoring Organisation needs to be suitably strengthened without further delay. A proposal for strengthening of the State Evaluation and Monitoring machinery has already been sent to the Programme Evaluation Organisation, Government of India during the year, 1982 which has been again renewed in the month of June, 1984.

The State units of the Planning Commission's Programme Evaluation Organisation, should maintain more effective and closer ties with the State Evaluation Organisation. Instead of present practice of occassional exchange of reports prepared by each organisation separetely, there should be constant rapport, close cooperation and in appropriate cases joint studies may be undertaken.

6.12 No Comments.

6.13 In Assam the State Planning Board oversees the Plan formulation and implementation. But the extent of effective exercise of the State Board is circumscribed, as the State Plans are prepared within the guidelines prepared by the Centre. Secondly, the strengthening process of the State Planning machinery has been hindered or rather crippled by excessive inroads by the Centre. The strengthening of the State Planning machinery has to be effected through a prescription issued by the Planning Commission which, in effect, is a catelogue of junior officers, assistants and peons to be recruited and a few minor items to be purchased. The list does not provide for appointment of experts with decent salaries attached to their post. Nor does the list provide for any construction or purchase of conveyances for providing mobility for effective functioning of the machinery.

The remedy lies in allowing the State Planning machinery to strengthen itself and to meet its own needs without let or hindrance within the financial

limitations recommended by the Planning Commission. In fact, if necessary, States may go beyond the recommendations of the Planning Commission for strengthening the Planning machinery at the State level to be able to handle its own Plan and with the implementation of Plan Schemes.

PART VII

Miscellaneous

Indusries

7.1 The First Schedule to the Industries (Development and Regulation) Act, 1951 envisaged Central regulation of a few industries which were of vital public interest and of national importance. Thereafter Central control has grown to add more and more industries of all types leaving to the States only the small scale industries which are also controlled by the Centre to a large extent. However, we have no instance to cite that the Centre has used a deliberate policy to the detriment of the States' interest. But the Central Regulation has caused a situation in many States like ours, where vast natural resources, particularly gas and mineral resources, have remained unutilised/unexploited—as for example the cases of cement industry, oil exploration/natural gas can be cited. The policy followed by the Centre in the early 70s of discouraging additional capacity in surplus States retarded the expansion of such industries in the State and thereby exploration/exploitation and utilisation of the vast resources.

7.2 We are of the view that the Central Government should only regulate those industries having connections with defence and security of the country. The licensing authority for the remaining industries should be vested with the State Government under the guidelines of the Central Government.

7.3 It is observed that licences are taken for many items by big houses but never implement them. It is observed that such licences are taken to stop establishment of similar projects by other parties. It may also be pointed out that backward States are normally victims of this as new licences for these items are not considered on the ground that licences for excess capacity of these items have been issued. Definite time Schedule be fixed for implementation of the project and such licences should be cancelled after the expiry of stipulated time. Application from public & Co-operative sector should not be rejected on the ground of excess capacity licence being issued if the project is found otherwise viable. Applications for industrial licences for establishing project in category-A backward district and non-industry district should be given over-riding preference. Although the principle is laid down by the Government of India for non-industry district but this is not followed in practice.

7.4 Many States particularly the backward States are not fully organised to support the small scale industries mainly in respect of supply of raw materials and marketing assistance. Although State Small Scale Development Corporations are authorised to procure and distribute all variety of steel materials, the performance is not very satisfactory because the cost of materials often becomes uneconomic for S.S.I. units. For other items, it is suggested that the organisation like S.T.C., M.M.T.C., N.S.I.C. etc. should open their functioning establishment in all States so that the small enterpreneur from the State need not run for their requirement to the head office or regional offices of these organisations. It is observed that the offices of these organisations were opened in many States but without sufficient power. The offices should be given necessary powers to function to assist the local S.S.I. unit in true spirit. Central Government is the biggest individual buyer in the country. It is true that the Central Government has taken number of steps to provide marketing assistance to Small Scale Industries but many more are necessary. It is suggested that the requirement of various organisation of Government of India's establishment & undertaking should purchase the requirement of various items from the local units where these items are required to be consumed. If the prices offered in such cases are found to be higher, the prices may be fixed by competent authority on cost analysis basis which is the established practice of D.G.S. & D.

7.5 The Centrally Controlled national industrial financing institutions working in Assam are I.D.B.I. & I.F.C.I. But the functioning of other organisations like L.I.C.I., I.C.I.C.I. are not encouraging. Government may consider establishment of a single Centrally controlled national industrial financing institution for each States where all the facilities may be made available.

7.6 & 7.7. Locational decisions on central investment in public sector is the most important matter particularly for the State where the private investment is shy. The Industries reserved for public sector should be established in the State where there is potentiality as well as availability of raw materials and in such cases the State Government concerned should have a major say in location of the industrial project. In respect of other items backward States should get preference. Under no circumstances States' demand for establishment of central sector projects should be turned down on the ground of lack of suitable infrastructure if the project is otherwise viable.

7.8 We are fully satisfied with the policy of the Government of India in regard to the assistance given for development of the backward areas.

Trade and Commerce

8.1 We agree to the provision of Article 307 of the Constitution providing for appointment of an authority for the purposes enjoined in Articles 301 to 304.

Agriculture

9.1 So far as the Centrally sponsored schemes are concerned, it is evident that while/approving the State Plan, Central Government priorities are not keeping in tune with the State Government priorities—the tendency being to retain uniformity in the terms and conditions for the entire country. It is therefore, considered meet and proper that the Government of India would give priority to the interests of the States.

9.2 It is suggested that in such cases, the Government of India should continue to bear the whole expenditure of the scheme so long as the Government of India considers the running of the scheme necessary.

9.3 Apart from the recommendations of the National Commission, the Government of India should also formulate locally suitable schemes keeping in view the diverse conditions in different States.

9.4 (a) Fixation of minimum or fair prices of agriculture items uniformly throughout the country does not appear proper. It is suggested that they should be fixed keeping in view local conditions of productivity, market price, demand etc. which differ from State to State.

9.5 National Agricultural Research institutions should come forward to help the State Governments for solving local problems faced by different States as all the States do not have the infrastructure for conducting researches on the local problems.

Similarly NABARD should formulate the credit scheme keeping in mind the different stages of development in each State instead of having a uniform regulation applicable to all States.

Food & Civil Supplies

10.1 Present arrangements for the purpose mentioned in the question are adequate.

10.2 Periodical review will definitely help improved functioning. The States should have unfettered power in respect of those enforcement and regulatory orders administered by the States.

Education

11.1 It is not true that there is unnecessary centralisation and standardisation in the field of education and excessive interference. Our experience in recent past is that Centre seldom interferes in this sphere and has always sympathetically treated the problems of the State. It is an established fact that centralisation is essential in some fields of education and perhaps in such fields only the Centre has guided the States. Educationally, Assam is one of the nine backward States and it has received special attention and financial aid from the Centre.

11.2 The State is receiving satisfactory financial assistance from the University Grants Commission. There is wide scope for the University Grants Commission to tone up the administration of the Universities for their effective functioning. In this respect, they can also extend financial help for imparting training for better management of University affairs. It will be better to provide legal action against the Universities for their failure to conduct the examinations timely.

11.3 At present a Central Advisory Board under the Chairmanship of Union Minister of Education is functioning and all the State Education Ministers are its members. Timely meeting of this Board facilitating exchange of views at regular intervals will be quite adequate and no separate arrangement is called for.

11.4 There is no difficulty in maintenance of separate institutions for linguistic minorities both tribal and non-tribal, except financial drawbacks. There are restrictions in rules and procedures to provide deficit finance to such institutions. Even if rules are relaxed, it may not be convenient to give financial aid to all the linguistic minorities 'institutions'. The Central Govt. may consider to provide a scheme under the Central Sector for giving aids to such institutions.

11.5 There is no such conflict between the Centre and the State in Educational fields.

Inter-Governmental Co-Ordination

12.1 No serious problems in the Centre-State relations have been found in this State. Therefore, the setting up of an Advisory Commission in the line of U.S.A. is not considered necessary.

Modified/Additional Replies From Government of Assam to some selected questions of the questionnaire (Received in July, 1987)

PART I

INTRODUCTORY

1.2 The distribution of powers between the Centres and the States is very important to maintain federalism and the democratic norms in a federal system of administration. Some powers which have been incorporated in List III of the Constitution have to be incorporated in List II in order to make federalism more effective. Entries, like, 17A-Forests, 17B-Protection of Wild Animals and Birds of List III should be brought to List II. Unless the States are given exclusive powers in respect of natural wealth and resources, such as, oil, forests and some minerals, the States cannot be resourceful. This will affect the economy of the States where there are plenty of such resources. Therefore, occasional review of distribution of powers between the Centre and the States is a must and considering the exigencies more power should be given to the States for the development. More concentration of powers in the Centre will not be conducive to allround development of the States.

1.8 Article 3 of the Constitution needs to be suitably amended for making it mandatory to obtain the prior approval of the State Legislature before a bill is introduced in the Parliament to change the area of any State.

PART II

LEGISLATIVE RELATIONS

2.1 It appears from the amendments of the Constitution made from time to time that there is a tendency of the Centre to curtail powers of the State by making additional entries in List III to the Seventh Schedule. It has already been mentioned in the original answer to Question 2.1. The Entry 92-A made in List I by way of amendment in the year 1956 has virtually taken away the power of the State under Entry 54 as it stood prior to the amendment of 1956. Likewise, Entries 17-A and 17-B made in List III by amendment of the Constitution made in 1976 have curtailed the powers of the State in respect of Forests and protection of wild animals and birds. Prior to that amendment, the State exercised its powers on the subjects mentioned in the aforesaid two entries. So, the view that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States is not basically correct. The tendency of the Centre which has been clearly exhibited from the amendments of the Constitution is to curtail the legislative autonomy given to the States and this tendency is not a healthy one for maintaining cordial relation between the Centre and the States. The Centre should not encroach upon the State Legislatives field on the basis of the so-called "national interest" or "public interest"

2.5 (i) Entry 97 in the Union List of the Seventh Schedule has given enormous powers to the Parliament to make laws in any other matter not enumerated in List II or List III. This entry appears to have given unguided powers to the Parliament. Some restrictions should be made so that in making any law where State is concerned, the Parliament, before introducing any Bill shall obtain prior approval of the State Legislature.

(ii) It is necessary to amend Article 213 of the Constitution in respect of promulgation of Ordinance by the Governor of a State. From the existing provisions of Article 213 it appears that even in utmost urgency, the Governor is not entitled to promulgate any Ordinance without instruction from the President in respect of the items mentioned under the proviso to clause (1) of the said Article 213. Some provision like the provisions of the Article 255 of the Constitution should be incorporated in Article 213 so that the Governor can exercise power in utmost urgency to promulgate Ordinance without instruction from the President.

(iii) Under Article 16(3) of the Constitution, the Parliament has been authorised to make law in regard to a class or classes of employment or appointment to an office within a State prescribing requirement as to residence prior to such employment or appointment. In that view of the matter, the Centre should make some law prescribing the condition of permanent residence within the States prior to the employment or appointment of a citizen. It should be a condition-precedent that a citizen coming from one State to another State and seeking employment must be a permanent resident of the latter State.

(iv) Crude oil was first discovered in Digboi around 100 years ago and the first refinery in the country was set up at Digboi at the turn of the century. Over the last few decades, crude oil and natural gas have together emerged as the single most important source of primary energy in the world. In 1984, out of 7201.6 million tonnes of crude oil equivalent energy consumed. Oil and Natural Gas accounted for 2844 and 1409 million tonnes of oil equivalent. In India, against the worldwide estimated per capita primary energy consumption of 1529 KG oil equivalent the consumption was only 196 KG. Again, against the world wide per capita consumption of 604 KG oil equivalent and 299 KG oil equivalent for crude oil and natural gas, India's consumption was only 55 KG and 5 KG respectively. Thus, with economic development, the importance of oil and natural gas as a primary source of energy is bound to increase.

Within the country, in 1983-84, out of the total production of 26.20 million tonnes of crude oil, off-shore oil production accounted for 17.39 million tonnes and on-shore oil production was 8.62 million tonnes, of which the share of Assam was 5.00 million tonnes. The share of Assam in 1985-86 was almost same when the total crude oil production reached the figure to 30.16 million tonnes of which off-shore crude oil production accounted for 20.82 million tonnes.

Thus, Assam accounts for between 1/5th to 1/6th of the total crude production of the country (both off-shore and on-shore).

However, a perusal of the income derived by the Centre from exploration and production of crude oil alone would show, for example, that the Central Government earned a total of Rs. 2751 crores in the year 1983-84 on account of royalty, sales tax, profit divident, corporate tax and oil development cess. On the other hand, the State of Assam earned only Rs. 58.07 crores on account of royalty and sales tax. In 1983-84, Assam produced 5.009 million tonnes and thus, the State made on earning of Rs. 115.93 per tonne of crude oil versus the Centre's earning of Rs. 1057 per tonne of crude oil of 26 million produce that year. Thus, even in the single year of 1983-84, the per tonne earning of the Central Government on account of production of crude oil was almost 10 times as much as that of the State.

The State Government is of the view that retention of the subject of Regulation and Development of oil Fields and Mineral Oil Resources in the Union List is resulting in an enormous transfer of the State's resources to the Union depriving the State of Assam which is one of the least developed States in the Country and which suffers from the disadvantages of relative inaccessibility, small size of market and backwardness in relation to the rest of the country from making use of one of its principal natural resources in order to foster the development of the State. The illustration given above has not taken into consideration the additional enormous profits earned by the Central Government, through the processing and sale of the petroleum products and also the production of petro-chemical, based on this basic raw material. It has also not taken into consideration the similar profits and revenues earned by the Central Government on account of the sale of natural gas which has come to be recognised as an equally important source of energy as oil.

Therefore for balancing regional development and for allowing the State of Assam to obtain a just share of the profits made by the Central Government on account of production of crude oil and natural gas, it is necessary that the subject of development of on-shore Oil Fields and Mineral Oil Resources be transferred from the Union List to the State List. Off-shore development of Oil Fields and Mineral Oil Resources could continue to remain in the Union List.

PART III

ROLE OF THE GOVERNOR

3.5 It is the common knowledge that Bills passed by State Legislatures are pending months together and some-time years together with the Central Government. In some cases it is found that the Bills are not even sent to the President for assent. Due to such undue delay in obtaining the assent of the President, State Government faces immense difficulties in respect of the implementation of the scheme provided in the Bill passed by the State Legislature and sent for assent of the President. There should be a machinery to look after this important matter and the Central Government should be alert so that no Bill is unnecessarily withheld from the assent of the President. It should also be looked into that the Bills sent for assent of the President are attended to without any delay. In connection with inordinate delay in getting the assent of the President two Bills passed by the Assam Legislative Assembly may be cited. They are— (1) Assam Panchayati Raj Bill, 1986 and (2) Assam Forest Protection Force Bill, 1986.

3.7 There are divergent views in respect of the office held by the Governor. It is needless to mention that unless there is a cordial relation and coordination between the Ministry and the Governor of a State, the administration of the State cannot be run smoothly. There are instances that due to lack of such cordial relation and co-ordination, the administration of a State had suffered badly. In order to avoid such unpleasant situation, the Central Government should consult a State Government before a Governor is appointed for a State. The Governor so appointed should be acceptable to the State Government. This has to be done for the greater interest of smooth administration of a State.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.6 In addition to the answer already furnished to the Commission, the following is also the view of the State Government—

> Although "Planning" as a subject is in the Concurrent list, it has virtually become a Central subject. While the exercise of planning can be done by a State, such an exercise will be fruitless unless the plan prepared is approved by the Planning Commission. On such approval will depend the plan allocation. Thus it is quite clear that planning is no longer a concurrent subject, but has become a Central subject in all but name.
>
> Viewed in this context, and that the Five Year Plans have progressively tended to reflect national priorities much more than local needs and aspirations, it is appropriate that the financing of the five year plans should be by and large the responsibility of the Central Government, except in so far the resource position of the State allows. In contradistinction to the present system the concept here is that the development plan of a State should not be based on its capacity to raise resources but should be based on agreed needs. Since national priorities are reflected more than anything else in the development plan, the financing should also be from the national fund. As it is, the share of income tax and other taxes made available to a State is not increasing due to other means of raising resources resorted to by the Central Government such as administered prices, surcharge on various

taxes, which do not come into the divisible pool. Particularly for a poor state such as Assam, national planning, involving national priorities as it does should also be based on national resources and not on the State resources.

PART VII

MISCELLANEOUS

Education

11.1 To avoid unnecessary centralisation, education, in the true spirit of the federal structure, has to be in the State list. Role of the Central Government should be purely advisory. A sound educational policy must take into consideration the regional, economic, social and cultural disparities. A uniform central policy may be advantageous for some states and quite disadvantageous for others. The responsibility of building up the future generation retaining their cultural roots should be entrusted to the States. Since financial assistance is tied to Central policy, State's authority is sufficiently curtailed so far as planning and development of education is concerned.

11.2 (a) University Grants Commission is an autonomous body and this body is expected to guide the universities in all their affairs. So far academic guidance of the UGC has not been upto expectations. The Commission is more engrossed in distribution of grants. Academic evaluation of the universities by the UGC should be persued more vigorously. Academic impact of the UGC is yet to be felt by the teachers, students and the State Governments.

(b) Gauhati University and Dibrugarh University are affiliating universities. Most of the colleges affiliated to the two universities are situated in rural areas. Many such colleges cannot fulfil the criteria set-up by the UGC for receiving grants, whereas the colleges situated in comparatively advanced areas can take full advantage of the benefit of the UGC projects. Those situated in backward areas can hardly avail any thing. This creates more disparities.

We do not want to curb higher education. The norms set up by the UGC without taking into consideration the economic backwardness of our regions has greatly hampered the consolidation of higher education in our State.

11.3 The role of Central Advisory Board of Education (CABE) can be more useful if policy decision are not allowed to be taken on merely majority counts. Genuine difficulties of the State must be appreciated and responded to. More over, political considerations must not be allowed to influence decision particularly in the policy planning of education.

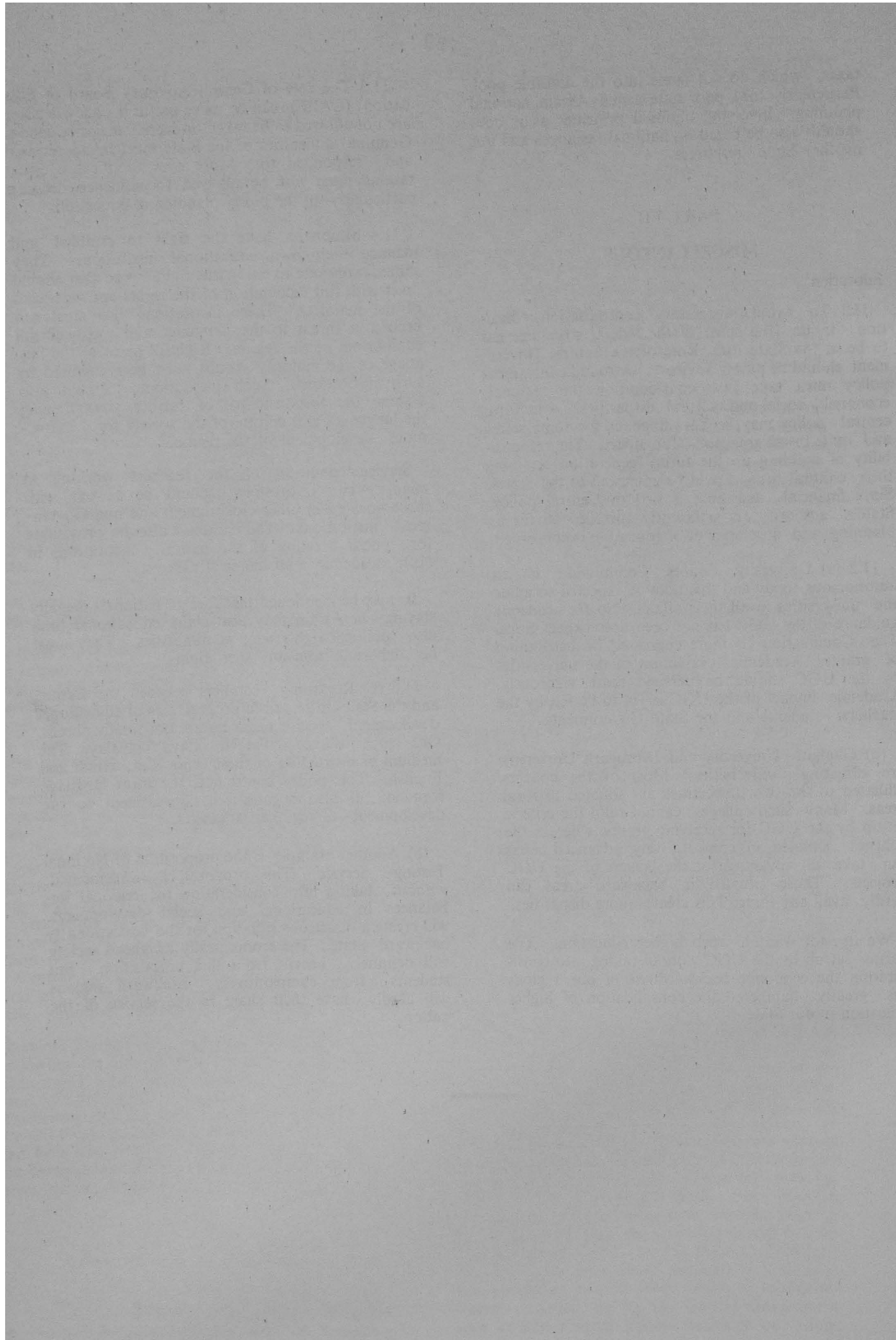
11.4 Minorities have the right to establish and manage their own educational institutions. They should continue to enjoy this right. And they should do it with full recognition of the rights and privileges of the majority. These institutions also must not become a threat to the language and socio-cultural equilibrium of the region. Rightful place of the language of the majority groups must be recognised by such institutions. Such institutions should also assume the responsibility of further strengthening the languages and culture of the society for a harmonious development of the region.

Service condition of the teachers working in minority run institutions should be at par with those working in other Government and non-Government institutions. There should also be provisions for public scrutiny of the minority institutions in both academic and financial aspects.

It may be mentioned that foreign nationals illegally staying in Assam may also claim educational (and also political rights etc.) as minorities. They must be debarred from any such rights.

11.5 (a) Regarding conflicts between the Centre and the States in regard to programmes of educational development, specific instances are not totally absent. One such instance is the Novodaya Vidyalaya. The medium of instruction of these schools are Hindi and English. This policy contradicts the three language formula. It also negates the commitment to the development of regional languages.

(b) Another example is the proposition of National Testing Service. This proposal, if implemented, without taking into consideration the regional imbalances in educational and social development, will create a disastrous situation for the educationally backward State. The economically advanced society will definitely benefit from this proposition. But students from comparatively backward regions will hardly have their share in the service of the nation.



GOVERNMENT OF BIHAR

(a) Replies to the Questionnaire

(b) Statement of the Chief Minister before the Commission

925 ISCS/98—7A

925 ISCS/98—7B

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

No reply given.

PART II

LEGISLATIVE RELATIONS

2.1 There is nothing basically wrong in the scheme of distribution of Legislative Powers between the Union and the States as envisaged in the Constitution. There is no such case in this State where Article 249 has been made use of by the Parliament as a result of which any State Law has been overridden to the detriment of the State. No Law made by the Parliament has been a source of irritation to this State. There has also been no such Legislation by the Parliament by which the State Powers have been eroded or any specific difficulty created. The Union has not made any encroachment on the State Legislative field in the name of either National Interest or Public Interest to the detriment of this State.

2.2 Our Constitution has justified its existence and it does not require any major change. The distribution of powers under the Legislative List of the 7th Schedule of the Constitution is balanced and does not require any interference so as to amend the Constitution. Strong centre is needed to preserve the unity and integrity of the Nation and, as such, no change in the Legislative List is suggested by this State.

2.3 The provisions as contained in the instruments of the instruction under the Government of India, 1935, that whenever any Legislation by the Centre was under taken on a concurrent subject, the Provincial Government had to be consulted beforehand, should not be adopted. Various States have not different local interest and they may not agree on a particular point, which is essential for the National interest and, as such, it is only the Centre who may judge the paramount interest of the Nation in relation to a particular zone. It is not desirable that the Union should consult with the Provincial Government before making any legislation on concurrent subject as mentioned in List III of the 7th Schedule of the Constitution.

2.4 The Declaration enabling the Parliament to legislate on certain subjects within the exclusive competence of the State in "National Interest" or "Public Interest" should be for a particular duration subject to periodic review. The provision enabling the Parliament to legislate on certain items in the State List on the ground of National interest or Public interest should be for a particular period subject to periodic review. National interest must over-ride Zonal interest.

2.5 Not in favour of any change in regard to the Union State relations in the legislative sphere. The existing provisions are sufficient which alone can maintain good relationship between the Union and the State.

However opinion of the Legislative Assembly and Council can also be obtained on the relations between the Union and the States in the legislative sphere.

PART III

ROLE OF GOVERNOR

No reply given.

PART IV

ADMINISTRATIVE RELATIONS

No reply given.

PART V

FINANCIAL RELATIONS

5.1 Before replying to this question, it would be necessary to have a look at the main features of the financial arrangements made in the Constitution laying down, *inter alia*, the pattern of distribution of revenues between the Union and the State, and the nature, scope and manner of transfer of resources from the Centre to the States.

While the Constitution makes a clear delimitation of taxing powers of the Union and the States leaving no room for concurrent jurisdiction, it also makes a provision for the yield from certain taxes and duties levied and collected by the Union to be assigned to the States in certain cases and to be shared between them in case of some others. The States retain the proceeds of their own taxes and levies wholly to themselves. In addition, they receive certain sums as their shares both as constitutional right and assignment from the Union.

The taxes and duties levied and collected by the Union can be classified into four district categories :

(i) these taxes, the proceeds of which are entirely retained by the Centre, such as, custom duties, corporation tax and wealth tax;

(ii) those taxes, the net proceeds of which are wholly assigned to the States such as, Estate Duty, taxes on railway fares and freights, terminal taxes, stamp duties and excise duties on toilet and medicinal preparations;

(iii) those taxes, the net proceeds of which are compulsorily shared with the states such as, income-tax; and

(iv) those taxes, the proceeds of which may be shared with the States; if the Parliament by law so decides, such as, excise duties other than those on toilet and medicinal preparations. Besides additional duties of excise, levied by the Union in replacement of sales tax, wholly accrues to the States.

Apart from the tax sharing arrangements described above, the Constitution also envisages statutory grants-in-aid to the States under Article 275 which can be extended to the States which are determined to be in need of assistance. There is an element of discretion in this provision as regards its applicability in general. There is, however, an obligation created by the proviso to the aforesaid Article for meeting the costs of such schemes of development as may be undertaken by a State with the approval of the Government of India for the purposes of promoting the welfare of the Scheduled Tribes or raising the level of administration of the rest of the areas of that State.

There is another provision in Article 282 which empowers the Union or the State to make grants for any public purpose, notwithstanding the fact that it falls outside the purview of their legislative authority. It is obvious that this is an enabling provision to meet a situation not otherwise provided for. Since plan grants are made under this provision, the use made of this Article has evoked considerable controversy which should not detain us here because it will be dealt with later at the appropriate place.

The makers of our Constitution were fully aware that howsoever meticulous care is exercised in devising a system of clear out division of functions and resources between the Union Government and the States, there is bound to arise, as has happened in other federations too the, problem of achieving an enduring correspondence between the functions and resources of the two layers of Government. Hence, the problem of fiscal imbalance—both vertical and horizontal is not an exceptional phenomenon of the financial arrangements enshrined in our Constitution.

The nature of the sources of revenue and the expenditure functions entrusted to the Union and the States having been decided naturally in consideration of different principles, there would invariably arise a situation which will place the Union in a comfortable position with major, elasitc, high yielding and rapidly growing sources of revenue as against the States, which are left with comparatively inelastic, narrow-based revenues sources but burdened with the responsibilities of expanding nature, such as maintenance of law and order, education, agriculture, public health, irrigation and so on. Thus, results a vertical imbalance when we take into account the fiscal needs of the States against their resource position vis-a-vis that of the Union.

Apart from vertical fiscal imbalnace, which will universally affect all the States, on account of the States being not economically equally placed at the time the Constitution came into operation and also for the reason of the varying levels of development achieved by them at any given time as well as their varying revenue potentials and needs of expanding expenditure commitments, the States would inevitably come to face the impact of horizontal fiscal imbalance, which coupled with vertical fiscal imbalance adds greatly to their revenue requirements.

The framers of the Indian Constitution were fully conscious that complete separation of taxing powers leaving no room for overlapping jurisdiction of the Centre and the States in this regard would by itself not do away with the inevitability of imbalance between the functions and resources of the States leading to inadequacy on their part to discharge their obligations under the Constitution solely on their own. In almost all federations, the inevitability of fiscal imbalance of the nature described above has been given due recognition and constitutional provisions made for transfer out of federal revenues sums to the constitutent units to remedy the imbalance. Hence, our Constitution too made constitutional provisions for wide ranging resources transfers from the Union to the States.

Since the plan of distribution of revenues between the Union and the States had assigned the former a place of primacy, the framers of the constitution did not think it desirable to give the Centre unfettered hand in the matter of financial transfer to the States. Keeping this in view, Article 280 of the Constitution provided for the appointment of a Finance Commission once in every five years to make a quinquennial review of the finances and needs of the Union and the States and recommend financial transfer to the States.

According to the constitutional provisions, the Finance Commission is intended to be the chief instrument of transfer of revenues from the Union to the States. It derives its authority from the Constitution and its composition is settled in accordance with an Act of the Parliament. It is empowered to make recommendations to the President about the distribution between the Union and the States of the net proceeds of the shared and shareable taxes and the allocation between the States of the respective shares of such proceeds. It is also required to suggest the principles to govern the grants-in-aid of the revenues of the States. Moreover, any other matter can also be referred to the Commission by the President in the interest of sound finance.

The constitutional provisions, therefore, making the financial arrangements and providing for the scheme of devolution as well as setting out the mechanism of resources transfers to the States are manifestly adequate in themselves and do not call for a change. The Finance Commission, composed as it is of distinguished persons in their own fields, is an institution enjoying constitutional status and so is independent in its own sphere and its deliberations are not likely to be susceptible to outside interference. Hence, the mechanism of resource transfer, which operates in accordance with the principles laid down by the Finance Commission, is subject to the limits set by the recommendations of the Commission.

In this view of the matter, we are not inclined to hold that the mechanism of resource transfers, as envisaged in the Constitution, suffers from inherent weakness or deficiencies so that it cannot come upto the expectations of the makers of the Constitution. We

are, however, aware that the field of Union-State financial relations has not been so quiet. In fact many issues have been raised suggesting, *inter alia*, that the way these arrangements have been working has led to a situation in which the transfer of resources has neither succeeded in meeting the needs of the States nor has been able to secure a reasonable measure of uniformity in standards, the two broad objectives which any scheme of fiscal transfers should desirably aim at. We do not believe that the said failure of resource transfers in enabling the States to meet their growing requirements or in producing equalising effects on standards of administration social and economic services can be attributed to any discernible infirmity of the constitutional provisions. If there has been failure on these counts, the reasons lie elsewhere.

The framers of the Constitution had hoped that the mechanism of fiscal transfers which they provided in the Constitution would achieve the objective of covering the revenue gap between the resources and the fiscal needs of the States to discharge their growing responsibilities. It can be nobody's case that this hope has been fully realised; and for this the methodology followed by the Finance Commission is answerable. The Finance Commissions have been following what has come to be known as the gap-filling approach. The States are called upon to submit forecasts of revenue and expenditure on non-plan account in a standard form. The forecasts thus obtained are reassessed in the light of certain broad considerations and on the basis of certain assumptions so that the forecasts are adjusted to make them comparable. Then the Commissions work out the gross deficits or surpluses on the non-plan revenue account of the state budgets. After allowing for devolution of tax shares from the divisible pool of taxes, the gaps are treated as budgetary needs of the State Governments. In case some States are still found to suffer from deficits in their non-plan revenue account, they are considered eligible for grants-in-aid, otherwise not. In other words, the budgetary gaps so assessed have tended to be equated with financial needs of the States.

The estimate of the gap on non-plan revenue account assessed in the manner described above, is based merely on normative growth rates of revenue and expenditure assumed by the Finance Commissions, which were not in a position, on the other hand, to reduce the tax shares of those States which were found to enjoy non-plan revenue surplus after receiving tax shares because such shares were dependent entirely on different sets of criteria uniformally applicable to States irrespective of the nature of the gap assessed. One consequence of this methodology has been that richer States have received higher amounts in the total devolution as compared to some weaker States which had to remain content with the fixed sums of grants-in-aid to fill in the gap.

The past Finance Commissions have made reference to the needs of the States in varying terms but they have never attempted to estimate the real financial needs of the States in relative terms and recommend fiscal transfers accordingly. They seem to have assumed that the gap between estimated revenue and expenditure reflects the financial needs of a State. This assumption is open to question. The real financial needs of a State cannot truly be reflected by the budgetary gap estimate in the manner detailed earlier, because the financial need has to be measured keeping in view broad economic consideration such as, levels of development, disparities in the revenue potentials, the standards of essential public services of different States. The estimated budgetary gap as assessed by the Finance Commissions, used only for the limited purpose of determining grants-in-aid, cannot be held as representing the real financial need of a State, which should be assessed in a comprehensive manner by taking an overall view of the resources and responsibilities of the States so as to determine their relative needs in an objective manner.

In estimating the revenue gap, the Finance Commission rely on several assumptions which eventually tend to make the revenue gap estimate unrealistic. For instance, the revenue potentials of a State are unduly exaggerated by assuming that the States would earn certain positive rates of return even from their public utility undertakings such as, Electricity Boards and Road Transport Corporations. To make such assumption amounts to totally ignoring the realities of the situation. We know from our own experience that the State Government have not received any amount from the Electricity Board either by way of repayment of loan or interest thereon during the entire period covered by the recommendations of the Seventh Finance Commission, even though the Commission had taken credit for a certain rate of return thus adding to the resources of the State, which in fact, has not materialised. So is the case with our Road Transport Corporation, in whose case also the Seventh Finance Commission had stipulated a fixed rate of return during the devolution period and had hoped that the return so earned would add to the resources for the States plan. This turned out to be a pious hope.

Then again, the Finance Commission expected the irrigation work yielding certain rates of return. Such expectations, it may be pointed out, are based on questionable premise that public utilities like generation and supply of electricity, road transport undertakings or irrigation projects should make profits like commercial ventures. It need not be forgotton that they create infrastructures and also carry social obligations so that they cannot be treated at par with commercial undertakings run with a motive to earn profits. To ignore these aspects amounts to taking an unrealistic view of the nature and purpose of such public utilities, let alone their social obligations and the socio-political mileu in which they have to operate. The assumption of positive return from the undertakings of this nature can only be hypothetical and, in real sense, will not add to the revenue of the States or the resources for their plans. Hence, a correct assessment of the revenue of a State should not take credit for returns from such undertakings. If at all, rates of reasonable return can be assumed only on such enterprises of the States which are commercial by their very nature so that they can be ligitimately expected to yield profits. Other public utilities and undertakings, intended to create infrastructures and fulfil certain social obligations should not be expected to give return on the investments therein.

There is yet another instance to show how the revenue gap is estimated by ignoring a significant portion of the inevitable expenditure incurred by the States on pay and dearness allowance of their employees merely on the ground that such expenditure was incurred after the reference date. If on such technical grounds, substantial expenditure is not taken into account, the estimate of revenue gap will not correctly reflect the gap between revenue and expenditure of the States.

Since the Finance Commissions have based their estimates on such unrealistic assumptions, the revenue gaps worked out by them have turned out to be under-estimate of the revenue gap. To illustrate the point by referring to our own case, the Seventh Finance Commission assessed that the non-plan revenue gap in the case of Bihar for the devolution period would be Rs. (—)1057·53, but the assessment has been found to be a gross underestimate because the actual gap during the devolutions period is estimated to be of the order of Rs. (—)2659·32 crores.

It would thus appear that the estimate of revenue gaps made by the Finance Commissions is based on a number of such unrealistic assumptions that the gaps so assessed, even as far as they go, do not correctly reflect the actual gap between the revenue and expenditure of the States. Moreover, the chief defect of the gap-filling approach lies in the fact that the budgetary gap, which the Finance Commissions determine, is equated with the real financial needs of a State. The inescapable consequence is that the gap between the resources and the fiscal needs of the States to discharge their growing responsibilities remain uncovered to a considerable extent.

The remedy lies in furnishing the methodology adopted by the Finance Commissions so that the real financial needs of the states are assessed in a comprehensive manner and met by requisite financial transfers.

There is another point which is usually raised to show that a significant part of the financial arrangements between the Centre and the States has gone out of the purview of the Finance Commissions. Referring to the emergence of Planning Commission over the years as a dominant arbiter of transfer of resources to the States, it is said that this has resulted in quality and overlapping of functions of the Finance Commission and the Planning Commission and, in the process, the Finance Commission's role has been restricted to non-plan fiscal transfers only, the Planning Commission being given exclusive sway over Central assistance for State plans. In this situation of parallel operation of the two Commissions, it is but expected that the Finance Commission has not been left in a position to take a total view of the finance of the States and, therefore, the transfers through the Finance Commissions have failed to come up to the expectations of the framers of the Constitution.

This raises the question of the respective roles of the two Commissions. More appropriately, this matter can be discussed in detail while replaying to question number 5.9. It would be sufficient here to point out that the crucial question is to see if there is any inherent contradiction between the functions of the two Commissions and if the interactions between them produces any discernible adverse impact of fiscal transfers to the States. It should not be forgotten that economic and social planning is an accepted national policy. Therefore, the Central and State plans reinforce each other and together aim at achieving the set goals. For the same reason, despite their separate identities and difference in composition, separately varying but not necessarily fundamentally conflicting ways of functioning and approach, the Finance Commission and the Planning Commission cannot afford to adopt opposite postures and swerve from the common path of working towards the end of furthering, in their own ways, economic development of the country accompanied with balanced growth of the States. In this view of the matter, the possibility of existence of lack identify of approach between the two Commissions cannot be overplayed .The objective being common, the results of their efforts would not be contradictory but complementary to each other. This finds support in the observation of the Seventh Finance Commission to the effect that 'Central assistance for State Plans is not decided independently of the situation of the State resulting from the Finance Commission awards, for, to the extent that the States' resources are improved vis-a-vis their requirements for their Plans, the proportion of Central assistance for the Plan in the total transfer can be smaller.' This interdependance between the efforts of the two Commissions largely obviates the likelihood of adverse impact on the total fiscal transfers to the States.

True, the Constitution did not contemplate of federal fiscal transfers otherwise than through the Finance Commission. Even so, the Planning Commission came into being almost simultaneously with the Constitution coming into operation. So, transfers through these two Commissions came to be woven into the system of fiscal transfers to the States right from the beginning. And, the pattern has come to stay.

So far, we have urged that the mechanism of fiscal transfers is capable of satisfying the expectations of the framers of the Constitution. The failures, wherever noted, do not arise because of any inherent infirmity in the constitutional arrangements for division of resources between the Union and the States or fiscal devolution. We have, however, noted that there is room for improvement in the methodology followed by the Finance Commissions so as to make the transfer of resources through their endeavours more equalising in effect.

While the principles of fiscal devolution have evolved as a result of labours of eight Finance Commissions and hence have acquired some degree of consistency, their is scope for periodic changes in the sharing of central taxes and duties as well as giving of grants-in-aid to the States. Whenever such changes are brought out on the basis of recommendations of Finance Commission, voices of protest are hardly heard. The position is not the same when changes are governed by considerations other than those recommended by Finance Commissions. An instance in view is the decision of the Government of India to implement the recommendations of the Eighth

Finance Commission from 1985-86 to 1988-89, a period of four years only instead of the usual period of five years which, in the present ease, would have been from 1984-85 to 1988-89. We do not propose to apportion blames. All that we intend to any is that in a federal structure, recommendations of institutions like Finance Commission have their own place and they should be accorded due regard.

Now we come to resources transferred to States through Finance Commission. During the first five-year plan period, that is 1951-52 to 1955-56, the total transfer amounted to Rs. 447 crores. As against this, the total resources transferred during the period (1974-75 to 1978-79) covered by the fifth-year plan was of the order of Rs. 11048 crores and during the sixth five year plan period (1979-80 to 1983-84) the financial devolution went up to Rs. 22888 crores. In other words, the fiscal transfers through the Finance Commission have recorded a phenomenal increase during the first thirty two years.

If we look at fiscal transfers from another angle, it will be evident that in the year 1972-73, the transfer of resources by way of tax shares constituted 36.8 percent of net devolution of resources from Centre to States (including net loans and advances from Centre to States.) This percentage has gone up to 52.6 in the year 1982-83 (B.H.). As regards grants-in-aid (both discretionary and non-discretionary), it constituted 32.4 percent of net devolution of resources from the Centre to States in the year 1972-73 and the percentage has gone up to 33.9 in the year 1982-83 (B.H.).

It will thus appear that not only total financial transfers have gone up during these years, but also there has been an increase in tax shares and grants-in-aid received by States both in quantum as well as percentage of net devolution of resources from Centre to States.

However, another side of the picture emerges if we look at transfer of resources from the Centre to States as percentages of aggregate receipt and aggregate disbursement of the Central Government. During the year 1972-73, net devolution of resources from Centre to States constituted 33.6 percent of aggregate receipt of the Central Government. In the year 1982-83, this percentage came down to 27.1 only. Similarly, during the same period, the net devolution of resources from Centre to States as percentage of aggregate disbursements of Central Government recorded a decline from 30.5 in 1972-73 to 26.4 in 1982-83.

It would thus be seen that whereas in absolute terms the total quantum of financial devolution has been increasing over the years, there has been a noticeable trend of decline in the transfer of resources as percentage of both aggregate receipt and aggregate disbursement of the Central Government. It may be mentioned that both the aggregate receipt and aggregate disbursement of the Government of India have increased considerably during the same period. The aggregate receipt in the year 1972-73 was Rs. 8619 crores. It has gone up to Rs. 33437 crores in the year 1982-83 (B.E.). Similarly, aggregate disbursement was Rs. 9488 crores in the year 1972-73. It has gone up to Rs. 34808 crores. But this increase is not adequately reflected in the transfer of resources to States in so far as the percentage of aggregate receipt transferred to the States has gone down.

It is of crucial significance to emphasise the point that irrespective of the channel through which fiscal transfers are effected, it is ultimately the quantum of fiscal transfers and their eventual impact on achieving the accepted objective of economic development of the country accompanied with balanced growth of the States. It is in respect of removal of regional disparities that, according to us, fiscal devolution over the year appear to have failed in fulfilling the expectations. In spite of over 30 years of planning process, not only the regional disparities have not been removed, but these have been further accentuated. The per capita income of Bihar at current prices was Rs. 870 in 1980-81 against the average per capita income of the country of Rs. 1571. A look at the per capita income of Bihar during the entire period of planning will indicate that the gap between the per capita income of this State and that of the country as a whole has been widening. In respect of per capita SDP (Average 1976-79), Bihar occupies the lowest position with Rs. 753 as against Rs. 2250 of Punjab (which is the highest) and Rs. 870 for Uttar Pradesh, Rs. 918 for Orissa and even the specially classed States, such as Manipur, Meghalaya have gone ahead of this State. This clearly symptomises growing regional disparities.

Removal of inter-State, disparities is necessary for achieving all-round uniform progress in the country. This calls for a reorientation of approach of financial devolution keeping the end of attaining balanced regional growth in view. It should be realised that tangible result in removal of regional imbalances can only be achieved by giving up the present system of assessing the financial needs of the States by lumping together the backward and better-off States and then evolving common criteria for resource allocation. Instead, a more pragmatic approach is needed to assess the needs of backward States particularly in the light of their special problems and give them special treatment for the purpose of resource transfer.

Fiscal equalisation, however, has not been expressed as an explicit objective by any of the Finance Commissions. Reference to removal of inter-State disparities has been made by them and for this purpose recommendations for grants for upgradation of administrative standards, wherever they are adjusted to fall below the levels obtaining in other States were made for certain backward States. Recognition has also been given to special problems of certain States. Such recommendations, however, were by their very nature limited in scope and could not be expected to make significant dent on the problem of inter-State inequalities, for which the total devolution of resources should be distributed on principles that give due primacy to backwardness.

It was the Sixth Finance Commission which made a bold departure from the earlier Commissions in giving further recognition to the special problems of backward States, and for the first time, had given them access to resources on a liberal scale to enable

them to come up to the national average in important administrative and social services. The Seventh Finance Commission did more in the direction. The Eighth Finance Commission has leaned in favour of the backward States and tried to make the scheme of devolution more progressive because this, according to the Commission, is what the national interest requires. It has given added weightage to factors which go to help the backward States. We have the feeling that it is a step in the right direction and needs to be carried forward in that spirit.

In conclusion, we can say that the expectations of the makers of the Constitution have not been fully realised not because of anything inherently wrong with the institution of Finance Commission, but mainly because of two reasons. Firstly, the manner in which the gap between the needs of the States and their resources are assessed is based on a methodology which leaves much to be desired. And, secondly, each Finance Commission has evolved its own method of assessing the relative backwardness of the States, which has resulted in shift of emphasis on factors reflecting the true extent and nature of backwardness of States. We believe that, of late, there has been a growing realisation that balanced growth can be achieved only by greater emphasis on removal of inter-State inequalities and determined steps in that direction will ensure adequate financial devolution so as to enable them to catch up with the more developed States, thus fulfilling the real objective of financial arrangements conceived by the framers of the Constitution.

5.2 We agree that the observations made by the ARC Study Team on Centre-State Relations still hold good. The Centre continues to be in the position of financial dominance and, the States dependent on the Centre for financial withdrawal to meet their numerous obligations.

At the same time, we also believe that this situation is quite natural in view of the allocation of taxing powers to the Centre and the States made by the Constitution and the access of the Union Government to various other sources of non-tax financial resources. This phenomenon of vertical fiscal imbalance is not unknown to other federations, nor it is unexpected for our federal structure. In fact, framers of our Constitution were aware of this eventuality, hence they consciously made provision in the financial arrangements for mechanism of wide-ranging fiscal transfers to States. We had occasion to dwell at length on the different aspects of fiscal imbalance and implications of transfer of resources to States in our reply to question no. 5.1. We need not enter into repetition and will only reiterate our view that the constitutional provisions governing financial relations between the Centre and the States are adequate in themselves and so they do not call for any change. Against this background, we give below our views on various alternatives suggested in this question.

The alternative (a) envisages a basic change in the financial relations between the Union and the States. As we have stated above, we are not in favour of change in the constitutional provisions relating to financial relations between the Centre and the States. Moreover, if this alternative is accepted it would mean that some more taxing heads would be transferred to the State List and having done so, there would be no question of transfer of resources from the Centre to the States. Stated in other words, the alternative would seem to suggest that financial independence of the States could be secured merely by placing within their reach certain items of taxes, which at present do not belong to them. It may be mentioned here that financial relations between the Union and the States are not confined to taxing powers alone. Nor can it be said that by merely giving more taxing powers to States, their financial dependence on the Centre will cease to exist and the States will no longer continue to be the Receiver and the Centre the Giver. In this connection, it has to be remembered that dependence of States on the Centre is not the effect merely of the constitutional provisions relating to transfer of resources from Centre to States. Large size plan assistance fall outside the scope of these constitutional provisions and yet, in no small measure, States are beholden to the Centre for central assistance, to a significant extent, of considerable dependence of the States on the Centre. This picture can hardly change merely because some more elastic taxes are added to the State List.

Moreover, the course suggested also ignores some other vital areas of financial relations between the Union and States. For instance, market borrowings, central loans to States to enable them to tide over their ways and means difficulties, utilisation of foreign funds for benefits of the States etc. are matters in respect of which States' dependence on the Centre would continue even after some more taxing powers are transferred to the States.

There is yet another reason why the suggestion does not appeal to us. Taxing powers can be vested in respective authorities keeping in view the nature and base of taxation and also economy in administering the tax. So, where the basis of tax is country wide, the Central Government is the appropriate authority to impose and collect the tax, also because from the point of view of economy and efficiency in administration of such a tax, the power to levy and collect such a tax should rest with the Central Government. The States can tax their own citizens of income generated within their respective territorial jurisdictions. The point is that distribution of taxing powers has to take into account recognised imperatives of a federal structure. Taxes which affect the national economy in general or generate effects on inter-State trade or commerce should remain with the Centre. It is pointless to argue that taxes like income tax, custom duties or central excise can be transferred to the States. To do so would be economically unsound and administratively inexpedient. Improper allocations of taxing powers will cause distortions in the tax system and will lead to failure in achieving optimum exploitation of sources of tax revenue.

For the foregoing reasons, we do not support the alternative mentioned at (a). The reasons explained in the foregoing paragraphs also do not impel us to endorse the suggestion mentioned at (b) also.

The alternative at (c) envisages three things. Firstly, all taxing heads/taxing powers would be transferred to the Union List, which will mean

that the States will no longer possess any power to impose taxes. In other words, they would cease to have any tax-revenue of their own, because all tax receipts will accrue to the Consolidated Fund of India, which will constitute a shareable pool. It is this pool from which the States would receive their share.

Secondly, it is proposed that the respective shares of the Union and the States as a whole should be specified in the Constitution itself. This will obviously require a constitutional amendment. Moreover, laying down the share of the States in the Constitution would result in taking away from the Finance Commissions their existing power to determine the share of the States as a whole in the proceeds of shareable or shared taxes. There is another important point to which we will draw attention in this connection. A constitutional provision specifying States' share in the shareable pool will be a permanent feature not capable of periodical revision, as is the case at present when the Finance Commissions make a qninsquennial review of the finances of the Centre and the States and recommends principles for determining the respective shares of the Centre and the States as a whole. Share of the States thus fixed practically once for all is fraught with the danger of proving as an avoidable irritant to Centre-State relations, because the shares once fixed shall continue indefinitely, at least unless and until a change is brought about by constitutional amendment, in spite of positive changes in the economic and financial conditions which may necessitate a fresh look at fiscal devolution to the States. Unless, some provision exists for a periodical review the course may well become counter productive from the point of view of Centre-State relations.

Taking up the alternative (d), we do not favour the idea that the proceeds of custom duties should be shared with the States. The case, however, with the proceeds of corporation tax and surcharge on income tax is different.

In the case of corporation tax, it has been our case before the Finance Commissions that the proceeds of corporation tax should be shared with the States. In fact, even before the constitution came into operation, corporation tax used to be shared between the Centre and the Provinces. The Constitution, as originally prepared, had not kept the proceeds from the tax out of divisibility. However, it was by an amendment in 1959-60 that the tax on income paid by companies was taken out of the divisible pool.

The proceeds of corporation tax have far outstepped the proceeds of income tax over the past years. Had amendment of 1959-60 not kept the tax on company incomes out of the divisible pool, the States would have been receiving their due share in proceeds of corporation tax, which have shown greater buoyancy than income tax. Thus, the States have been deprived of their due share in this expanding source of revenue.

'As regards corporation tax' the Eighth Finance Commission has noted, 'the grievance of the States is even stronger'. The Sixth Finance Commission's recommendation that the matter of inclusion of corporation tax in the divisible pool should be discussed in the National Development Council has not produced any concrete result. The outcome of the meeting of the Chief Ministers held on 19th and 20th May 1979 could not satisfy the States, because their case was rejected on the plea that, Corporation tax being analoguous to income tax, its distribution amongst States according to principles governing distribution of income tax would benefit less developed States at the cost of advanced States. This view is certainly obvious of the crying need to fill financial devolution more in favour of backward States to speed up removal of inter-State inequalities.

The Eighth Finance Commission has come to the conclusion that 'further review of this matter is overdue, as it is important to remove this major irritant in Centre-State relations. Corporation tax has shown a high elasticity and it would seem only fair that the States should have access to such a source of revenue'.

Hence, we support the idea that the Corporation tax should be brought into the divisible pool.

As regards Union surcharge on income tax, we have been consistently pleading before the Finance Commissions that the proceeds should be shared with the States. We concede the right of the Union to levy surcharges for its own purposes. Nevertheless, we are convinced, as the Seventh Finance Commission felt, that "though Article 271 does not in express terms lay down that Union surcharge should be for meeting the burdens of the Centre arising from any emergent requirements, there is an underlying assumption that a surcharge should only be levied for meeting the requirements of some unexpected events and should only be for the period during which it lasts. In this view, a surcharge continued indefinitely could well be called on additional income tax shareable with the rest of the proceeds of income tax".

The Eight Finance Commission has laid emphasis on the constitutional position that it is not permissible to merge the surcharge with income tax. Yet, the Commission has taken into account the fact that the proceeds of surcharge had added to the Centre's resources in deciding what the share of the States in the divisible pool of income tax should be. This amounts to indirect acceptance of the legitimacy of the case of the States that they have a justified claim on a share in the proceeds of surcharge on income tax.

We are not convinced of the rationale of keeping the surcharge on income tax as a permanent but separate impost. It would be more appropriate and logical to merge the surcharge with the basic rates of income tax. When we make this suggestion we do so with a precedent in view the surcharge levied on income tax for some years was merged with the basic rates after the Second World War. There is nothing to stand in the way of acting accordingly again, more so when the surcharge has become a regular and permanent feature of taxation of personal incomes. If, however, that is not found possible for any reason, the proceeds of the surcharge should be made divisible with the States.

We now come to the alternative (e). In our reply to question No. 5.14, we have suggested that the yield from Special Bearer Bonds should be shared with the States. We have also expressed our views on the need for a suitable modification in the policy relating to administered prices with a view that the States are not deprived of their due share in central excise revenue to which some part of increase in administered prices may be attributable. We have also made a suggestion that the net deposits under the Compulsory Deposit (Income Tax Payers) Scheme may be treated at par with net small savings collections and a part thereof may be made over to the States.

We do not consider it necessary that other non-tax revenues of the Centre need be shared with the States.

In conclusion, it does not appear to us that acceptance of either of the alternatives would materially alter the present position of dependence of the States on the Centre. On the other hand, we feel that with desired change in the methodology of the Finance Commission, to which we have made reference earlier and also in replies to some other questions, the existing arrangements for financial devolution would create satisfaction, provided certain taxes and non-tax revenue of the Centre, are also shared with the States, as suggested above.

5.3 The laudable objective to provide social and economic justice and to endeavour to eliminate inequalities amongst groups of people residing in different areas is really unexceptionable. In fact, one of the acceptable goals of planning in India has been economic development accompanied with balanced regional growth. Reduction of inequalities of income and wealth amongst various strata of society has been the avoid aim of planned progress.

It is, however, also true that for various reasons all States were not economically equally placed so that their capacity to ensure through their own resources reduction of regional inequalities or to attain social and economic justice varies widely. The crucial issue is whether the remedy lies in making the Centre more strong by giving it more elastic sources of revenue and more discretionary powers to use the funds at its disposal for the development of poorer States.

We are in favour of a strong Centre. At the same time, we also hold that strong Centre is not inconsistent with strong States. For we earnestly believe that India, being a Union of States (the Indian Constitution does not use the word "federation") can be really strong only when the States are strong. Any attempt at restructuring of financial relations should not miss to take in to account these basic facts.

The distribution of financial powers between the Centre and the States envisaged in the Constitution seeks to harmonise their seemingly conflicting interests by striking a balance between excessive centralisation of powers in the hands of the Centre and extensive decentralisation of powers in favour of the States. The division of revenues between the Centre and the States was accordingly made and the mechanism of fiscal transfers was devised for the purposes of taking care of fiscal imbalances resulting from the financial arrangement made by the Constitution.

It is against this backdrop that the answer to this question should be sought. The various sources of taxes suitable for the Centre have been allocated to the Central Government. Taxes which can be appropriately levied and collected by the States have been given to them. Then there are provision for financial adjustments. The basic principle underlying the division of taxing powers between the Centre and the States is that the taxes which affect the economic life of the entire country should belong to the Centre. Accordingly, custom duties, taxes of company incomes, excise duties etc. are levied by the Centre. On the other hand, the taxes left at the command of the States are such as do not affect the entire economy are local in their effects, and on grounds of administrative efficiency and relative costs of collection, more appropriately belong to the States.

If, therefore, some of the taxes at the disposal of the States are transferred to the Centre, on the one hand, the States will cease to have at their command sufficient resources of their own to meet their normal expenses and cope up with increasing requirements for providing social, economic and administrative services, and, on the other hand, such an arrangement will disturb the financial plan stipulated in the Constitution. And, we have already pointed out in reply to Question No. 5.1 that the constitutional provisions laying down the scheme of division of resources and financial readjustments are adequate in themselves and do not need any change.

If the suggestion to make over to the Centre certain of the taxes, which are with the States at present, is accepted, it will lead to unnecessary centralisation of sources of revenue at the level of the Centre and the problems of financial adjustments would get more complicated, and invite more irritants rather than assuaging the strains on Centre-State relationship. The attitude of the States towards prudence in financial management may tend to be weakened because their sense of responsibility in ordering public expenditure is likely to be adversely affected.

Moreover, considering the nature of State taxes, it is difficult to say that they are anywhere near the Central taxes and levies in the matter of elasticity or buoyancy. In fact, taking into account the yield from State taxes as compared to the yield from Central taxes, it would appear that the taxes levied by the Centre amounts to about 67 percent of the total of taxes levied both by Centre and the States. Hence, there does not seem to be a reasonable possibility of achieving any substantial gain by transferring some of the State taxes to the Centre. Moreover, it would be economically unsound and administratively inexpendient to make over some or other of the taxes at present allocated to the States.

The disadvantages, on the other hand, are many, which will inevitably follow from such a rearrangement of taxing powers as would reallocate some more

taxes to the Centre. First it will further accentuate vertical fiscal imbalance by increasing the already existing centralisation in the Indian federal fiscal system. Secondly, the States would be left with practically negligible resources of their own which will make them utterly dependent for their requirements on the Centre and consequently also place them under continuous debilitating influence of lack of proper financial discipline. Thirdly, such a real-location of taxes between the Centre and the States will greatly distort the basis of resource allocation and hence aggrevate the evil effects of lack of correspondence between the functions and resources of the States. Above all, incalculable damage will be done to fiscal federation and, in fact, too much centralisation will set a trend in the opposite direction.

It is also not very clear to us how regional imbalances could be reduced to any significant extent, merely by giving the Centre more elastic sources of revenue and more discretionary powers to use the funds available with it for the development of poorer States. For one thing, there would be excessive centralisation of funds and the States will be left with much reduced resources of their own so that their financial capacity to meet their obligations will greatly suffer. Since ours is a developing economy there is self-evident need for a growth oriented fiscal policy, which should aim at effecting such an inter-regional transference of resources as would promote regional growth and at the same time be equitable. Therefore, removal of regional imbalance cannot possibly be achieved merely by céntralisation of resources. On the other hand, more necessary will be deployment of resources in areas of under development taking into account regional variations in resource endowments. So, it is agian the question of financial readjustments by way of fiscal transfers that can play an effective role in the reduction of inter-State inequalities, which cannot be achieved merely by placing more revenues and more discretionary powers in the hands of the Centre. It is more relevant, therefore, to look for and devise such principles of resource transfers as could lead to removal of inter-State disparities.

We also do not consider it necessary that more taking powers should be given to the States either. All that we plead for is suitable modifications, within the existing pattern of financial relations between Centre and the States, of the principles governing fiscal transfers so as to make them more progressive to achieve greater inter-regional equalisation.

5.4 The objective set forth in the preceding question is to provide social and economic justice and endeavour to eliminate inequalities amongst groups of people residing in different areas. Growth with special justice is an accepted goal of planned development programmes in this country. The development strategy adopted achieve the set goal accords the requisite priority to social and economic justice and removal of inequalities of incomes and wealth amongst peoples as well as inter-regional disparities.

Since the financial resources allocated to the Union by the constitutional provisions have placed the Centre in a more advantageous position than the States, and since planning for development is guided and regulated by the Government of India through the mechanism of Planning Commission, the Centre should bear a greater part of the responsibility for balanced growth, which implies removal of inter-regional disparities and elimination of inequalities amongst groups of people residing in different areas.

Any developing country requires an increasing revenue to meet its growing expenditure. For achieving the goals set forth in the preceding question, the requirement of revenue is still greater. There are various ways and means of raising more revenue resources. The choice has to be made keeping in view the requirements of the national economy.

Taxation is one such course open to governments to raise revenue. It has to be realised, however, that besides raising revenue, the objectives of taxation also include regulation and economic control. The planning Commission has viewed the tax policy as an instrument of mobilising resources for development and allocating them according to plan priorities. Thus taxation is a significant source of development finance. It however, be clear that revenue raised through taxation will not automatically be available for achieving social justice or removal of inequalities. It will depend on the priority given to attaining these objectives. In our case, social justice or removal of inter-regional inequalities have not been given the high priority which can warrant predominance in allocation of resources to these sectors.

Even so, the need for raising more revenues cannot be disputed. The question is whether and how far this should be done through taxation. It is pointed out in certain quarters that the developing countries have been different in collecting taxes, so that the ratio of tax revenue to GNP in their case is nearabout 15 percent as against 30 percent or so in the case of developed countries. In other words, it is suggested that either more taxes could be imposed or the level of existing taxation could be further raised for collecting more revenues. It is, however, difficult to contend that how the ratio of tax revenue to GNP necessarily reflects the position that the present level of taxation is far below the taxable capacity of the people in developing countries. In fact, it is admitted on all hands that taxable capacity is not arithmatically measureable. Yet there is a limit to which taxation could be used for raising resources, for augmentation of revenue is but one of the objectives of tax policy. There are also political, administrative as well as economic limits to raising resources through taxation. We do not think that having regard to all these points, the Government of India can raise further resources only through taxation to attain the objectives set forth in the preceding question.

But, there can always be scope for adjustments in the tax structure keeping in view the interest of the national economy and the need for greater resources. Such attempts would include efficient and strict administration of taxes so as to reduce to the minimum the scope of tax evasion. It should be considered important to plug the 100 holes in tax administration so that even with existing tax structure, the yield could be raised by strictly dealing with cases of tax evasion. One such instance is provided by concealed incomes which could be discovered and brought within the net by a special scheme of Bearer Bonds. Such incomes could have been assessed and

subjected to tax in ordinary course. Who knows there may still be more cases of concealed incomes.

We are not in favour of raising more revenue through subventions from richer States to Central Pool under some principles. This will amount to trying to remove inequalities by levelling down rather than levelling up. Moreover, such an arrangement will require constitutional amendment which we do not consider necessary for reasons explained in our replies to earlier questions. An attempt in this direction would lead to avoidable inter-State friction, which we think to be against the interets of national unity.

Better control over expenditure is an unexceptionable mode of conserving resources. Financial prudence lies in ordering public expenditure in an efficient way so as to ensure optimum utilisation of available resources. We believe that adjustments in tax structure coupled with efficient and strict administration of taxes and strict control ever public expenditure would result in considerable improvement in resource position of the Centre as well as States.

We are at one with what the approach paper to the Seventh Five Year Plan says about augmenting resources. It has rightly pointed out that tax collection can be raised, even without raising rates, by widening the tax net and toning up administration.

We also agree with the Approach Paper that the required resources have to be mobilised in a manner which minimises dependence on deficit financing which has a high inflationary potential. Though a policy of deficit financing for economic development, especially in developing countries, is widely advocated and usually practised, it has many pitfalls and unless used moderately and wisely, it may do more harm than good. Therefore, limited deficit financing is always preferable.

According to us, therefore, efforts to raise further resources should be along the lines indicated in the Approach Paper. We would like to emphasise, in this connection, that while measures to raise more resources have their value, what is equally, if not more, important is to make proper assessment of the needs of the States in a realistic manner and devise and evolve such principles governing transfer of available resources as according full recognition to removal of inter-State inequalities, which according to us, is in national interest.

5.5 We would base our reply to the question on the promise, stated in the question itself, that present devolution through the two channels of the Finance Commission and the Planning Commission have not succeeded in bridging the gap in resources between the poorer and the richer States. We would add here that not only regional disparities are substantial, but there is evidence to show the widening gap in the level of development amongst various States. In terms of per capital SDP, the position of less developed States such as Bihar, Orissa, M.P. and U.P. has either worsened or remained static over the years. Between 1950-51 and 1975-76, Bihar for instance, continued to occupy the 14th place amongst the States (barring the specially classed States) and U.P., another backward State, has moved down during this period from the 8th to the 15th position. During the same period, Punjab has moved up to the top most position and Maharashtra from 4th to the end position. The gap between the richer and poorer States has thus widened. This is so because of financial devolution to the weaker States has been inadequate as compared to their requirement for achieving higher rate of growth to improve their relative level of development. Therefore, principles weighted in favour of backwardness should be adopted to determine financial devolution. According to us, this should be the over-riding consideration.

With these broad observations, we now proceed to indicate the criteria for determining devolution on various counts.

Taking up the question of the share of taxes, we would first deal with income-tax. At present, the net proceeds of income tax is distributed amongst the States 90 percent on the basis of population and 10 percent on the basis of contribution for which assessment is taken as the indicator of contribution. These principles for distribution are based on the recommendations of the Seventh Finance Commission.

We have pleaded before the Eighth Finance Commission that assessment or collection as basis for distribution would be altogether abandoned. We reiterate this view here too. Our conviction that assessment collection as a basis for distribution of income - tax should be given up rests on the ground that there is great difference between the origin of income and its collection and the concentration of the latter in industrially advanced States and their metropolitan cities. Besides the income earned in a State is, to a large extent, conditioned by federal economic policies pursued in national interest and is likely to bestow unequal benefits and impose unequal burden on different States.

Years ago, the Second Finance Commission had expressed an the view that in de course the factor of collection should be altogether eliminated. The economic integration of the country and the abolition of inter-State trade barrier clearly indicated that business incomes were derived from the country as a whole. Hence, the Commission rightly thought that collection would not be an equitable basis to retain in the developing situation. In fact, barring to the industrialised State of West Bengal and Bombay, widest measure of agreement was expressed by the States before the Commission that population alone should form the basis of distribution. Even if convinced of the submission so made, the Commission did not recommend that collection as a basis should be given up largely with a view not to upset the prevailing position; but it did reduce the weight given to collection from 20 percent to 10%. The fifth, sixth and seventh Commissions have retained this weight given to collection.

The Seventh Finance Commission was unequivocal on the point that a larger proportion on the basis of contribution would set a trend in the wrong direction. The factor which weighed with the Sixth and Seventh Commissions against raising the weight given to contribution as a basis of distribution not only still hold good, but have also acquired over the years increase relevence, so that, in our view

the desirability or propriety of continuing contribution as a factor of distribution has become highly questionable. In fact, according to us, the time has come to completely stand on contribution as a basis of distribution.

For the foregoing reasons, contribuion needs to be replaced by an equalising factor such as backwardness. Thus only two criteria, namely, population and backwardness, should be taken into account for distribution of the divisible pool of income tax.

Successive Finance Commissions have recognised population as representing the general needs of a State. Since all the States are not economically equally placed, population as a factor of distribution would not be non-discriminating in effect, because, if adopted as a sole factor, it will mean equal per capita distribution irrespective of need. The problems confronting the less developed States. like ours, are not only of expansion of social and administrative services but of making the desired efforts for providing a sound base for development. Hence we consider it extremely necessary that population as a criterion for distribution should be supplemented with another criterion, such as backwardness of a State, with a view to arriving at a proper relative measure of need.

Bearing these considerations in mind, we suggest that 70 percent of the divisible pool of income tax should be distributed on the basis of population and the rest 30 percent should be distributed only amongst the States with per capita income below the average per capita income of all States, in proportion to the shortfall of the State's per capita income from all States' average, multiplied by the population of the State.

Coming to the distribution of the net proceeds of Union excise duties assigned to the States, it can be noted that the first and the second Finance Commissions had taken population as the sole basis of distribution. The third and fourth Commissions introduced another element according to which some weightage was allowed to social and economic backwardness of the States. All the succeeding Commissions have gone by the same basis of distribution, namely, population and backwardness, although the indicators of backwardness adopted by them have not been the same.

None of the Finance Commissions gave any place to factors such as consumption, urbanisation or industrialisation and the like. The Second Commission thought that accepting such factors as basis for distribution would result in unequal benefits to the States, because consumption of dutiable articles was higher in urbanised States, so that this factor would work to the detriment of predominantly non-urbanised States. The Third Finance Commission aptly observed that consumption was not relevant because distribution embraced also duties on raw materials, intermediary goods and industrial manufactures. The The Seventh Commission therefore, thought it unnecessary to go by the factor of consumption.

Thus, by now it has become an established principle to adopt the criteria of population and backwardness for distribution of the net proceeds of Union excise duties. We think that the two criteria should continue to govern the distribution amongst the States of their share of excise duties.

As to the question of relative weightage to be given to the two criteria of population and backwardness, the Sixth Finance Commission allowed 75 percent of the divisible pool to be distributed on the basis of population, and the balance 25 percent, on the basis of backwardness, as indicated by a States per capita income, in relation to the distance of a State's per capita income from that of the State with highest per capita income, namely Punjab, multiplied by the population of the State concerned. This worked to the utter disadvantage of backward States, like ours, because every other State, regardless of its backwardness, became united to a share in the remainder 25 percent of the divisible pool. In our own case, the share of the divisible pool came down to 11.47 percent from 13.81 percent during the Fifth Finance Commission period. On the other hand, the share of most of the richer States went up. This was the inequitable consequence of the formula adopted by the Sixth Finance Commission.

We had, therefore, suggested to the Seventh Finance Commission that 70 percent of the divisible pool of excise duties should be distributed amongst the States on the basis of population and the remaining 30 percent should be distributed exclusively amongst the States whose per capita income fall below the average per capital income of all States in proportion to the shortfall of the State's per capita income from all the States average, multiplied by the population of the State. We consider that such a formula would give due recognition to the needs of the backward States. The Seventh Finance Commission, however, did not see its way to accept this suggestion. It thought that adoption of a multiple formula would be more equitable, neither unduly favourable to certain States nor harsh against some others. Therefore, the Commission decided to give equal weight to each of the four factors, population, inverse of per capita SDP multiplied by the projected population of the State as on the 1st March 1976, percentage of poor in each State measured according to a method evolved by the Commission, and a formula of revenue equalisation worked out by the Commission.

The Seventh Finance Commission hoped that the combination of measures recommended by it would enhance the preparation of the proceeds of excise revenue distributed amongst the States on the basis of assessment of their relative backwardness. To some extent, this hope was realised. In our own case, the share in the divisible pool showed an improvement and rose to 13·025 percent as against 11.47 percent on the basis of the recommendations of the Sixth Finance Commission. But, yet it failed to restore the percentage to which this State was entitled under the principles recommended by the Fifth Finance Commission, according to which the State's share was 13·81 percent. Thus, the intention of the Seventh Finance Commission to do more than earlier Commissions in this direction was fulfilled only to a limited extent.

In view of what has been urged above, the State Government has also suggested to the Eighth Finance Commission to accept the same formula which had

submitted before the Seventh Finance Commission, namely, that the distribution should be 70 percent on the basis of population and the rest 30 percent to be distributed exclusively amongst the States whose per capita income fall below the average per capita income of all States in proportion to the shortfall of the States per capita income from all the States average, multiplied by the population of the State. In our view, this formula will better serve the end of reduction of inter-State inequalities. Income tax having lost its dominant position as a balancing factor of State finances, excise revenue alone, considering its size, must have, as also recognised by the Seventh Finance Commission, a predominant role to play in the transfer of financial resources to the States, more so when bulk of the fiscal transfer should be by way of tax shares rather than grants-in-aid under Article 275. In this view of the matter, the formula suggested by us above is in consonance with the objective of strengthening the finances of backward States particularly.

It will appear that we have suggested the same principles of distribution of the divisible pool of both income tax and union excise duties. It seems to us that the question of adopting uniform set of principles to govern the distribution of the divisible pool of both these taxes deserves more serious consideration that it has received so far. Prof. Raj Krishna, in his note of dissent appended to the report of the Seventh Finance Commission, had advocated one and the same formula for adoption and distribution of shareable revenue on account of both the taxes on a number of grounds, with which we are in full agreement.

Prof. Raj Krishna had pointed out that distribution of the divisible pool of income tax and union excise duties according to different sets of criteria was not necessary on any legal ground. A reading of relevant Articles of the Constitution, namely, Article 270 and 272, would not reveal any explicit provision or implied intention to suggest that it was legally required not to adopt uniform principles to determine distribution of the income tax revenue and the excise revenue. The Constitutional provisions, therefore, do not impose any limitation on the discretion of the Finance Commission in the matter.

We have repeatedly pointed out in our replies to some other questions that fiscal imbalance, both vertical and horizontal, is an unmistakable feature of our federal financial structure. Therefore, in order to secure a better correspondence between the functions and responsibilities of the States, greater fiscal devolution to States from the Centre is necessary. The horizontal fiscal imbalance is also required to be corrected by a step in the direction of making inter-State allocations more equitable so that greater equalising effects are generated. So, from both these points of view, the interest of the States lies in the total volume of financial devolution. Therefore, adequacy and progressivity of the transfers are really significant. It is not so material whether such transfers come by way of income tax share or sharing of excise revenue. We agree with the view of Prof. Raj Krishna that if progressivity could be a good principle for distribution of the net proceeds of excise duties, it cannot be argued that it was not a wholesome principle for sharing of the divisible pool of income tax.

Thus, on tne one hand, there is no legal bar to adopting same formula for the distribution of revenues both from income tax and union excise duties, and on the other, there are good economic reasons to justify uniform criteria for allocation amongst the States, *inter se* of the share out of the proceeds of both the taxes. In fact, Prof. C. H. Hanumantha Rao, another member of the Seventh Finance Commission was at one with this approach, but he did not press the issue mainly backwardness of States. The Commission on its part, chose not to adopt this approach largely on the consideration that it might not be acceptable to developed States. We can only say that principles to be evolved by the Finance Commissions should be based on propriety and objectivity rather than agreeableness or disagreeableness of any section of opinion.

It is on these considerations that we have suggested uniform set of principles to govern distribution of the divisible pool of both income tax and union excise duties. We are happy that the Eighth Finance Commission has appreciated the force in this submission and has recommended uniform formula to govern the distribution amongst the States of the divisible pool of both income tax and union excise duties.

Now, we come to distribution, amongst the States, of the proceeds of the Additional Excise Duties. The principles according to which the net proceeds of these duties are distributed amongst the States are based on the recommendations of the Seventh Finance Commission.

Additional Excise Duties were imposed in replacement of sales tax levied by the States on the three commodities namely, cotton fabrics (including woolen and rayon or artificial silk fabrics), sugar and tobacco including manufactured tobacco. The Finance Commissions, therefore, have taken consumption of these articles as the basis of distribution, differing, however, in adoption of indicators of consumption, mainly because of absence of reliable data relating to consumption of these articles. For instance, the Seventh Finance Commission, took dispatches as a fair indicator of consumption of sugar. But in respect of other two commodities, it could not find dependable statistics to indicate the level of consumption. Hence, it adopted a different method to measure the relativities of consumption of these articles the two commodities relative consumption would be adequately reflected by the product of population of a State and its per capita State Domestic Product and accordingly the percentage share of each State was worked out.

The consequence of the formula adopted by the Seventh Finance Commission was that the percentage share of this State got reduced and was less than that available under the recommendations of the Sixth Finance Commission. Let us have a quick look at the comparative position emanating from the recommendations of the Sixth and Seventh Finance Commission. The Sixth Finance Commission had recommended that 1·41 percent of the total net proceeds of these duties should be treated as attributable to Union Territories. The Seventh Finance Commission, on the other hand, assessed such percentage separately for each of the commodities, and

such percentage in respect of each of the articles was more than 1·41. In respect of sugar, it was 3.271 percent, in respect of textiles it was 2·192 and for tobacco, the percentage was 2·192, so, on all counts, greater percentage was treated as the amount attributable to Union Territories, which obviously left reduced amount, in terms of percentage, of the total net proceeds to be distributed amongst the States. Bihar was allowed 9·36 percent of the remainder of the net proceeds as its share by the Sixth Finance Commission. According to the Seventh Finance Commission, this share was much lower in respect of each of the commodities concerned. In respect of sugar, the percentage was 5·933, in respect of textiles 7·221, and in respect of tobacco it was 7·219. Therefore it may be that in absolute terms the State would have received more by way of devolution on this count, reduction of the percentage was hardly consistent with the accepted position that the share of the States out of the proceeds of the Additional Excise Duties should be equivalent to that the States would have got had they continued to levy sales tax on these articles. There is no reasonable ground that the consumption of these articles has gone down, to that reduced share in our case runs counter to the principle of compensation tax on these commodities. Moreover, reduction of percentage of these has prevented our State from benefitting from the consistent rise over the years in the proceeds from these duties.

Therefore, in our view any formula which results in depriving the State of its legitimate share in the growing potential of the proceeds from these duties should not be considered justified because, after-all, the arrangement by which these duties replaced sales tax levied and collected by the States was, in the words of the Fourth Finance Commission, "essentially in the nature of a tax rental agreement".

Coming to the question of formula of distribution amongst States of the net proceeds of Additional Excise Duties, we see sufficient ground to place that principle of distribution of net proceeds on account of levy of additional excise duties should not be different from one recommended for basic excise duty. The reasons for this view are more than one.

Under the tax rental agreement, the impost is not on sale or purchase of goods, but at the State preceding sale or purchase. The character of basic excise duty and additional excise duties is not different from each other on this count. Yet the mode of devolution of Union excise duties and additional excise duties is different only because the latter is based on tax rental agreement. Moreover, only because of this tax rental agreement, it was possible for the Seventh Finance Commission to reduce the percentage share of this State. Such a reduction would not have taken place had there been continuance of sales tax on these articles. The tax rental agreement has now worked for over twenty five years and as such has practically come to stay as a permanent arrangement. Moreover, even if a State wishes to opt out of the scheme, it will not be possible for any State to do so because of the coiling on rate on the concerned items under Sections 14/15 of the CST Act, 1956 so that the receipt of the State will be subject to limitation.

The essential nature of tax rental agreement has practically undergone vital change because of the arrangement having acquired permanance, more so in view of the freedom of the States to opt out of the scheme being severely limited. This change has made additional excise duties akin to and not materially different from basic excise duties.

For the foregoing reasons, there should not be any difference between the principles governing distribution of the proceeds of basic excise duties and additional excise duties.

Now, we come to plan assistance. It is, no doubt, true that the Central assistance is given now in accordance with the modified Gadgil formula. Nevertheless, neither the sums given to the States in the shape of block grants and loans by way of Central assistance have been certain nor they bear a definite proportion to the size of the plan out.

Moreover, even the modified Gadgil formula has not succeeded in bringing about the desired change in the complexion of development. In spite of the thirty years of the planning process not only regional disparities have not been removed but these have been further accentuated. For instance, a look at the per capita income of Bihar during the entire period of planning will indicate that the gap between the per capita income of the State and that of the country as a whole has been widening. One reason has been that the resources deployed on development in the State have been about the lowest in the country. Even in the Sixth Plan, the per capita plan outlay in Bihar has been Rs. 572 as against Rs. 872 for all States.

Economic backwardness, persisting particularly in the less-developed States, can be removed only by higher developmental outlays made available to such States. We are of the view that the existing formula for distribution of Central plan assistance will need suitable modification for achieving the objective of removal of inter-State economic disparities and backwardness.

The present Central assistance for State plan is faulty in as much as it leads to considerable debt burden on the States, because it is composed of 70 percent loan and 30 percent grant. The dominant portion of Union loans to the States consists of Plan loans. This arrangement loses sight of the capacity of the borrower to pay. Moreover, the scheme of Central assistance tends to accord equal treatment to unequal States as regards the loans and grant component of the assistance, evidently results in unequal burden on the States. Consequently, the backward States suffer most. Their repaying capacity being severely limited, these loans cause great strain on their budgetary position, so that the less developed States, unlike the developed States, are left with reduced resource to be utilised for further economic development. Thus, the yawning gap between the levels of development of richer States and the backward States has continued to widen. This is certainly contrary to the declared objective of aiming at rapid economic development with balanced regional growth.

It is true that the modified Gadgil formula is slightly more progressive than the original one. The actual disbursement of Central assistance during the Fourth and Fifth plan periods, however, would show that some of the States had received excess amount of

assistance than the stipulated level, while some others were adversely effected. Bihar was one of the States which received less than the estimated level of the assistance. From the point of view of per capita plan expenditure in this period also a less developed State like Bihar, has been sufferer. We would, therefore, urge that the allocation of Central plan assistance should adhere to the formula laid down for the purpose, because if that is done, it would ensure progressive reduction in regional disparities, it should be necessary to substantially reduce the loan component of Central assistance for State plans. We would suggest that the States having per capita income below the all-States' average per capita income should be given Central assistance in the ratio of 70 percent grant and 30 percent loan and reverse may be the case for the States having higher per capita income than the all-States' average per capita income. That would be a better way of ensuring adequate share of national resources to backward States. An alternative to this source may be to earmark a part of the total quantum of Central assistance for backward States to be distributed amongst them on the basis of population and backwardness in the ratio of 60 : 40.

Non-developmental programmes also have substantial development component in them. Expenditure on such non-developmental items creates new assets or improve upon existing infrastructures, which together go to serve the objective of overall development. Since development has to be meaningful for the people inhabiting the backward States, balanced regional growth can be really achieved by giving differential treatment to such backward States in the matter of schemes falling outside the plan programmes. Wherever, such projects are beyond the means of a backward State, the Centre should come to help in a generous way by extending grants to aid the completion of such projects. for this would eventually help removal of inter-State inequalities.

5.6 We do not have adequate information on the working and result of special federal fund in Yugoslavia so that it would not be fair for us to comment on the system. Nevertheless, it is clear to us that even though the Constitutions of India and Yugoslavia are federal in character, they differ, often widely, in their essential nature. Their economic and social structure are different. The State of development of different regions in India are not comparable to that of Yugoslavia. The nature of relationship between the federation and the constituent units is not the same as in India.

In Yugoslavia, the State directs economic life and development of the country in accordance with general economic plan, relaying on the State and co-operative economic sectors. Means of production are either the property of the entire people or property in the hands of the State. The position in India is basically different. Fundamental freedoms, guarantee right to property and means of production are not wholly nationalised. Planning unlike Yugoslavia, is not a federal subject in India. Economic and social planning finds a place in the Concurrent List of the Indian Constitution.

The Fundamental Law of Yugoslavia pertaining to the basis of the social and political organisation of the Federal Republic provides for the Federal Economic Plan to set aside for the Federal Government only those financial means which are specified by law and which serve for the conduct of affairs within the sphere of competence of the Federal Government for ensuring the normal development of the economy and for the provision of aid to the insufficiently developed regions of the country.

The situation in India is not the same. The Indian Constitution does not make any provision for direction of economic life of the country in accordance with a national economic plan. Nor does it provide for distribution of resources between the Union and the States in the same manner as has been done in the Yugoslav Constitution.

The dissimilarities in the two countries is in respect of the basic feature of their constitutions. Their economic and social order and institutions, the division of functions and resources between the federal government and the units, would not seem to admit the possibility of fruitfully limitating the provisions of one by the other. Hence, we do not think that creation of a special federal fund would fit in our constitutions frame work of relationship between the Union and the States. As we have already indicated in our reply to Question No. 5.1, we are not in favour of amending the constitution for restructuring the Union-State relations.

Supposing such a special federal fund is established it will have to be out of the resources of the Centre. This would mean that the total kitty of distributable resources will be reduced by the amount transferred to such a fund. This would raise the question of who will decide upon the amount of money to be transferred to the fund and on what priniciples the amount should be fixed and distributed amongst the backward areas. If these issues are left to be decided by the Centre the least we can say is that it would mean another irritant in the Centre-State relations in the country. If on the other hand, these issues are to be decided jointly by the Centre and the State, there are bound to be serious practical constraints in smooth and efficient working of such a fund. Therefore, there has to be an independent expert body to decide both the quantum of money to be transferred to the fund and the principles of distribution amongst the States of the amount out of this fund.

Finance Commission and the Planning Commission are the two bodies which are performing the functions of transfer of resources to the State. It is true that there is not a special fund out of which such transfers take place, but certainly it is mostly out of the funds available with the Centre that the transfer of resources to the States takes place. If the funds so made available to the States is based on principles recognising the specific requirement of backward areas and preferential tratment is given to their needs on objective standards to judge their entitlements, there is no reason why economically underdeveloped area cannot be lifted out of the messes in which they are at present.

In view of what has been stated above, we do not consider it necessary that a special federal fund should be set up. The objective sought to be achieved by establishing such a fund can very well be served by giving the requirement orientation to the principles

determining devolution of resources through the Finance Commission and allocation of plan assistance through the planning Commission.

5.7 There are certain imperatives in the allocation of taxation fuctions to the Union and the States, to which we had occasion to refer while replying to question numbers 5.1 and 5.3. Apart from the well established principles of federal finance, there were certain inexorable factors which influenced the distribution of taxation fuctions between the Centre and the States. There was the force of history which played a crucial role in determing the pattern of Union-State financial relations of which taxation powers constituted a vital part.

When the constitution was being made, the Constituent Assembly had two clear alternatives open before it. One option was to make a clear break with the past and evolve an altogther new scheme of devision of financial powers between the Government of India and the State (as the then existing provinces were being rechristened.). The other option was to retain or follow, as far as possible, the financial plan of the Government of India Act, 1935. Perhaps. the first alternative could not command itself to the makers of the Constitution for the fact that the Indian federal policy was born not as a result of aggregation of sovereign or autonomous units agreeing to establish a federation, but as a result of devolution of powers and functions of what had been unitary State, that is, the Government of India. This basic historical fact has perceptibly imbued the federal character of our constitution.

The Constituent Assembly made a deliberate choice in favour of adopting the division of resources, as contained in the Government of India Act, 1935. for, devising an entirely new system of distribution of resources between the Union and the States would have meant a complete rejection of the continuity of financial arrangement then in vogue.

Therefore, it is not by accident but by a conscious decision that our Constitution established what can be aptly described as federation with a strong Centre. This basic fact visibly characterises the allocation of taxation functions to the Centre and the States. Nonetheless, for obvious reasons the tax powers had to be distributed between the Centre and State Governments keeping in view the federal nature of Union State relationship.

There are a number of recognised principles to govern allocation of tax functions in a federation. One is efficiency of administration, which in other words means that a tax should be imposed and collected by the authority which can best collect and administer it. The other principle relates to the base of taxation. Taxes affecting the national economy as a whole should be allotted to the Central Government on grounds of uniformity and avoidance of conflicts in rates and coverage. Then there is the principle of adequacy which implies that in working out of pattern of revenue sharing arrangements, the functions and responsibilities of the Central and State Governments would be taken into account. Also related is the principle of elasticity which requires that allocation of resources both in nature and quantum, should be consistent with growing needs in future. The principle of equity means that not only both the Centre and the States be free in their own respective spheres, but also they should together contribute to sharing common burdens on an equitable basis.

There is yet another way of looking at distribution of taxes in a federal structure. Previously it was believed that all indirect taxes should be better allotted to the federal government and the direct taxes be reserved for the constituents. The position has now drastically changed and there is increasing support for federalisation of direct taxes. Therefore, on grounds of equity in taxation and fiscal productivity taxes on business and production are now allotted to the federal government. This explains allocation of Corporation Tax and excise duties to the Centre. In fact, a watertight division in distribution of direct and indirect taxes as between the Central and the State Governments is not to be found in the tax system devised by our Constitution.

Perhaps it is needless to carry on the discussion, in the conventional way, on the principles, governing distribution of taxation functions between the Centre and the States. The principles indicated above are relevant considerations, but it is not difficult to discover that the demarcation of taxing powers in many federal constitutions has been determined more by experience and expediency, because no other reason can possibly explain the wide variations in the pattern of division of resources found in different federations. Our Constitution is no exception to this broad rule. One illlustration to substantiate the point is that the resources placed at the disposal of the States do not fully satisfy the criteria of adequacy and elasticity.

The question refers to another imperative contained in Chapter XIII of the Constitution to ensure 'freedom of trade, commerce and intercourse within the country'. Article 301 of the Constitution laid down that subject to other provisions of Part XIII, trade, commerce and inter course throughout the territory of India shall be free. The object is to ensure that the economic unity of the country may not be disturbed or broken by internal barriers. The Articles does not prohibit regulatory measures. As far as taxes are concerned, only such taxes as directly and immediately restrict trade attract the provision of this Article and a tax imposed by a State is not violative of this Article if it does not effect the movement of persons of goods from one State to another. Imposition of a tax on sale or purchase by itself does not offend this constitutional provision unless it discriminates between goods of one State and another or, if the tax is on an article used in inter-State trade, it is so excessive or prohibitive as to become an obstacle in the way of free flow of trade and commerce.

The complete separation of taxing powers between the Centre and the States leaving no room for concurrent jurisdiction in the matter of taxation obviates the possibility of a situation which may impinge on the object of free trade and commerce within the country. Since taxation of business and production is a Central subject, there is little scope of restrictions being imposed by the States.

Article 286 of the Constitution precludes any State from imposing or authorising the imposition of any tax on sale or purchase, where such sale or purchase

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takes place (i) outside the State or (ii) in the course of import into or export out of the country. It lies within the competence of the Parliament to lay down principles for determining the nature of sale or purchase so as to attract the provision of this Article. This again, is a sufficient guarantee against any contingency or barriers to free flow of trade and commerce.

The Constitution (46th Amendment) Act, 1982 has amended Articles 286 and 366 to provide that any law of State imposing or authorising the imposition of a tax on sale or purchase of goods declared by the Parliament by law to be of special importance or on (i) transfer of property in goods involved in the execution of a works contract, (ii) delivery of goods on hire purchase or any system of payment by instalments and (iii) the transfer of the right to use any goods for any purchase for cash, deferred payment or other valuable consideration shall be subject to such restrictions and conditions in regard to the system of levy, rates and other incidence of the tax as Parliament may by law specify. Thus, sale and purchase of the nature described above will be subject to uniform restrictions and conditions specified by the Parliament so that inter-State trade and commerce will be free from the fear of restrictive legislative action by different States.

These constitutional provisions seek to buttress the conditions for the inter-State trade and commerce to be free from interference save and except by way of reasonable regulation. And we see nothing wrong in this.

The third point raised by the question is in regard to the use of tax system for reduction of inequalities. There is also a mention of transfer of certain taxes to the States in this connection. In reply to Question No. 5.3 we have explained our view on the question of transferring certain taxes to the Centre and vice versa, so we need not repeat them here.

As regards the role of tax system in reduction of inequalities, it may be pointed out that though it is possible to use the tax system so as to generate redistributive effects, the tax system by itself cannot succeed in achieving reduction of inequalities. If the tax system is progressive, it will tend to reduce inequalities in incomes and wealth. The progressivity of a tax will depend upon its structure, rates of taxation, coverage and may not be greatly determined by the fact which authority imposes the tax. Hence, on this account there seems to be no point in advocating transfer of a tax from the Centre to the States or *vice versa*.

As far as removal of inter-State disparities is concerned, it will really depend upon transfer of resources to the States so as to strengthen their finances to meet expenditure on providing administrative, social and economic services of the people. To transfer some taxes to the States to improve their revenue position is a step which, for many reasons explained in replies to other question, we do not advocate. On the other hand, we are inclined to feel that it would be of greater help to the States if the resources transferred to them are based on a tacit recognition of their needs for achieving a better equalisation of standards.

5.8 In reply to some other qusetions, we have drawn attention to the basic features of the financial plan envisaged by the constitution, according to which division of the sources of revenues has been made between the Union and the States. Consistant with the federal structure, the bifurcation of taxing powers between the Union and the States has been made effecting inter state trade and commerce have been allotted to the Centre, while taxes of local import are left with the States. Overlapping tax jurisdictions have been avoided. The residual powers of taxation have been reserved for the Centre.

The answer to the question posed here has to be sought keeping in mind the pattern of fiscal federalism woven into the scheme of financial relationship between the Union and the States. One element in that relationship is the principle of separation on which the division of taxing powers of the two layers of government has been founded. There are good reasons why the Central Government should collect income tax. If the States were to levy his tax, apart from cost of collection of the tax going up for want of economies of scale, there will always arise conflict between the States as to the basis of taxation. Some may adopt residence while others origin of income as the basis of taxation on income. This would create for the States insuperable difficulties in tax administration, let alone the problem of tax evasion or double taxation. Similarly, corporation tax would create identical problems if the States were given the powers to levy this tax. International trade being the function of the Centre, it is only logical that the Centre should levy custom duties. For many economic reasons, tax on production i.e. excise duties, is a tax which the Centre should rightly continue to levy.

Similarly, the taxes which are on consumption or on localised income and wealth have been rightly given to the States, Taxes on sales and purchases, entertainment, land revenue, duties of excise on liquor and alcohol and so on are levied on the citizens of the States or on economic activities carried on within the limits of a State without interacting on inter-State trade or commerce. Therefore, the taxes allotted to the States have been rightly conceived as sources of revenue exclusively meant for them.

Taking the whole country as a common market and on grounds of cost and efficiency, the taxes mentioned in the question, except sales tax, rightly belong to the Centre and, therefore, should continue to be collected at the national level. If the Constitution has allocated certain taxes exclusively to the States, just as some other broad based and productive taxes were given to the Centre, the framers of the Constitution took a cool, calculated and conscious decision to devise a federal fiscal structure comprising of separation of sources of revenues between the Union and the States to enable them to fulfil the respective function assigned to them in the Constitution. The arrangement made should not justifiably be viewed as denoting a fragmentary approach to taxation. If all significant taxes are reserved for the Centre, the inevitable consequences will be to reduce the States to a position in which they willl be left with practically little resources of their own. Such an arrangement cannot be defended on various grounds of sound public finance, including efficiency and economy in tax administration, and proper allocation of taxing power between the Centre and the States. Above all,

instead of ushering in a happier State of Union State relations, such an arrangement would give rise to recurring irritants causing immense damage to our federal policy.'

The question refers to a view expressed in certain quarters according to which there should be separation between imposition of such taxes and distribution of tax proceeds. According to the earlier part of the question, imposition of major taxes mentioned there should be the responsibility of the Centre. By implication, it would mean that all important taxes would be collected by the Central Government and the proceeds would be distributed amongst the States, their respective shares being determined by a Council for Central and State Finance Ministers.

We have pointed out earlier how imposition of all major taxes mentioned in the question, except sales tax, even now is the responsibility of the Centre and if it is intended that further taxing powers should be made over the Central Government, the idea does not appeal to us for the reasons already explained.

As a corollary to the stand we have taken, there seems to be no need of a council of the nature contemplated by the question. All of the major taxes mentioned in the question (except sales tax), though levied and collected by the Centre, are not divisible. While custom duties and corporation tax proceeds exclusively belong to the Centre, income tax and excise durites are shared with the States, the former on complusory basis and the latter in a permissive way. Estate duty, though Levied and collected by the Centre, is an assigned tax under Article 269 of the Constitution and the proceeds thereof constitute the consolidated Funds of the States. Even though wealth tax on agricultural property is not constitutienally a shared or shareable tax, there has been a long standing practice to transfer as grant the net proceeds of this tax to the States. We do not support the idea of reopening the question of shareability of these taxes or the practice of transferring the net proceeds of wealth tax on agricultural property as grant to the States. We are also not at one with the idea of amending the Constitution to achieve the objective of making all these taxes wholly assignable to the Centre either.

The respective shares of the States in the total divisible pool of these taxes are determined according to principles evolved by the Finance Commissions which have the requisite consitutional authority for the purpose. We do not wish that the shpere of functions of the Finance Commission should be curtailed or its position diluted in any manner. It is an independent body enjoying a constitutional status and so more likely to command the confidence and respect on account of objectivity and impartiality which it can bring to bear on its recommendations than any other extra-constitutional body which entrusted with the task of deciding the principles to determine States share in tax devolution.

Moreover, the distribution of tax by a council of the nature suggested in the questions bristles with many difficulties. Such a council, in the ultimate analysis, may at worst turn out to be another forum for the Centre and the States ventilating mutual grievances and engaging in endless controversies, levelling accusations against each other without achieving concrete results for positive action. The possibilities of the nature described above cannot be discounted in view of the changing political complexion of the governments in the States. At best, it may act as a negotiating body between the Union and the States and, as is well known in any negotiation the spirit of give and take prevails and no one can forecast with any certainty who gives and who takes and in what measure. Obviously, the weaker States will in all probability stand to lose. The experience in Australia in the 1920's and early years of 1930 stands testimony to the play of bargaining element in the termination of grants to the States. It was ultimately realised that such bargaining was not conducive to mutual trust and confidence between the constituents making the federation. It was against this background that the Australian Grants Commission was created. The framers of the Constitution appear to have drawn lessons from this experience and therefore thought of the institution of Finance Commission, a body akin to the Australian Grants Commission.

Supposing the council is given a constitutional authority, there will again arise the question of overlapping of functions between the council and the Finance Commission. Will the council supersede the Finance Commission or will it supplement its efforts ? How their respective spheres will be demarcated ? If the council is thought of as a superior authority capable of doing or undoing the work of the Finance Commission, it is needless to establish such as agency to sit in judgement over the quasi judicial adjustment by the Finance Commission of the issues relating to fiscal transfer to the States. Moreover, it will also result in adding an unpleasant strand to the fabric of Union state financial relations.

If, on the other hand, the council is supposed merely to supplement the efforts of the Finance Commission, it would accentuate the problems caused by overlapping of jurisdictions by creation of multiplicity of agencies charged with the task of transfer of resources to the States. From this point of view, such an agency is not expected to serve any really useful purpose. Over and above everything else, whether the council is supplementary to the Finance Commission or above it, there can be no way to save it from the evil of being reduced to a forum for bargaining which is not desirable for the reasons explained earlier.

Now, we come to the question of sales tax. As we have said earlier, we are not in favour of disturbing the distribution of taxing powers between the Union and the States. Therefore, we do not support the view that tax on sales should be levied by the Centre. The Government of India already enjoy the powers to levy tax on inter-State sale or purchase of goods under the provisions of Central Sales Tax Act, 1956. The States have already made over to the Centre their right to levy sales tax on sugar, taxtiles (other than silk) and tobacco, and the sales tax on these articles has been replaced by additional excise duties, the yields from which are shared with the States in accordance with the recommendations of the Finaance Commission.

It is subject to these limitations that the States have to develop their own sales tax system. A look at the distribution of revenues from States taxes

would show that proceeds from sales tax constituted nearly fifty per cent of the total tax revenue of the States in 1970-71. The dominant position which sales tax has come to occupy in the total tax revenue of the States will be evident from the fact that 1982-83 (BF) it accounted for nearly 59 per cent of the total tax revenue of the States. Thus, sales tax has proved to be the most important single and elastic source of revenue for the States. It is the main stay of the financial strength which the States cannot afford to lose except to the utter impairment of their financial wherewithal. Considering the need of the States for more fiscal resources for keeping their finances on an even keel, there is no case for taking away the States right to levy tax on sales, which is available to them under the Seventh Schedule of the of the Constitution.

5.9 This question raises a number of issues which need to be settled in order to spell out the broad approach to the question posed. The issues are :

(i) Whether only one organisation should deal with all financial transfers plan and non-plan on an assessment of capital and revenue resources ?

(ii) If the answer to (i) is in the affirmative, whether the organisation should be the Finance Commission ?

(iii) Whether the Finance Commission should be a permanent body ?

(iv) What role should be specified for the Planning Commission in case the answers to (i) to (iii) be in the affirmative ?

Taking up the issue mentioned at (i) above, it can be noted that Article 280 of the Constitution provided for the appointment of a Finance Commission once in every five years with the object of making a equinquennial review of the finances and needs of the Union and the States and recommending transfer of resources to the States by way of tax shares and grants-in-aid under Article 275. The Finance Commission, therefore, is a constitutional authority to recommend devolution of resources and, in addition, is empowered to make recommendation in respect of any other matter referred to it by the President in the interest of sound finance. A look at the relevant provisions of the Constitution would show that it is nowhere laid down that the Finance Commission should confine itself to the assessment of non-plan revenue requirements of the States. As the Chairman of the Fourth Finance Commission observed, it is abundantly clear (to my mind) that reference in the main part of clause (i) of Article 275 to grants-in-aid of the revenue of the States is not confined to revenue expenditure only. He went on to say that 'there is no legal warrant for excluding from the scope of the Finance Commission all capital grants, even the capital requirements of a State may properly be met by grants-in-aid under Article 275(1), made on the recommendations of the Finance Commission. In fact, this broad interpretation had been accepted by the Government of India till the end of the Second Five Year Plan.

Thus it would appear that the Constitution conceived of the Finance Commission as an independent body to act as the sole instrument of transfer or resources from the Centre to the States. To a great extent, this position subsisted till the Second Finance Commission period as the first two Finance Commissions recommended financial assistance from the Centre to cover both current and capital requirements of the States. But with the emergence of the Planning Commission and its assumption of the responsibility and function of allocating national resources for development among different sectors of the economy and regions of the country, the position materially changed leading to circumscribing the scope of the recommendations of the Finance Commission to the non-plan account of the States. It is said that as a result of this development, the planning Commission has become the dominant arbiter of transfer of resources to the States.

The respective roles of the Finace Commission and the Planning Commission have always been a subject-matter of intense controversy. The attitutde of the two Commissions towards each other has not been one of comradeship. The Finance Commission on their part, have viewed the presence of the Planning Commission with envy. The little amount of confrontation which seemed to characterise the relationship between the two in the earlier stages appears to have given place to a sense of helplessness on the part of the Finance Commission after the Third Finance Commission summed up the inevitable position by saying that the role and functions of the Finance Commission, as provided in the constitution, can no longer be realised fully due to the emergence of the Planning Commission as an apparatus for national planning. It thought that the Finance Commission, in the circumstances, could do no better than to act as an agency to review the forecasts of revenue and expenditure submitted by the States and to undertake an arithmetical exercise to determine the quantum of devolution, without going into the amounts settled by the Planning Commission under different heads of plan expenditure.

The Fourth Finance Commission, however, thought that the function of a Finance Commission was not merely to recommand such devolution and grants-in-aid as would merely fill up the non-plan revenue deficit as reported by the States, because such an approach would be a mechanical one. Even so, the Commission did not consider it appropriate to take upon itself the task of dealing with the States' plan expenditure.

Subsequent Finance Commissions followed the path of Keeping away from the grounds within the domain of the Planning Commission. The Seventh Finance Commission thought that the freedom of a Finance Commission to evolve its own scheme of transfer for the evolution period was in no way limited except by the four corners of the constitutional provisions. The Commission did not think that dealing out the area of plan investment and Central assistance for State Plan to the Planning Commission was a restraint in any real sense.

The critics of the existing arrangements whereby the operation of the Finance Commission has come to be restricted to the non-plan sphere and planning Commission is entrusted with the task of looking after plan requirements, point out a number of drawbacks in the arrangement. First relates to the

overlap of functions of the two Commissions and the divergent assessments made by them. The duality of channels of transfer of resources and the different ways of making assessment of the States' requirements, it is said, leads the States to present their estimates and forecasts of revenues in two different ways to the two Commissions. How to overcome this situation is the question. It may be emphasised in this connection that the vital aspect of the matter from the point of the interest of the States is not whether there should be one or two channels of canalising resource transfers nor will it be appropriate view the problem as one of distribution of available resources between the Centre and the States, as the as the Sixth Finance Commission observed, but to approach the problem as one of distribution of available resources between the subjects coming constitutionally within the competence of the Centre and those falling within the purview of the States, which substantially means distribution of national resources as between different sectors of development.

The Finance Commission and the Planning Commission may appear to be different in composition adopting divergent ways in their functioning and approach, but it cannot be said that they can shy away from the common objective of working towards the end of seeking economic development of country accompanied with balanced growth of the of the States. If the planning Commission and the Finance Commission develop harmony in their pursuit of the common goal by adopting uniform tests, it would to a large extent, take care of the drawbacks of the prevailing dualism in the matter of resource transfers. Moreover, by a little coordination of the procedures adopted by the two Commissions the practice, as complained, of the States submitting differnet estimates to the Planning Commission and the Finance Commission, could be rendered unnecessary.

In this context, the intimate relationship between the results of what each of the Finance Commission and Planning Commission does should not be ignored. As the Seventh Finance Commission has observed, the developmental process guided and supported by the Planning Commission should result in reduction of economic disparities between the States, and in the poorer States building up their resource potential which the Finance Commission would take into account at the end of a plan period. On the other hand, the Finance Commission's transfers should provide the financial wherewithal for the States to maintain and develop and adequate administrative infrastructure which is responsive to the increasing demands that a developing economy generates.

The intimate relationship and the interdependance between the two Commissions could be made more meaningful by establishing a proper time sequence so that each of them know the consequence of the efforts of the other. The 1980-85 Plan could take into account the recommendations of the Seventh Finance Commission for the First four years.

The Eighth Finance Commission could have the benefit of the Planning Commission's work for 1984-85. It is of crucial significance to establish a proper sequence and adhere to it in order that a harmony is struck between the relationship between the two Commissions.

Another point of criticism has usually been that the sheer magnitude of transfers through the Planning Commission on as compared to the transfers through the Finance Commission has lent a position of dominance to the former in respect of transfer of resources to the States. A related issue raised in this connection is that the Finance Commission, being a statutory and independent body, decides the entitlements of the States on quasi judicial adjudgment of the issues concerning financial transfers whereas the Planning Commission's transfers do not have any statutory basis and so are discretionary in nature.

As regards the relative position of the quantum of transfer of resources through the channels of Finance Commission and the Planning Commission, significant change has taken place in this respect during last few years. With the greater reliance of the Finance Commission on tax sharing as compared to the grant-in-aid with a view to creating non-plan surplus for as many States as possible, the transfers through Finance Commission have increased as compared to transfers through the Planning Commission as will be evident from the table below :

(Rs. in Crores)

	1st Plan	2nd Plan	3rd Plan	Three annual plan	4th Plan	5th Plan	6th Plan
A. Transfer through Finance Commission	429	918	1,590	1,782	5,420	13,079	20,845
B. Transfer through Planning Commission	880	1,344	2,738	1,917	4,900	10,595	13,245
C. Other transfers	104	606	1,272	1,648	4,992	4,054	N.A.
D. Total (A+B+C)	1,413	2,868	3,600	5,347	15,312	27,728	34,090
Percent of A to D	30.3	32·0	28·4	33·3	35·3	47.2	61·1
Percent of B to D	62.3	46.9	48·9	55·9	32.0	38.2	38·9

It will be seen that whereas the transfers through the Finance Commission during the first Plan period constituted 30.3 per cent of the total transfers against 62.3 per cent transfers through the Planning Commission, the respective percentages during the fifth plan period were 47.2 and 38.2. The total quantum of transfers through the Finance Commission as well as the percentage it formed of the total tranfers have further increased during the current plan period. This is a welcome change. There is no reason to think that this process of change in the right direction will be upset of reversed in the coming years.

It may be true that the transfers through the Planning Commission are discretionary in character in as much as the Planning Commission is not founded on constitutional provisions, but it is equally not true to say that the transfers are arbitrary and not related to any set criteria. From 1979, the Planning Commission adopted the well known IATP formula for determining a substantial part of plan assistance to the States and the discretionary assistance placed at its disposal was practically entirely utilised for the benefit of the poorer States. Since 1980, the modified Gadgil formula has been used to determine assistance to States according to which the importance of distribution to States with per capita income below the national average has been raised from 10 percent to 20 per cent. Thus, a salutary change has come about in the principles governing plan assistance to the States and the change has meant relief to the weaker States. In view of these facts, it would not be correct to say that the transfers through the Planning Commission are that much arbitrary or discretionary as they are usually made out to be.

From the foregoing analysis it would appear that whatever difficulties might have been experienced in the past on account of duality in the mechanism of fiscal transfers are not so insuperable as to defy working solution within the broad framework of existing mechanism of transfers through the Finance Commission and the Planning Commission. In fact, the remarkable increase in the total quantum of transfers through the Finance Commission and that too more by way of tax shares should afford sufficient comfort to the States that increasing part of fiscal devolution to them now takes place through the assured channel and on the basis of well considered principles evolved by the Finance Commission.

It is of crucial significance to bear in mind that irrespective of the channel through which transfers take place, it is ultimately the quantum of surpluses with the Centre from which will flow the devolution to the States. Therefore, it would be to the advantage of the States if the finances of the Central Government are properly scrutinised to identify all possible surpluses from which transfer of resources could be made to the States. The Seventh Finance Commission has done important work in this direction in the sense that it reassessed the forecast of resources submitted by the Central Government by applying certain tests of scrutiny and found significant surpluses, which eventually resulted in substantial increase in the total transfer of resources to the States. This served the interest of the States. It is hoped that in future too, the Finance Commissions would continue to subject the forecast of resources of the Centre to the same scrutiny so that the States could expect their share to expand to the utmost extent possible.

There is another factor which has helped the States to benefit from the work of the Finance Commission. While maintaining the informal separation of the scope and functions of the two Commissions, the Government of India asked the sixth and the seventh Finance Commissions to estimate the non-plan capital gaps of the State Governments over the Fifth and Sixth Five Year Plans respectively and to recommend measures to deal with such non-plan capital gaps. This, by implication, means that the Central Government has accepted in principles that the recommendations of the Finance Commissions could embrace the financial needs of the States on non-plan capital account as well. This belief is further strengthened by the fact that the Central Government accepted the recommendations of the Seventh Finance Commission providing both revenue and capital grants to certain States for upgradation of administrative standards in certain specified sectors.

For the account in the preceding paragraphs of the working of the system of fiscal transfer to the States and the developments that have taken place in recent years, certain inferences are clear. Firstly. the Finance Commission and the Planning Commission, working in their respective spheres, have of late refrained from crossing swords with each other, and instead have preferred to devise ways and means of bebefitting from each other's work in their joint endeavour to serve the common objective of promoting economic development of the country accompanied with balanced growth of the States. Secondly, the Finance Commissions, on their own part, have made serious attempts to evolve rational principles of devolution imbued with progressivity, to the extent possible, aimed at meeting the requirements of the States in general and equalisation of standards in particular. Thirdly, the Planning Commission has adopted set criteria and well defined formula to determine plan assistance to the States taking special care for the benefit of the weaker States.

The situation, therefore, is not so desparate as to call for radical measures involving take-over of the functions and responsibilities of both the Finance Commission and the Planning Commission by either of the two. Such was the essence of the two alternatives suggested by the Third Finance Commission, one of which was to so enlarge the functions of the Finance Commission as to embrace the total financial assistance to be extended to the States, whether by way of loans, devolution or revenues, to enable them both to balance their normal budgets and to fulfil the prescribed targets of the plans.

The suggestion made by the third Finance Commission did not find acceptance and possibly for good reasons. The importance of planned economic development is so great and its implementation so essential that any dilution of responsibility in respect of any element of Plan expenditure may well be disastrous. The Planning Commission has been specially constituted for advising the Government of India and

the State Governments in respect of economic and social planning. The Fourth Finance Commission took note of these factors and did not consider it appropriate for the Finance Commission to take upon itself the task of dealing with the States' new Plan expenditure.

The Study Team on Centre-State Relationships of the Administrative Reforms Commission (1967) thought that the suggestion to expand the functions of the Finance Commission so as to bring within its fold what the Planning Commission was doing in the matter of Plan assistance had been rightly rejected because such functions could not be given to a body cut off from the responsibility for Plan formulation and implementation. The argument continues to hold good, hence it cannot be rejected.

As a matter of fact, the Finance Commission and the Planning Commission have so well defined and specified functions to perform that one cannot usefully take over the functions of the other. Their roles have to be different, not the ultimate objective they are together destined to strive for achieving, namely, economic development accompanied with balanced regional growth. The producers adopted by them should be continuously reviewed and adopted to changing demands, in the best interests of harmonious Centre-State relations, in order that on the one hand, the two bodies could function in class co-operation complementing each other and on the other hand, the results of their efforts create widest measure of all round satisfaction.

In view of what has been stated above, we do not subscribe to the view that there should be only one organisation to deal with all financial transfers plan and non-plan on an assessment of capital and revenue resources. It follows, therefore, that the issue mentioned at (ii) at the beginning is accordingly answered in the negative.

Now, we take up the issue mentioned at (iii) namely whether the Finance Commission should be a permanent body. A plea has often been made in certain quarters that even continuing to discharge the functions assigned to it at present, the Finance Commission should be converted into a permanent body. This suggestion is sought to be justified on more than one ground. Firstly, it is said that the Finance Commission, being *ad hoc* in nature, each time has a new personnel, with perhaps entirely new supporting secretariat, so that it has not been able to view the entire gamut of Union State financial relations in such a manner as to lend stability to the system of fiscal transfers to the States.

Secondly, the Commission is just not there after submitting its report, so there is absence of continuity in its thinking and work. Thirdly, it is pointed out that the time at the disposal of a Finance Commission is too short to enable it to evolve an independent methodology so that it is left with little option but to fall back upon one which is readily available. Further, it is said that one consequence of the Finance Commission being set up after five years has been to leaves sufficient scope for discretionary transfers by the Government of India.

Here, it is necessary to bear in mind that if for sake of continuity the Finance Commission is converted into a permanent body, one consequence may be for such a Commission to develop in course of years, certain elements of bias and prejudices in its approach, which would certainly affect it independence and judgement, the two vital attributes which inspire confidence in the august body.

There is another notable aspect of the issue. If the Finance Commission is made permanent, as the Seventh Finance Commission aptly observed, 'there might well be a tendency for the members of the Commission to be regarded as full time employees of the Central Government and this would be unhealthy from the point of view of the Commission's functions vis-a-vis the State Governments'.

Since, considerable changes are likely to take place during the periods between the appointment of two Finance Commissions in the economic and fiscal situation and relative needs and resources of the States, so that every Commission is duty bound to avail of the opportunity for fresh consideration of various problems in the changing circumstances. Such a freshness of approach, free from pre-conceived notions, is possible only in the present system because it permits, as the Seventh Finance Commission observed, the induction of persons with a fresh approach and unbiased minds as members every time a new Commission is set up.

As for the argument that making the Finance Commission permanent would greatly obviate the possibility of growing discretionary transfers by the Centre, the Seventh Finance Commission tightly pointed out that it was difficult to conceive of a system which can altogether eliminate uch transfers in the widely varying conditions and circumstances in which the State Governments may find themselves from time to time. It may be added that giving a permanent status to the Finance Commission will by itself not acceed in doing away with the need for discretionary transfers from the Centre to the States. On the other hand, it will largely depend on building up the financial where-withal of the States, to which Finance Commissions transfers contribute in a significant manner.

There is yet another point made out in support of the suggestion to made the Finance Commission permanent. It is said that one defect of the present arrangement lies in the absence of provision for a continuous review of Union State financial relations. Significant emphasis has been laid, in this connection, on preserving some stability and continuity by necessary changes in the composition and tenure of the Finance Commission, which should be made a standing body. Further, it has been emphasised that for a continuous review of Union State financial relations it would be necessary to collect, compile and analyse, on a continuing basis, date and information relating to various aspect of the finances of the Centre and the States, special features of particular regions and States and the factors affecting their finances and it has been urged that a permanent Finance Commission alone could undertake this task purposefully.

The crux of the matter is, whether a continuous review of Union State financial relationship of the kind contemplated is possible only by a permanent Finance Commission, or an equelly effective arrangement can be devised for ensuring such a review without

disturbing the tenure of the Finance Commission. We have seen earlier how on various considerations, the balance of advantage would very much lie in favour of preserving the present set up of the Commission. In fact, for achieving the objective of a proper review of Union State financial relations, what is particularly significant is to conduct regular studies and collect and analyse all relevant data pertaining to the various aspects of the finances of the Union and the State. If the Finance Commission is made a permanent body merely for conducting such studies and collecting relevent data, it would be sheer waste of time for such an august body because the task can be very well assigned to and performed by a qualified and fully equipped study call set up for the purpose which can assist the Finance Commission by providing ready made materials based on regular studies undertaken and completed by the cell. In fact, all Finance Commissions have laid stress on the usefulness of studies by such a cell.

It was on the recommendations of the first Finance Commission that such a cell was established in the President's Secretariat. But on the recommendations of the Taxation Enquiry Commission, it was later transferred to the Finance Ministry. The Fourth Finance Commission (1956) found that the cell consisted merely of some ministerial staff. The position does not appear to have improved in any significant manner since then as would appear from the observation of the Seventh Finance Commission that the arrangement was inadequate. We feel that the recommendations, which the Commission made in this connection should be implemented in letter and spirit. It said it will be extremely useful to future Finance Commission and greatly facilitate their work if can expert on political agency were to be established by the Central Government and were to perform such functions as the Secretariat of the Commission is expected to perform. The Commission wanted this agency to play a watching and advisory role with regard to Centre-State financial relations generally. The agency should be vested with sufficient authority to call for and be furnished all relevant information from the Union and State Government. The Commission also thought that this expert agency should also be concerned with proper implementation of the accepted recommendgations of the Finance Commission. This agency, on appointment of a Finance Commission, should get merged into its secretariat.

We would very much favour the creation of such an agency in the light of the recommendations of the Seventh Finance Commission, for we feel that if such an agency is built up along the lines indicated by the Commission, it would go a long way towards achieving a purposeful review of Union State financial relations on a continuing basis, and would greatly meet the point which is made out as a ground for making the Finance Commission permanent.

The Seventh Finance Commission did not indicate whether the proposed agency should be located in the Finance Ministry or in the Planning Commission. We are inclined to think that since the Planning Commission is already engaged in research in various fields relating to evaluation of plan programmes, it has a definite orientation towards research by subject matter specialists and experts, it will be the appropriate place where the proposed agency should be located. The present cell under the Finance Ministry can very well be shifted there to take over all the tasks indicated by the Seventh Finance Commission.

In view of what has been explained in the preceding paragraphs, we do not see any need to make the Finance Commission permanent.

In the earlier paragraphs, we have also elaborated our approach to the respective roles of the Finance Commission and the Planning Commission. Since we do not advocate any particular change in the relative functions of the two we do not envisage any significant modification in the role of the Planning Commission either, except emphasising the point of suitable measures to achieve a better Co-ordination between the functions and working of the two Commissions.

5.10 There is no denying the fact that there has been considerable rise in the volume of public expenditure undertaken by the Centre as well as the States. It is also true that the total quantum of resources transferred to the States through the Finance Commission and the Planning Commission have also been going up from year to year. It, however, does not follow automatically from the above stated position that the rising volume of total transfer of funds to the States has resulted in inefficiency or lack of economy in expenditure.

It is true that Finance Commissions have not laid down or applied specific norms to see whether the States are exercising proper economy in expenditure. That does not mean, however, that the Finance Commissions have been accepting whatever expenditure is shown by States in their forecasts of revenue and expenditure for the devolution period. The Commissions have been reassessing the forecast of the State by applying certain considerations, notable among which are suitable rates of growth by which individual items of revenue and expenditure may be expected to increase annually. In other wards, such a methodology provides for a measure of guaranteed against wasteful expenditure.

The Eighth Finance Commission has taken note of the criticism made against the Finance Commissions that the "gap filling" approach adopted by them encourages the loss well managed States to squander resources. It has met this point of criticism by saying that 'it is not as if the Finance Commissions accept the forecasts sent by the States at their face value'. We, like all previous Finance Commissions, have realistically re-assessed the forecasts and applied certain norms. Our approach has been objective both on the revenue and expenditure sides.

Periodical assessment by the Finance Commissions of expenditure of States on non-plan account by applying certain norms holds out a premise that the States would exercise desired care in ordering their expenditure. None the less, it may not be difficult to point out instances of avoidable waste in public expenditure. At the same time, it cannot be contended that such inefficient or wasteful expenditure has been the consequence of transfer of resources through the Finance Commission. One may like to take exception

to certain items of expenditure undertaken by the States, such as that on social services. This, again is a question of value judgment. The growing keenness of States to provide social services on increasing scale is in accordance with public policy accepted by them. Similarly, expenditure on emoluments of staff constitutes another areas where lack of ecomony may be hinted at. However, it should be realised that a predominant part of the States' expenditure on emoluments of staff consists of payment of dearness allowance at Centre rates. Here, it may be pointed out that rise in prices, which is the factor responsible for payment of increasing number of States of dearness allowance, is a matter which is beyond the Control of the States. Moreover, the Centre having shown the way by paying dearness allowance to their employees the States are hardly left with any scope of independent action in the matter, However. this inescapable expenditure incurred by the States cannot be attributed to transfer of resources to them through the Finance Commission.

The valume of expenditure has undoubtedly been growing. The correct perspective, however, would be to recognise that there has been substantial rise in prices during the last thirty years. The volume of public expenditure in real terms, therefore, would be much less than what it is money terms.

Last, but not the least, important factor is the Plan expenditure which also has been increasing from Plan to Plan. Not only development expenditure but also non-developmental expenditure has grown on account of planning, because it has necessitated growth of administrative and other services. The transfers through the Planning Commission to meet the Plan requirements have, therefore, been going up. The priorities of Plan projects having been fixed and the periodical reviews undertaken by the Planning Commission to assess the progress made in achieving the financial and physical targets set in different fields, it cannot be said that the sheer volume of plan transfers leads to inefficiency or lack of economy expenditure.

Fiscal equalisation has not been a pronounced objective of any Finance Commission. It is for the first time that the Eighth Finance Commission has said in explicit terms that it was too late in the day for any one to argue that backwardness should not be a factor in allocating resources between the States. On that promise, the Commission made an advance towards equitable distribution of resources but yet it could not correct the prevailing imbalances in one attempt. The declared goal of planning has been rapid economic development with balanced regionaal growth. But ver thiry years of planning has not succeeded in removal of regional economic inequalities. The phenomenon is well reflected in persistant disparity in public expenditure of States.

The Seventh Finance Commission computed variations in total (Plan and non-Plan) expenditure of States during the span of period between 1961-64 to 1974-77. To cite but a few example of some States, the per capita expenditure of Punjab rose from Rs. 104·58 to Rs. 275·91, that of Uttar Pradesh rose from Rs. 28.62 to Rs. 123·30, and of Bihar it rose from Rs. 27·51 to Rs. 92·75. Despite this rise in per capita expenditure during this period, it was found that the per capita expenditure of Bihar continued to be lowest in both the relevant years. The per capita expenditure of Uttar Pradesh was second lowest in 1961-64, whereas in 1974-77 it improved its position to become the third lowest, the other two being Madhya Pradesh and Bihar in that order. On the other hand, Punjab continued with highest per capita expenditure. In 1961-64, Maharashtra had the fifth highest per capita expenditure of Rs. 50·56 as against the highest per capita expenditure of Rs. 104·58. In 1974-77, Maharashtra not only moved up to occupy the second highest position in terms of per capita expenditure, but also the distance from the highest per capita expenditure (Rs. 275·91) of Punjab was considerably reduced in comparised to the distance obtaining in 1961-64. If we look at the ranking of States in terms of per capita expenditure during the period, we will find that while the position of some States has considerably improved, that of some others has either not improved at all or shown only nominal improvement. In our case, the position has stagnated with lowest per capita expenditure during the whole period.

If we take into account per capita expenditure of States on two important items like education and medical and public health over the last thirty years, we will find sufficient evidence of disparities in expenditure. The per capita expenditure on the aforesaid two items of certain States over the period is shown below :

(In Rupees)

State	Education 1951-52	Education 1980-81 (BE)	Medical and Public Health 1951-52	Medical and Public Health 1980-81 (BE)
Bihar	0.9	33.82	0.5	10.40
Orissa	0·9	41·72	0·5	22·67
U.P.	1·2	29·62	0·5	14·21
Punjab	1·5	71·90	0·7	29·81
Bombay (Now Maharashtra)	2·8	60·71	1·0	25·68
Gujarat	..	53·10	..	21·68
West Bengal	1·3	49·02	1·6	22·70

The table above distinctly reveals the wide disparities in per capita expenditure on the two selected items of public expenditute. That there has been no uniform pattern in the rise in per capita expenditure over the period 1951-52 to 1980-81 in respect of different States also goes to show that the disparities have adversely affected the backward States like Bihar.

Here it may be remembered that there has been considerable rise in prices during the last thirty years. Therefore, the per capita expenditure, if expressed in real terms, will be far less than in money terms. In other words, the improvement in per capita expenditure of States is more apparent than real. It is no wonder, therefore, that inspite of the planning process extending over a period exceeding thirty years, economic inequalities persist unabated and backward States, like Bihar continued to lag behind the more fortunate States in the matter of administrative, social and economic service to the people.

5.11 The present mechanism of transfer of resources consists mainly of two channels, the Finance Commission and Planning Commission. It is said that this duality leads the States to present their estimates and forcasts of revenues in two different ways to the two Commissions. The observation is not entirely without foundation. The reason for presenting different estimate to the two Commissions is that they apply different criteria and arrive at different results.

It has been the practice of the Finance Commissions to relate the quantum of grants-in-aid to the budgetary gaps of the States as the budgetary gaps are taken to reflect the needs of the States. The Planning Commission, on the other hand, assesses the need of the States with a view to identify surplus that can be made available from the non-plan side to be utilised on the plan side. Thus, there is a marked difference in the approaches of the two Commissions. This basic difference in their outlook also explains the possibility of the States presenting two different estimates of revenue and expenditure to the two Commissions.

In order to qualify for the whole Central Plan assistance, a State has to be mobilise its resources to the extent agreed upon in the plan discussions. For this purpose, as State is under compulsion to restrict its non-plan expenditure to the utmost in order to produce a revenue surplus of the order estimated by the Planning Commission. In this context, the revenue surplus as estimated by the Finance Commission is not taken into consideration. But When a State approaches the Centre for any non-plan requirement, its demand is examined by the Central in the light of the recommendations of the Finance Commission and the revenue surplus or revenue deficit assessed by it is taken into account.

This is not only disadvantageous to the States, but it also tends to encourage them to prepare and present two different estimates of revenue and expenditure to the Finance Commission and the Planning Commission. Since the Finance Commissions assess the needs of the States in terms of fiscal gaps, there may will be a tendency on the part of the States in sheer self interest to draw their forecasts in such a manner as to show a revenue deficit on non-plan account. The remedy will be in change of approach of the Finance Commission, so that the budgetary gaps alone are not deemed to truly reflect neads of the States. Instead, objective criteria to assess relative needs of the States in physical terms is likely to considerably reduce the possibility of exaggerated revenue-deficits.

We do not think that the transfer of resources and the manner in which it is effected has inherent propensities to cause financial indiscipline, the transfer of resources under the Finance Commission's recommendations or through the Planning Commission are made in accordance with set principles. Both the Commissions apply rigorous tests to assess the revenue and expenditure accounts of the States and to some extent, States which err on the side of extravagance or financial laxity suffer because they do not always get full credit or excessive expenditure incurred by them. The Planning Commission determines the Plan size of the State keeping in view the States efforts in raising additional resources and failure to achieve the set targets for resource mobilisation affects the plan size. Thus the States are chestened to exercise desirable restraint on extravagant expenditure.

The more fact of the size of transfer of resources can hardly lead to the consequence of financial indiscipline, firstly because most of the expenditure is incurred on earmarked purposes and, secondly, all public expenditure is subject to audit by the Comprtoller and Auditor General of India and also scrutiny by the Public Accounts Committee. The Plan expenditure is to be incurred in accordance with the plan allocations on schemes or projects approved as part of the State Plan. Both the financial and physical performance is constantly under watch of the Planning Commission. These safeguards tend to provide sufficient safeguard against financial indiscipline.

It is not suggested, however, that there is no instance of financial imprudence. All that is intended to point out is that instances of financial impropriety or wasteful expenditure, wherever they occur, are because of the failure of the authority spending public money to observe the rules of financial propriety and should be attributed to the mechanism of transfer of resources.

In the wake of programme of planned development, public expenditure has risen considerably. With the increase in the scale of expenditure of public funds, the changes of leakages or waste are likely to increase if adequate controls are not exercised. There may have been some instance of insufficient control exercised over public expenditure or ignoring or condoning lapses in financial discipline. But these, again, are failures on the part of authorities empowered to direct and control expenditure of public funds and the mechanism of transfer of resources cannot be said to have provided the impulse for such lapses.

What can be called populist measures depends upon the relative importance attached to the various programmes or activities undertaken by the Government. Some would give lowest priority to schemes of social welfare and would invest any programme undertaken in this connection as being populist in nature or unproductive. Every activity has a hard core of real content. If the programme is implemented in right earnest, social welfare schemes add to the enrichment of the lives of the large masses and create a wide measure of satisfaction. Such activities, therefore, should not be regarded wasteful or unproductive. The social benefit that they produce has undobuted value.

It is difficult to establish a definite linkage between adoption of what is called populist measure and the mechanism of transfer of resources. Neither the quantum nor the manner of transfer of resources seems to have a bearing on adoption of a populist measure. If a government is so obvious of its responsibilities towards the people that it loses its sense of priority, it can go about undertaking any measure irrespective of its usefulness or value vis-a-vis other pressing requirements. We have no such instance in view.

5.12 We are in agreement with the broad approach that the bulk of the resource transfer should be by way of devolution of tax shares and the role of grants-in-aid should, as far as possible, be supplementary.

In this connection, it would be relevant to recall that the fifth Finance Commission had expressed the view that the aim of a reasonable policy of transfer of resources should be to minimise the number of States receiving grants so that the State's need for additional resources should be met, as far as possible, by devolution of taxes rather than by grants. Similar views had also been expressed by earlier Finance Commissions too. Similarly, the Seventh Finance Commission reiterated this broad preposition.

In expressing our agreement with this approach, we have two main considerations in mind. Devolution by way of tax shares will always take place on the basis of equitable principles evolved by Finance Commissions and uniformly applied in the matter of distribution of respective share of the States. As such, it will mean assured devolution to the States on this account, also because tax shares will not be dependent upon the budgetary needs as assessed by the Finance Commissions, so that irrespective of whether there is a surplus or deficit in the forecast of resources, the States will get their legitimate share out of the divisible pool of taxes in accordance with the principles decided by the Finance Commission.

Secondly, if bulk of the resources transfer takes place by way of tax shares, it will offer an opportunity to the States to have the benefit of sharing the increasing bouyancy of taxes raised by the Centre and shares with the States. It will be of distinct advantage to a backward State, like ours, which stands in the dire need for additional resources for strengthening its finances to meet the ever increasing responsibilities to provide administrative, economic and social services to its people.

5.13 The principles mentioned above give primacy to bridging of fiscal gaps of States by Grants-in-aid, which would not have been exceptionable if, instead of normative approach followed in making assessment of such gaps by limiting it to budgetary gap alone, there had been an attempt to measure the financial needs of States on the basis of a methodical appraisal of physical standards of the levels of social, economic and administrative services, that could have resulted in exposing in sharp focus the States of economic and social backwardness of States, which really stand in need of assistance.

In fact, we are inclined to hold the view that there is nothing in Article 275 which limit its opration to filling up any gap. The provisions contained in this Article speak of States which may be determined to be in need of assistance, and there is no indication, explicit or implicit, in the said Article that the assistance should be extended only to fill up revenue gap. Therefore, what the Finance Commissions had been doing amounts to attaching restrictive meaning to the provisions of Article 275 in recommending grants to States having regard basically to their revenue gaps left after devolution of their share out of taxes and duties.

Therefore, we would urge that budgetary gap should not be deemed to reflect the needs of States to as to be covered by grants under Article 275. Instead, it would be in keeping with the spirit of the provisions of Article 275 to determine the States to be in need of assistance by measuring their fiscal needs, and distinct from budgetary gaps, based on an assessment of the relative standards of social, economic and administrtive services available in different States. As a consequence, the gap on revenue account of States, should cease to have overriding influence on determination of needs of States for being entitled to Grants-in-aid.

The second principle enunciated by the Seventh Finance Commission will, to some extent, narrow down inter-regional disparities in the level of administrative and other services. However, for this it would be necessary to adopt such a viewpoint in determining upgradation grants as would assure certain basic minimum standards of such services irrespective of State boundaries. It should, at the same time, be realised that equalisation grants alone would not succeed in serving the objective sought to be achieved by this principle. Equally important is to appreciate that the real purpose of devolution is not merely to extend to States a share on the principle of compensation for having joined the union, or, to fill up their revenue gap, but to lend an equilibrium to their precarious finances so that their resource base is strengthened to enable them to become financially capable of generating sufficient surplus for investment in order that the objective of equilisation of standards can be attained.

We subscribe to the principle that grants-in-aid should also be given to individual States to enable them to meet special burdens on their finances because of their peculiar circumstances or matter of national concern. In this connection, we would like to draw attention to certain consideration relevant to this problem. Problem of special nature would entitle States for grants-in-aid, for this purpose, expenditure incurred by a State like ours on floods and droughts, which have verily become a regular feature, should qualify for grants-in-aid. The existing policy and arrangements for financing of relief expenditure does not take full cognisance of this principle and Central assistance is given partly in the shape of grants and partly in the shape of loans. In deference to the third principle laid down by the Seventh Finance Commission, we would urge that the expenditure on floods and droughts cast a special burden on our finances because of peculiar circumstance in which this State is placed on account of recurring floods and droughts. Hence, this State should be deemed entitled to grants-in-aid on this score.

There is another matter to which we would like to draw attention in this connection. States should also be entitled to grants-in-aid to meet burdens cast on tham as a result of policies adopted by the Government of India. We have to incure heavy expenditure on account of payment of DA at Central rates to our employees. This is an unavoidable part of expenditure, caused largely by federal policy, and, the State has little scope for independent action in the matter. Therefore, the full bruden of expenditure on this account should be taken care of by

provision of grants-in-aid. This should be considered as a legitimate claim of the States in the spirit of the third principle laid down by the Seventh Finance Commission.

As we have urged earlier, the Finance Commissions should not interpret the provisions of Article 275 in a restrictive manner so as to narrow its scope to States' needs on revenue account only. We have welcomed to hold the view taken by the Seventh Finance Commission that it was open to it to recommed grant for capital expenditure also apart from grants for revenue expenditure under Article 275. The Commission rightly saw no restiction or bar in the operative part of the provision in the aforesaid Article against making grants for capital expenditure. Such a view was in keeping with the true spirit of Article 275, and, at the same time, grants extended for capital expenditure in accordance with the said view of the impart of the aforesaid Article would tend to help the achievement of the objective of removal of inter-regional disparities.

In our replies to several questions, we have repeatedly stressed the point that the less developed States have a legitimate right not only to catch up with more developed States in respect of social and administrative services and economic development, but also to be constantly in a position to go up along the ladder of economic progress. In keeping with the true nature of federalism, the Union Government has the obligation to enable the backward States to quicken their pace of progress so that eventually regional inequalities cease to exist. From this point of view, we consider that differential aid to poorer States is a wholesome principle and the Government of India would be fully justified in acting accordingly to ensure balanced growth by enabling the less developed States to reach the national level of progress and development.

As we have pointed out above, there is unmistakable evidence of overriding influence exercised by the gapfilling approach in the methodology used for determining the entitlement of States for grants-in-aid. The forecast of revenue and expenditure on non-plan account furnished by the States are re-assessed by the Finance Commissions in the light of certain broad considerations and on the basis of certain assumptions. The finance Commissions insistence on assuming certain rates of return from State Electricity Boards or State Transport Corporations is divorced from realistic considerations and the normative approach adopted in this respect makes the reassessment of States' forecasts unrealistic. While the legitimacy of expecting returns from such pulic enterprises cannot be seriously questioned, at the same time it is hardly justified to totally ignore the realities of socio-political milieu in which these enterprises have been working and the social responsibilities they are expected to discharge. Similarly, irrigation projects cannot be linked to a commercial venture yet they are expected to yield certain rates of returns on investments therein. Assumptions of this nature underservedly inflate the receipts of States in the devolution period so that corresponding reduction in their revenue gap is brought about in an artificial manner.

There is no doubt that the resources of the Central Government and the demands thereon have a bearing on the devolution of funds to the States. But, at the same time, it cannot be forgotten that compared to the States the Centre has at its command high-yielding, broad-based and elastic sources of revenue. Moreover, the Centre does not suffer from the same limitations in the matter of market borrowings as the States do. Above all, the Centre has the exclusive privilege of resorting to deficit financing (This is not to say that the Centre's power to resort to deficit financing has no limits.). Thus, the Centre is endowed with resources with great potential. Similar is not the case with the States, whose own resources are severely limited but their responsibilities are correspondingly great.

Hence, the Finnce Commissions should take a total view of the financial resources of the Centre and in making assessment of the revenue and needs of the Central Government, the same criteria should be applied as is done while assessing the resources of the States. Such an attempt was made, practically for the first time, by the Seventh Finance Commission and the Eighth Finance Commission has continued the practice.

The principles laid down by the Seventh Finance Commission have been endorsed by the Eighth Finance Commission, which has also made it clear that these principles are not intended to be either exhaustive or inflexible. How problems will require new approach and this is probably what the Constitution intended, for, a new Finance Commission has to consider the matter every fifth year. Even having said so, the Eighth Finance Commission has not brought to bear any new approach on the principles followed in dealing with the grants-in-aid question. Its methodology has been in accordance with the traditional lines.

It is in respect of upgradation of grants that this Commission has traversed some new grounds. Till now, the practice has been to allow grants for upgradation of administrative standards only in non-developmental sectors. The Eighth Finance Commission has, however, rightly chosen even developmental sectors, such as education and health, and besides has also allowed grant for training of administrative staff.

According to us, transfer of resources to States by way of tax shares should form a major part of devolution, leaving a residual role for grants-in-aid. However, we would add that it should not be ignored that grants have a constitutional sanction behind them. The constitutional provision made in Article 275 for grants-in-aid of the revenues of such States as Parliament by law determine to be in need of assistance should be viewed in its correct perspective.

It is an accepted preposition both in theory and practice of fiscal federalism that State Governments should be given grants for ensuring to their citizens an objectively determined level of essential public services. For this purpose, the Commission should first identify the essential public services and then proceed to determine the standard level to which such services should be raised. In this connection, we would urge that the standards in such services

prevailing in backward States should be raised to attain the level at least all States average standard of these services. The cost of making up the difference between the existing standards of these services in each State and the desired level to be achieved should be deemed to reflect the need of assistance required by the States and grants-in-aid should be extended to meet the requirement so assessed. The real purpose of grants-in-aid to States can then be better served than by following the present method of extending grants to States for covering their revenue gaps.

5.14 We have made a suggestion to the Eighth Finance Commission that the yield from the Special Bearer Bonds Scheme should be shared with the States. We have pointed out in this connection that the scheme is linked to income tax. In fact, the proceeds of the bearer bonds are primarily out of concealed incomes. Therefore, had the income tax authorities taken effective steps to discover concealed income in time and bring them under the net of income taxation, the amount of tax realised would have, in the normal course, entered the divisible pool of income tax, out of which the States would have received their due share. Hence, if the incomes were concealed and could not be brought under assessment in the relevant year, it was not because of the States that it happened so. Therefore, now that these conceled incomes have been subjected to the schemes, the proceeds should not be treated differently from the yield from the tax on incomes.

Historically, income tax was conceived as a balancing factor and it was believed that share in the proceeds of income tax would adequately balance the States' budgets. However, the importance of the income tax as a balancing factor has considerably diminished over the years, as reflected in the slower buoyancy of the total receipts of income tax on account of several factors, such as, reclassification of tax on income paid by companies in 1959, surcharge on income tax assuming a permanent character, a number of concessions in the structure of income tax including raising of exemption limit all of which cumulatively resulted in retardation of Central Government's efforts in adequately tapping the source of tax revenue.

The resultant decline in the significance of income tax as a balancing factor can also be measured in quantitative terms. While in 1952-53, income tax collections (including surcharge) was of the order of Rs. 143.2 crores as against corporation tax collections of Rs. 43.8 crores, in 1981-82, the income tax receipts amounted to Rs. 1475·5 crores as against corporation tax collections of Rs. 1970·0 crores. The corresponding figures according to budget estimates of 1983-84 were Rs. 1563·0 crores and Rs. 2339·0 crores respectively. The buoyancy registered by growth in the proceeds of income tax has far lagged behind that in the proceeds of corporation tax. On the other hand, the need to widen the base of tax sharing is self-evident and one obvious method by which it can be done is to ensure maximum possible collections by way of income tax. Since the proceeds from the scheme have, in essence, all the attributes of income tax, they should be made divisible. An idea of the extent to which the divisible pool will increase by such a step can be had from the foot that the first period of sale of these Bearer Bonds in 1981 alone resulted in the total subscription amounting to Rs. 395·60 crores.

For these reasons, we have considered it necessary to plead that the proceeds of the Bearer Bonds scheme should be shared with the States.

We have also suggested to the Eighth Finance Commission that the deposits under the Compulsory Deposit (Income Tax Payers) Scheme should also be included in the divisible pool. Under this scheme, a prescribed percentage of the current income has to be deposited for a period of five years. The net deposits, therefore, are available with the Central Government for the said period. It adds to the resources of the Centre in the same way as income tax.

If, however, it is held that it is not a tax but only a kind of saving, like any other scheme of saving, with the only difference that while other saving schemes are voluntary, saving under this scheme is enforced compulsorily, then, in the case too, the total net collections under this scheme can very well be treated at par with small saving collections, and at least a part thereof can be made over to the States. The amount so transferred to the States can be treated as loan in perpetuity as the Seventh Finance Commission had recommended in respect of loans to States out of net small savings collections.

The raising of administered prices by the Government of India affects the finances of the States in several Finance Commissions recommend grants for upgradation of administrative standards in certain sectors and the Eighth Finance Commission also allowed capital grants for undertaking certain building projects. But while making estimates of costs involved in construction of buildings, it assumed fixed costs for the devolution period. On the other hand, increase in administrated prices of iron and steel and coal resulted in inescapable increase in the cost of building materials. The result has been that despite best intentions and efforts, we have not been able to fulfil the physical targets with the given amount of grants. The Central Government has declined to meet the extra costs involved on this account. The only option left to us is to find additional funds to achieve the physical targets, which means unexpected strain on our finances. The alternative of giving up the building projects is limited because the buildings under Construction cannot be left half way and have to be completed. This is really an unenviable position.

For these considerations, we think that suitable modification in the policy relating to administered prices is called for. We are not in a position, for want of information, to say how much of increase in these prices are attributable to excise duties and what part is on account of covering losses being incurred by the undertakings of enterprises of the Central Government. These can be studied and the practice should be reviewed. We, on our part, believe that either the practice should be stopped and the desired objective may be suitable adjustments of usual excise levies on these projects or certain part to the proceeds from the increase in administered prices may be shared with the States according to some wholesome principles.

We are not aware of any other such claims made for sharing the non-tax revenues of the Centre.

5.15 Generally the saving of the community is reflected in the Bank Accounts. Savings also find access to life Insurance Corporation, General Insurance Corporation, Unit Trust Scheme, Debentures, Shares of both Private and Public Undertakings. Presently there does not exist any yardstick on which the resources mobilised by these institutions is shared between the State and the Centre, nor is there any definite criterion for its distribution between Public Undertakings and the Centre even. Presently the distribution of the deposits of the resources mobilised by the Commercial Banks is shared between the Banks and the States through the trend of Credit/Deposit ratio. Similarly the resources mobilised by other Public Undertakings like LIC/GIC etc. is shared between the depositor States and these institutions through a devise which is evolved by the Planning Commission/Ministry of Finance in course of appraisal of the States resources for executing Annual Plans. This is an indirect, rather an oblique way of sharing of the resources which is neither need-based, nor based on the quantum of deposit made by the individual States. Thus, the resources mobilised from the savings through the public Undertakings like Banks and other institutions is not passed on to the State on any set principle. The existing system, therefore, requires modifications in the interest of the State which contributes towards the mopping up of such resources.

5.16 The question seeks to highlight some of these phenomona of Central-State financial relations which eventually culminate in the fiscal imbalance of the States manifesting in their mounting indebtedness. They are : (i) growth of budgetary deficits of the States at a faster rate than that of the Centre, and (ii) because of the increasing deficit of the Centre, a declining trend in the percentage of its revenue receipts being transferred to the States inspite of there being a substantial increase in these transfers in absolute terms.

Growing budgetary deficits of States indicate the fiscal imbalance which has gripped them. Apart from other reasons, the basic cause of such a situation is the lack of correspondence between the resources and responsibilities of the States. The vertical fiscal imbalance in the Indian fiscal system explains the phenomenon of the unstable finances of the States. While the share of the States in the total revenues of the Centre and the States has been around 30 per cent, their share in the total revenue expenditure of the Centre and States has been above 50 per cent. This divergence denoted centralisation of revenue collection at the Centre and decentralisation of revenue expenditure amongst the States. This, in other words, shows the extent of vertical fiscal imbalance with which our federal fiscal system suffers. The increasing trend of budgetary deficits of the States in a logical consequence of the situation in which the States do not have sufficient resources at their command to meet their indispensible expenditure commitments.

Tax devolution has acquired a position of predominance in lending support to the finances of State Governments and the role of grants through the Finance Commission has become relatively unimportant as a source to help to the States. There has been significant increase, in absolute terms, in the total quantum of fiscal transfers to the States. Yet in relative terms, there has been a decline in the precentage of net devolution from the Centre to States to the aggregate receipt of the Central Government. In 1972-73, the net devolution of resources from the Centre to the States formed 33.6 per cent of the aggregate receipts of the Government of India. This percentage has come down to 27.1 per cent in 1982-83 (B.E.). Looked at from another angle, the net devolution of resources from the Centre to States as percentage of aggregate receipts of State Governments has also gone down from 27·2 in 1972-73 to 34·3 in 1982-83 (B.E.). This should mean that the support lent to State finances by devolution of resources from the Centre has diminished over the years.

Chronic disequilibrium in State finances only shows that the lack of correspondence between their resources and responsibilities has not been removed despite large transfer of funds to the States. It is true that fairly large amount of resources on revenue account are available to the States. It can also be said that they have sufficient freedom to further raise resources on revenue account. But the same cannot be said about the capital account of the States. Their freedom to borrow has been restricted to a certain extent in as much as the consent of the Centre is necessary precondition for borrowing by States in base of outstanding Central loans for repayment. Market borrowings play a comparatively modest role in the capital finance account of the States. Therefore, the States have to depend on the Union loans for financing their capital programmes.

Since the States are not able to meet even their normal revenue requirements by their own revenues, it is only inescapable that Central loans have come to play a significant role in financing capital expenditure of the States, which has led to increasing burden of Union loans on the States. Plan loans account for a great deal of indebtedness of the States to the Centre.

We would have the opportunity of offering our comments in detail on mounting indebtedness of the States in our reply to question number 5.17. We would only point out that the observations made by the A.R.C. Study Team on Centre-State Relations about excessive indebtedness of the States still held good.

5.17 We may begin with an attempt to see how far periodical review of the problems relating to growing indebtedness of the States by successive Finance Commissions has succeeded in tackling this problem. The provision for quinquenial review of Union-State financial relations, in all aspects, by a Finance Commission offers a unique opportunity to have a close look at all problems concerning the finances of the Union and the States, including the complexities of indebtedness of the States, in the light of change in circumstances, which might have taken place during the period intervening between the constitution of two Finance Commissions. From that point of view, a periodical review should

be useful for a proper understanding of the implications of developments in this field so as to evolve appropriate correctives to deal with anomalies in the indebtedness of States.

Periodical review by the Finance Commission has obvious utility in the sense that the nature and extent of the problems arising from States' indebtedness to the Centre can be brought out in sharp focus and the relative debt position of States can be studied in the light of changed circumstances and appropriate measures suggested to deal with the matter. Such review can however, be of only limited value of the opportunity is used by the Finance Commission merely to suggest short-term solutions of *ad hoc* nature so that the basic problem is left to perpetuate itself.

The observations of the A.R.C. Study Team about excessive indebtedness of the States still hold good despite the deliberations of past Finance Commissions and remedies suggested by them to deal with this problem. As the Eighth Finance Commission has estimated, the States' indebtedness has doubled in the last five years i.e. from Rs. 18,785 crores at the end of 1978-79, as estimated by the Seventh Finance Commission, to Rs. 37,406 crores at the end of 1983-84. This only goes to show that short-term measures of *ad hoc* nature have proved unequal to the task of tackling this issue on a long-term basis.

It is not unexpected that central loans have also doubled from Rs. 13,463 crores to Rs. 27,059 crores in the last five years. Thus, out of the total debt liability of the States amounting to Rs. 37406.03 crores, the loans from the Central Government constitute more than 72 per cent of the total debt burden of the States. In the case of Bihar, the Central loans constitute about 80 per cent of the total debt liability of the State. Looked at from another point of view, the Eighth Finance Commission has estimated that the Central loans to the States outstanding as at the end of 1983-84 constitute 38.11 per cent of S.D.P. (average for 1976-79). As against this, in the case of Bihar, outstanding Central loan constitute 53.72 per cent of S.D.P. of the State (average for 1976-79).

Thus, a predominant component of the total debt liability of the States is on account of indebtedness of the States to the Centre. The Central loans are advanced to the States both in the form of Plan and Non-Plan assistance intended for development and non-development purposes. An example of loan advanced for non-plan revenue expenditure is the one given to enable the States to clear off their overdrafts with the Reserve Bank of India. Plan loans are intended for development purposes. Then, there are loans provided for non-development programmes like financing of relief expenditure.

The dominant share in the States' indebtedness to the Centre is attributable to central loans for financing development projects and such loans have been accumulating year after year. As the Eighth Finance Commission has pointed out, "the phenomenal growth in the States' indebtedness testifies to the compulsions for financing a large part of the plan outlays through borrowings." As the States' revenue resources have not succeeded in keeping pace with their expanding requirements, they have to be dependent upon the Centre's transfers to meet their requirements. In such a situation, the States have no alternative but to finance their development outlays by borrowings. Their market borrowings being under the control of the Centre, there is a limit which they could raise public debt directly by resort to market borrowings. Hence the consequence that they have to be dependent upon Central loans for financing a large part of their plan expenditure.

We agree with the observations of the Eighth Finance Commission that there was 'nothing basically wrong in the growth of public debt with the expanding public functions, no Government, particularly in developing economy, can undertake large scale programmes of development without recourse to public borrowing.' We also appreciate the point that the relationship between the Union and the States is one of partnership, in which loans constitute an important mechanism for transfer of resources. Yet what causes deep concern to us is (i) the growing volume of States' indebtedness to the Centre, (ii) the mounting interest charges, and consequently, (iii) smaller funds left available for meeting developmental requirements.

Let alone the swelling volume of Union loans, a major cause of constant worry to us has been the increasing debt servicing liability. The total repayment liability (including interest) takes away a sizeable chunk of the total assistance received from the Centre, leaving reduced resource with the State. The actual position can be seen in the table below :—

(Rupees in crores)

	1979-80	1980-81	1981-82	1982-83	1983-84
1. Central Assistance	215·86	257·01	247·86	247·25	
2. Repayment of loans to the Centre . .	51·09	63·54	78·56	44·96	
3. Payment of Interest to the Centre . .	26·99	105·23	83·66	96·05	
1—(2+3)— .	137·53	148·24	85·64	56·24	

It would appear from the above table that the financial burden of Union loans in terms of annual financial transfer from the State budget to the Union budget has set in motion a disquieting trend of resources flowing out of the State to the Centre at a greater pace than the flow in the reverse direction. Consequently, the financial equilibrium of a backward State, like ours, has remained continuously upset owing to heavy repayment liability.

Most of the Union loans have been largely for creating assets. Hence, it is often urged that the States should be able to service their debts out of return from projects which are financed by these loans. It is easier said than done. The States are engaged in discharging the responsibility of providing a large

part of infrastructural facilities for social and economic development. It is needless to point out that investment in such projects is not income-yielding. Even those projects which can be expected to yield returns have long gestation periods and so they do not yield requisite income in time. These are some of the factors responsible for mounting debt obligations of the States.

There is another angle from which we can view the effect of Union loans on the States, particularly weak States like ours. Central assistance for State Plan is composed of 70 per cent loans and 30 per cent grant which means that a major portion of the debt of the States consists of Plan loans from the Centre. This arrangement, though a reasult of good deal of discussion, suffers from many deficiencies, which vitally affect the financial capacity of States generally and adversely impinges on the finances of weaker States in particular. To recount a few shortcomings in the pattern, firstly, it loses sight of the capacity of the borrower to repay. Secondly, it does not take into account the viability of the schemes for which the loans are utilised. Thirdly, it places unequal burden on the States unrelated to their capacity of repayment in as much as the scheme of central assistance tends to accord equal treatment to unequal States as regards the loans and grant components of the assistance. Fourthly, it ignores the fact that the bulk of the Plan outlay has been spent on roads, health, and education, water supply, and power generation and transmission which provide the infrastructure and do not yield corresponding returns to enable the States to discharge their repayment obligations.

The result of all this has been that backward States, like ours, unlike the developed States, have not been able to derive full benefits from the loan portion of the assistance received. As there has been larger outflow from the State budget to the Central budget on account of repayment of loan and interest thereon, the net inflow of Central assistance has shown a declining trend. It is natural, therefore, that we have not been able to make the requisite investment for achieving further economic development and instead have been forced to deploy the resources available on making the critical minimum effort for creation of take-off conditions. Moreover, a fixed ration of loan in the Central assistance for all States, irrespective of their development and financial strength, casts unequal burden on the weaker States and further worsens their position of over-all deficit. Thus, the pattern of Central assistance has failed to serve the end of reducing inter-State inequalities.

Therefore, we consider that one effective way to deal with the problem of States' indebtedness to the Centre would be to substantially reduce the loan component of Central Assistance for financing the State Plans. Fixation of Uniform percentage of loan component, even at a reduced level, for all States would not be capable of enabling weaker States to catch up with more developed States. Hence, we would suggest that a State having per capita income below all-States' average per capita income should be given Central assistance in the ratio of 70 per cent grant and 30 per cent loan and the reverse may be the case for the States whose per capita income was higher than the all-States' average per capita income. Such a pattern would achieve two objectives, namely, of reducing the burden of States' indebtedness and of producing substantial equalising effect by really adding to the resources of the weaker States which can be spent on development purposes.

Another significant part of Union loans consists of loan given to States to enable them to tide over the problem of overdrafts with the Reserve Bank of India. These loans cover a part of overdrafts. We would have adequate opportunity to explain our views on the causes of overdrafts and remedies to deal with the problem in our reply to question number 5.21. It should suffice here to point out that it would be far too sweeping a remark to say that unauthorised overdrafts are a sign of financial indiscipline on the part of State Governments. It is not always so. The A.R.C. Study Team on Centre-State Relationships has pointed out that tight resource position of the States has also made recourse to overdrafts unavoidable to some extent and, therefore, has morally inhibited the application of prescribed correctives by the Central Government or the Reserve Bank of India. Therefore, the Study Team felt that the real remedy lay in revamping the Centre-State Financial relationship on the lines suggested by it so as to allow the States more elbow room, which will not only enable but also compel them to exercise responsibility in matching expenditure to their resources.

We would be making our suggestions to deal with the problem of persistant overdrafts in our reply to question number 5.21. The package of measures suggested would go a long way towards remedying the situation so as to reduce the imperativeness of Union loans to tide over the difficulties created by overdrafts.

Several measures have been suggested by financial experts to deal with the problem of States' indebtedness to the Centre. Finance Commission have also made a number of suggestions to remedy the situation of growing indebtedness of the States. The problems, however, persists. It appears to us that the Eighth Finance Commission has rightly observed that 'so long as the liability for repayments to the third parties is fully provided for, the indebtedness of the States to the Union could contained to grow without any detrimental effect on the national economy.' Nevertheless, we are of the view that effective steps are needed to reduce, as far as possible, to burden of Union loans on the States.

As a short term measure, we would suggest debt adjustment by way of writing-off certain loans made for socially as well as financially unproductive purposes, such as those for drought relief and rehabilitation. Similarly loans given in the past by the Central Government for schemes of modernisation of police and police housing, clearance of overdrafts and such others should also be written off because they do not yield returns.

The Eight Finance Commission expressed the view that in general, it was not in favour of writing off of loans since a write off would reduce the pool of resources available with the Union for re-cycling. Yet, as a matter of fact, it did recommend writing off of loans on certain specific accounts, such as

loans for relief and rehabilitation of displaced persons and has made a recommendation regarding writting off of a part of repayments to be made to the Centre by certain States.

In fact, debt adjustment is a recognised measure adopted in many federations to provide relief to the constituent States. Even in India, a measure of the kind of debt adjustment was suggested by Sir Otto Niameyer as far back as in the year 1935 with a view to extending federal fiscal assistance to the then provinces. He said the following while making his suggestion :

> "Where financial assistance is to be given by a creditor to an existing debter, elementary commonsense suggests that the shortest and simplest method of adjustment is by reducing the claim of the creditor on the debtor".

Therefore, writing-off of unproductive loans should be considered an useful short-term measure to bring debtrelief to the States.

Another accepted short- term measure is rescheduling of the existing loans by extending the period of repayment. Such rescheduling has been recommended by the Seventh and Eighth Finance Commissions.

These short-term measures are necessary to deal with the immediate problem of providing relief to the States and reducing the immediate strain on their finances. The long-term objective, however, should be to determine afresh the period of repayment and rates of interest of different categories of loans having due regard to the relative debt burden of the States and the nature of purpose on which the loan funds are to be spent. Loans for similar purposes should not be given on varying terms. We are also in agreement with the view expressed by the Second Finance Commission that the Union and the States being partners in the big enterprise of national development there is no justification for charging the States more than the cost of borrowing. Therefore, while fixing the rates of interest, the Government of India should not deal with the States as if they were commercial bankers.

Keeping these considerations in mind, we would suggest that in future all Union loans should be classified broadly in the two categories : (i) Union loans for socially productive but financially non-productive schemes, and (ii) Union loans for financially productive schemes. The former may embrace non-plan schemes relating to health, education, welfare of depressed classes, rural roads and such others, on which the States are expected to meet expenditure normally out of their budget. Since there projects do not yield monetary return to the States but they have to be implemented in furtherance of social and economic objectives, large expenditure may have to be undertaken by the States. Therefore, there would be need for Union loans particularly when such schemes are undertaken at the instance of Government of India or as an imperative necessity following acceptance of some national policies in this regard. The Union loans for such purposes should be on long-term basis and the States whose per capita income fall below the all-States' average per capita income should not be called upon to pay any in rest on such loans.

The other category of Union loans, that is, those for financially productive schemes such as generation and supply of electricity, industrial undertakings like road transport corporations etc. may carry rates of interest equivalent to statutory of rate of return otherwise stipulated for each of such projects. The loans, however, should be treated as loans in perpetuity. This concept of perpetual loans has been accepted by the Seventh Finance Commission in the case of small savings loans to the States. The Eighth Finance Commission has observed that "while it is, no doubt, preferable that public debt is discharged through public savings, in the event of such savings being inadequate or required for achieving a better social or economic goal, there is no harm in discharging old debts by taking fresh loans." There is what is envisaged by the philosophy of perpetual loans. In practice too, the Government of India have been advancing loans to States to clear off their past loans. So, the idea of loans in perpetuity should not be looked at as something unprecedented or an anachronism. As a matter of fact, the Union loans extended for being utilised in financing the schemes of the kind mentioned there should be treated by the Government of India as a form of investment which will bring dividend in the form of economic and social development.

As regards small savings loans they should be treated as loans in perpetuity. As only the collection of withdrawals is divided between the Central and the States, the Government of India do not have to pay the share of the State out of their own resources. The Government of India had themselves conceded before the Seventh Finance Commission that small savings loans stood on a different footing from other Union loans. Hence, we do not see any point in not treating small savings loans as loans in perpetuity.

We hope that the measures suggested above should go a long way towards lessening the burden of Union loans on the States. It should also tend to make allocation of Union loans more efficient both economically and socially. Nevertheless, we are also not oblivious of the position that the suggestions will not prove as a final solution to all problems of indebtedness of the States to the Centre. The enduring solution will always lie in strengthening the resource base of the States by making available to them greater financial wherewithal for which it would be necessary to modify the methodology used for assessment of needs of the States. We have had occasions to elaborate our views in this regard in our replies to some of the preceding questions. Hence, we need not repeat them here.

5.18 The State Governments borrow from three sources; Reserve Bank of India, the public and the Central Government. Here we will confine ourselves to the borrowing from the public. i. e. market borrowings of the State Governments. Borrowings from the rest two source have come up for consideration in replies to other questions.

The freedom of the State Governments to borrow from the public is subject to limitations on two counts; firstly, the extent of authority drawn from the constitutional provisions, and secondly the capacity of the State Government concerned to bear

and absorb the burden of borrowings. According to clause (1) of Article 293 of the Constitution, the State Governments can borrow within the territory of India upon the security of the consolidated funds of the respective States subject to such limits as the legislature of the concerned State may impose. The States are also empowered to stand guarentee to loans raised by their subordinate authorities or authorities created by the State legislatures and such guarantee will be subject to legislative control. Thus, the Constitution limits the powers of the State Governments to borrow within the country from the general public, Reserve Bank of India and the Central Government. The State have been debarred from contracting loans from outside the Country.

Clause (3) of the Article 293, imposes another restriction on the powers of the State Governments to borrow. It makes the consent of the Central Government necessary to all borrowings by a State Government if the State has outstanding loans for repayment to the Centre. Such consent may be given on specified conditions as considered appropriate by the Central Government.

Thus, it would appear that the constitutional limitations imposed on the powers of the State Governments in the matter of borrowings comprise of (i) restrictions imposed by the State legislature (ii) the requirement of consent of the Central Govt., on such conditions as it might deem fit to prescribe, to borrowings by the State Government if there be any outstanding loans for repayment to the Centre or any other outstanding loan for which the Central Government had given a guarantee, and (iii) borrowings will be confined within the territory of India.

These constitutional restrictions on the freedom of the State Governments to resort to borrowing are reasonable and we see no ground to take objection to them. The executive authority of the State Governments is subject to control by the State legislatures and so, if the powers of the States to borrow has been made subject to limitations imposed by the State legislatures, it has rightly been done so.

To a limited extend, the freedom of the States to borrow has been curtailed in the sense that the consent of the Central Government has been made a necessary precondition for borrowing in case there be outstanding central loans for repayment or such other outstanding loans which had been contracted on the basis of guarantee of the Central Government. As the Government of India manages the national economy and its fiscal and monetary policies have all-pervading effects on all economic activities in the country, it is only fair that it should oversee the borrowing operations undertaken by the 'States in the interest of avoiding adverse monentary and fiscal effects arising from uncontrolled borrowing powers of the States.

Since external affairs are the responsibilty of the Central Government, it is only logical that the borrowings powers of the State Governments are limited to internal borrowings only. No State can reasonably aspire to transgress its local limits and take any step towards developing any relationship with any foreign power or authority. Hence, they have been rightly debarred from entering foreign markets and contracting foreign loans. Attempts in the past by some States to first negotiate foreign loans and then approach the Government of India to accord approval to such external borrowings practically amounted to extra-territorial activities. Resort to such extra-constitutional methods has been rightly disliked by the Centre and has correctly evoked criticism by the Planning Commission, leading them to warm the States against recourse to negotiating foreign loans in this manner.

Exception cannot justifiably be taken to curbs on the powers of the State Governments as regards borrowing abroad. Experience in Australia before 1929 presents an example how uncoordinated borrowings by the States in foreign markets created political and economic problems for the Australian Government so that the Financial Agreement of 1929 had to take care of this matter. The framers of our Constitution, therefore, rightly foresaw the evil consequences of allowing freedom to the States to borrow abroad and so it was proper on their part to deny the States the right to borrow from foreign countries.

It would thus appear that the constitutional restrictions on the freedom of the State Governments to borrow are based on unexceptionable grounds and are, therefore, basically sound.

Since most of the States are indebted to the Central Government, they are not in a position to borrow without the previous approval of the Centre. This position has remained so practically right from the beginning of the Constitution. As the Reserve Bank of India is the Keeper of the funds of both the Central and State Government and is also responsible, on behalf of the Government of India, for the monetary policy and the public debt policy, it has been functioning as the coordinating agency in the matter of market borrowing policies of the State Governments. Accordingly, it floats the market loans of the States keeping in view general economic conditions prevailing in the country.

Market borrowings are also allocated between the different States by the Reserve Bank of India in consultation with the Planning Commission and the Ministry of Finance. As such, a well-coordinated borrowing policy has evolved. The mechanism operating the market borrowing policy and programme take note of the constitutional provisions and in its working has stood the test of time.

Now, we take up the question of the States' capacity to borrow and the restrictions, if any. The capacity of a State to resort to market borrowings would be dependent upon the extent of the loans raised. In their anxiety to find funds for financing their plans, the State Governments tend to clamour for more market borrowings regardless of their ability to assume the burden caused by increased repayment commitments. It need not be forgotton that the market loans have to be repaid with interest, Further, it is because of unified borrowing policy followed by the Reserve Bank of India that the rates of interest

payable on these market loans are kept at as low level as nearly one third of the ruling market rate of interest. Had the States the opportunity to float loans on their own perhaps the rate of interest payable according to prevailing market rates would have acted as a damper on the desire of many of them to go in for an ambitious market borrowing progamme.

There is another factor which affects the States' own capacity to raise public loans. Generally speaking, the securities of the States are less attractive and do not have the same appeal to the investing public as those of the Central Government. It is common knowledge that the State Governments' market loans are not so much subscribed by private individuals or financial institutions, but are practically made to be subscribed by nationalised banks, L. I. C. and other financial institutions and this is made possible by a statutory requirement for their investment policy.

There is yet another factor which, to certain extent, is likely to act as a restriction on the capacity of at least some of the States to raise public loans. All the States do not have equal access to capital markets. In fact, even leading business centres or headquarters of nationalised banks or financial institutions are not evenly dispersed. This factor presents a practical difficulty in the way of many States and were they to float large-size market loans on their own, disappointment alone would have been in store for them.

One good aspect of the unified policy of market borrowings being followed in our country is that it takes care of many of the inharent weaknesses in the capacity of the States to raise public loans. The arrangements devised have succeeded in keeping the cost of borrowing cheap for the State Governments. Uncoordinated borrowing programmes of various State Governments would have resulted in unnecessary competition amongst them in the capital markets. Above all, in the absence of effective coordination of the borrowing programmes of different States, there was little guarantee against the possibility that uncoordinated borrowings by the States might create difficulties for the working of the monetary policies being followed in response to the needs of conditions prevailing in the national economy.

In view of the foregoing analysis, it cannot be said that the freedom and the capacity of the States have been restricted in any manner which runs counter to the constitutional provisions in this respect or the requirements of the broad monetary and fiscal policies. It may be added here that giving unrestricted authority to the States to compete in the capital markets for open market borrowings would inevitably mean that richer States, which can pay higher rates of interest, would gain at the cost of poorer States, because it is they who would attract the funds and not the weak States, which cannot afford to pay higher interests than what they are now paying on account of unified borrowing policy. The result will be that a poor State, like Bihar, will have to borrow at higher cost which will further impair its already weak financial position.

Therefore, we do not advocate uncontrolled borrowing powers for the States. Our anxiety lies elsewhere. It is with regard to allocation of market borrowings amongst different States. In percentage terms, we have never been favoured with more than 7.05 per cent of total market borrowings during the period 1969-70 to 1978-79. A look at the general pattern of allocation of market borrowings will also show that there is no pre-determined objective or set criteria for such allocation. At least we are not aware of any such concrete criteria on the basis of which allocations are being made.

We would also like to look at the matter from another standpoint. The specially classed States like, Kashmir, Manipur, Sikkim and Himachal Pradesh are being allowed more market borrowings in per capita terms than a State like Bihar. Those States get plan assistance as outright grant, whereas Bihar gets plan assistant partly as loan and partly as grant. It is a cardinal principle that a State which is in a position to repay the loan and bear the burden of interest payments should qualify for higher market borrowings. If an exception is made for the specially classed States and they are allowed higher market borrowings even if it cannot be said that they are in a better position to bear the debt burden, on the same grounds Bihar too deserves higher market borrowings.

Hence, we would only suggest that allocation of market borrowings should be made more rational and for this purpose a well-considered set of criteria should be evolved.

5.19 The Centre charges higher rate of interest than what is pays to foreign lender. For example, in the Development and Credit Agreement (Bihar Rural Roads Projects) between India and International Development Association (Credit No. 10721. N.). The Credit envisages the borrower to pay a service charge @ three-fourth of one per cent (3/4 of 1%) per annum on the Principal Amount of the Credit withdrawn and outstanding from time to time. This service charge is payable semi-annually on Feb. 15 and August 15 in each year. If India, therefore, pays less than 1% as interest on the borrowed money and that also semi-annually, Govt. of India on the other hand releases the Central assistance for externally aided projects on the basis of 7 : 3 as loan and grant respectively.

The expenditure incurred by the State in execution of the programme forms the basis of reimbursement claim. Central Govt. gets loan from the leading institutions by preferring such claims. Amounts so received, by the Central Govt. get transferred to States as Central assistance on externally aided projects. Such assistance is in the proportion of 70 percent as loan and 30 per cent as grant.

Govt. of India realises 10% interest on the loan granted to the States. This, therefore, clearly indicates that the quantum of interest which Govt. of India realises from the States on the amount of external assistance received by them to finance such projects is many times more than what it pay to the lender country. This does not appear sound from the view of the State's resources.

5.20 The question would seem to suggest that Loans Council, set up on the pattern of Australian Loans Council, will take over from the Reserve Bank of India the functions relating to coordination of

market borrowings of the Centre and the States and will fix their borrowing limits. The council will perform this task in accordance with and on the basis of principles approved in this behalf by the National Development Council. To that extent, it is expected to be a better alternative to the Reserve Bank of India.

It will be relevant here to examine the grounds usually advanced in support of the plea for establishing of such a Loans Council. Broadly speaking, the case for a Loans Council is made out on three counts. Firstly, it is urged that under the existing position, the States have practically no say in determination of the total volume of loans raised and shares therefrom allotted to the Centre and amongst the States *inter se*. Secondly, a look at the pattern of allocation of loans to the Centre and the States indicates that there is absence of a set criteria or agreed principles for the division of the loan proceeds, which, in effect, reflects dependence of the States on the Centre. Thirdly, since the Centre has a dominant say in the allocation of loans to the States, there is a distinct possibility of the play of political considerations in loan allocation amongst the States, particularly in the context of changing political complexion of a number of States.

A Loans Council is favoured in the hope that it would be an effective way of dealing with the situation, because it can function independently in the matter of both loan-raising and loan-allocations. We can pause here for a while and dwell upon the factors that will really determine independence of the Loans Council.

Undoubtedly, the Council will be composed of the representatives of both the Centre and the States and, may be, of the Planning Commission. Whether established by or under any law or by an executive order, as in the case of Planning Commission, the Council will have to be appointed by the Central Government. If the States do not lend themselves to a reasonable measure of trust and confidence in the Centres' sense of fairness, the question of selection of members itself would come as a source of discord in Centre-State relationship.

Let us look at the matter from another standpoint. Since the number of States is large, the size of the Council will be unduly inflated if all States are represented on it, so that it can be reasonably foreseen that a limited number of seats on the Council would be available to the States. Naturally, therefore, the States' representatives would have to be selected or elected by the States as the case may be. In any event, the number of representatives of the States in the Council would far exceed the number of the representatives of the Centre including those of the Planning Commission. The inevitable consequence will be that on vital issues there is all the possibility of a constant stalemate if the States take to outvote the Centre. In practice, therefore, the Council does not seem to hold a promise for smooth working.

While independence of the Council is desirable. no less important is the assurance that it functions smoothly in discharging its function of deciding loan allocations between the Centre and the States and amongst the States *inter se*. Considering the fact that all States the backward States more than others-stand in need for development, it is highly unlikely that the Council can arrive at unanimous decisions. The position is apt to be more confused if the States' representatives carry, as in all probability they may, the imprint of the political hue of their State Governments. So, the allocations to the States may, in the ultimate analysis, be a matter of bargaining rather than based on objective considerations.

Needless to emphasise the apparent point that independence of the Council will be practically valueless unless the Council is able to approach the issues involved in deciding upon loans allocations dispassionately. Considering the composition of the Council and in-build propensity towards making unanimous decisions difficult, if not impossible, it seems doubtful that the Council will be really that independent as it is made out to be.

Now, we can examine the point relating to dependence of the States, under the existing position, on the Centre as far as their borrowings are concerned. Constitutional restrictions on the freedom of the State Governments to resort to borrowings are there and they cannot be transgressed. The consent of the Central Government is imperative, on such conditions as it may like to prescribe, to borrowings by a State Government if there be any outstanding loans for repayment to the Centre or any other outstanding loan for which the Central Government had given a guarantee. Therefore, since the States are heavily indebted to the Centre, they have lost their independence in the matter of raising loans largely on account of this factor. It is difficult to imagine how the Loans Council would succeed in retrieving the States from this position. In this connection, it is relevant to point out that the Australian precedent is held out in support of the suggestion for setting up a Loans Council. But then, the fact has to be remembered that even in Australia where all public borrowings of the Commonwealth and the States are centralised in the Council, the Commonwealth Government does extend loans to the States, and these loans fall outside the purview of the Loans Council. One reason why this happens is that the Council cannot always provide sufficient loan funds to the States. The position may not be different in India. The proposed Loans Council may not always succeed in satisfying the needs of the States for loan funds. And where the expenditure commitments of the States will so require, the States will have to approach the Centre and in turn, the Centre will have to come to the help of the States in this field. This possibility cannot be ruled out. And so, the burden of loans on the States or their dependence on the Centre cannot possibly be wholly taken care of merely by a Loans Council.

Now, let us take up the usual complaint that loan allocations between the Centre and the States an amongst the States *inter se*. are hardly determined on set criteria or agreed principles. It is, therefore, suggested that the Loans Council would decide the limits of borrowings of the Centre and the States on the basis of principles to be approved by the National Development Council. At present, the Reserve Bank of India, as the keeper of the funds

of both the Central and State Governments as well as being responsible on behalf of the Government of India for monetary and public debt policies, acts as the coordinating agency in the matter of borrowing policy. Thus, the market borrowings are allocated amongst the States by the Reserve Bank in consultation with the Planning Commission and the Government of India, Ministry of Finance. The pattern of financing of the Plan, including the State Plans, under the auspices of the Planning Commission, the monetary and public debt policies followed by the Reserve Bank, and the fiscal policy of the Central Government should, of necessity, together serve the common end of regulating the national economy in the best interests of the country. Therefore, a co-ordination between the Loans Council and the Planning Commission and the Ministry of Finance would be an imperative necessity. If, for any reason, the Council fails in establishing rapport with these, then an embrassing situation will develop both for the Council as well as the States, whose hopes from the Council will be greatly belied.

Therefore, to us it appears that what is of real significance is not whether there is a Loans Council to act as an authority to decide loan allocations or the resposibility is discharged by the Reserve Bank of India as at present, but the principles and criteria followed in deciding loan allocations. The question envisages that the Loans Council will decide loan allocations on the basis of the principles to be approved by the National Development Council. The States are well represented on the NDC which can, even in the existing situation tackle the problem of absence of set criteria to govern loan allocations, the Reserve Bank being left to coordinate borrowing programme in accordance with the principles so prescribed.

For the reasons explained in the foregoing paragraphs, we do not think that establishment of a Loans Council will be a 'preferable course to adopt. Instead we would advocate that rational principles should be evolved to determine loan allocations by the Reserve Bank of India, and these principles should be laid down by the National Development Council and no departure from then should be permitted except with the approval of the NDC.

5.21 There is no denying the fact that persistent over-drafts, at times of large size, are a matter of serious concern. At the same time, it is also true that the problem is neither a new one nor such as has not attracted attention in the past. If, however, the problem continues and has grown in proportion, it is precisely so because the remedies applied so far have not proved equal to the task of removing the causes and factors that contribute to the continuance of the problem.

Until the year 1950, when the first instance of overdraft of an appreciable size occurred, the States were able to manage their financial transactions within the prescribed limits of ways and means advances. The problem of overdrafts of increasing magnitude came to be felt more seriously after the end of the third plan period. Hence the Fifth Finance Commission was called upon to recommend procedure to be observed for avoiding unauthorised overdrafts of the States with the Reserve Bank of India. The Commission examined the matter at length and made a set of recommendations.

It would not be out of place to recount in brief the reasons given before the Fifth Finance Commission by the States for recurring instances of unauthorised overdrafts and see how some or other of the reasons still contribute to this persistent phenomenon. Broadly speaking, the States had pointed out that relatively more chronic imbalances between their resources and functions, inadequate devolution and the absence of suitable mechanism to deal with unforeseen difficulties accounted for the growing tendency of overdrafts of increasing magnitude.

While examining, the States' complaint regarding imbalance between their resources and functions, the Commission explained how transfer of resources are made to the States and observed that once the decisions are taken on the devolution recommended by the Finance Commission and about Central assistance for plans, the States had the duty to manage their affairs within the resources thus available to them. The Commission, at the same time, recognised that the States may have difficulties in matching expenditure with available resources due to circumstances beyond their control, such as natural calamities or such other new developments necessitating substantial additional expenditure. In such eventualities the Commission exhorted the States to make serious efforts to raise further resources to meet such unforeseen developments or to reduce expenditure instead of running into unauthorised overdrafts. If, however, such efforts did not enable the States to tide over the difficulties of this nature, they should approach the Centre for temporary assistance and the Centre should consider such requests and provide short term loans on suitable terms. But then, the States should endeavour to take measures to balance their budget for the succeeding year so as to avoid recurrence of overdrafts.

The Commission also recognised that substantial non-plan capital deficits experienced by the States have been largely responsible for unauthorised overdrafts in many cases. It, however, expected the States to carefully consider how to guard against occurrence of such deficits and, if even then such deficits continued, the Commission hoped that the Centre should assess the needs of the State in such cases and consider deferring repayment of Central loans falling due during the year to the desired extent. It also recommended that the Central Government should consider suitable modification of the procedure for consolidation of loans to States in order that repayments may be in instalments corresponding with releases of funds by the Centre.

The Commission noted, that, according to the States, apart from mounting burden of Union loans to the States, increasing financial requirements to meet plan expenditure, delay in releases of financial assistance by the Centre, inadequacy of the limits of ways and means advances were some of the other causes of persistent unauthorised over-drafts.

The Fifth Finance Commission had been specifically asked to consider this problem and suggest remedies presumably because it was for the first time that the problem had raised its ugly head conspicuously at the

end of the third plan period so as to attract pointed attention to the evil effects which unauthorised overdrafts were likely to produce. None of the succeeding Finance Commissions has been asked to examine in particular the causes of persistent unauthorised overdrafts and suggest measures to deal with this problem. This, in one sense, may appear to be indicative of acceptance of unauthorised overdrafts as perpetual feature of State finances. All that these Finance Commissions, including the Eighth Finance Commission, were required to do was to make an assessment of the non-plan capital gap of the States and, in this connection, also to undertake a general review of the States' debt position with particular reference to Central loans advanced to them and suggest appropriate measures to deal with them. This did not induce the sixth and seventh Finance Commissions to analyse at length the causes of unauthorised overdrafts.

The Study Team on Financial Administration of the Administrative Refomrs Commission (1967) went into the causes of unautho ised overdrafts and the Study Team thought that overdrafts continuing over long period must be principally attributed to persistant imbalance between resources and outlays of the States.

The Study Team on Centre-State relationships of the Administrative Reforms Commission has stated that a persistent overdrafts (with no extraordinary circumstances such as a continuing drought to justify it) shows the States inability or unwillingness, to balance expenditure against receipts. Where overdraft obviously resulted from lack of willingness on the part of a State to match its expenditure against receipts, the Study Team believed that the scope of invoking legally available measures, i.e. stoppage of payments on behalf of the defaulting St te by the Reserve Bank of India and, in the last resort, the declaration of a financial emergency by the President was subject to severe limitations, because stoppage of payment involved serious administrative problems and declaration of financial emergency was fraught with grave political repercussions. Moreover, the Study Team also thought, the tight resource position of the State has also made recourse to overdrafts unavoidable to some extent and has normally inhibited the application of these correctives. The Study Team, therefore, felt that the re l remedy lay in revamping the Centre-State financial relations along the lines suggested by it so as to allow the States more elbow room, which will not only enable but also compel them to exercise responsibility in matching their expenditure to their resources.

It has thus been realised all through that the imbalance between the resources available to the States and their expenditure commitments on account of ever increasing functions and responsibilities enjoined on them lies at the root of the problem of recurrence of unauthorised overdrafts. Therefore, if the problem has to be effectively tackled, there is the imperative necessity of so restructuring the Centre-State financial relations as to achieve a better correspondence between the resources of the States and their functions and responsibilities. The object can be achieved in several ways; one of the significant methods being to widen the base of statutory resource transfers by (i) including larger number of items of taxes in the scheme of devolution, (ii) fixing the States' share of the divisible taxes at a sufficiently high level, and (iii) bringing about a fuller exploitation of assigned taxes mentioned in Article 269 of the Constitution. We earnestly believe that unless the resource position of the States is strengthened, it will be really difficult to successfully combat this problem of persistent unauthorised overdrafts.

Hence we would address ourselves to answering the points of usual criticism alleging neglect of resources mobilisation efforts by the States and recourse by them to uneconomic or infructuous or wasteful expenditure. We have the testimony of the Seventh Finance Commission to show that in the matter of additional resource mobilisation, the States as a whole have not lagged behind the Central Government and the performance of the States has been on the whole creditable. The percentage of the tax revenue of the States to the total of the tax revenues of the Centre and the States has remained around 31 to 33 per cent between 1968-69 to 1978-79 barring one year, i.e. 1972-73. In our own case we have exceeded the targets of additional resource mobilisation during the current plan period.

Looking at the question of exploitation of avenues of raising resources, it will be seen that the total tax and non-tax revenue raised by the Centre in the total revenue (tax and non-tax) of the Centre and the States amounts to nearly 70 per cent. As against this, the share of the States in the total revenue expenditure of the Centre and the States has generally varied between 51 to 55 per cent. In other words, the share of the States in revenue expenditure is much higher than their share in revenue collections. This divergence between the two shares is also indicative of the distance between the revenues of the States and their expenditure. No doubt, this distance is sought to be covered by Central devolution in the shape of tax shares and grants. Yet, this has not left the States in any appreciably better position, because they have not as yet been able to so build up their financial wherewithal so to meet even their non-plan expenditure out of thier own revenues. In such a situation, the chronic imbalance between their resources and expenditure commitments persists, and so, despite their best efforts to build up their own finances, they are forced to run into overdrafts beyond the prescribed limits. Hence, an enduring solution of the problem has to be sought through steps to strengthen the resource position of the States.

Now, let us examine the expenditure of the States. According to the usual classification followed, the expenditure incurred by the States falls into two parts, some items of expenditure being treated as "developmental", while some others are treated "non-developmental". There is yet another way to classify the expenditure into "plan expenditure" and "non-plan expenditure". While plan expenditure may be wholly taken as developmental in nature, all non-plan expenditure may not be non-developmental, because some part of non-plan expenditure may be on schemes of development not forming part of the State Plan and yet having development component in them. Even though implementation of plan schemes has brought in its wake heavy expenditure by the States, yet because plan schemes and State plan outlay are finalised after clearance from the Planning Commission and the achievement of financial and physical targets set are subjected to regular review by the Planning Commission, it is difficult to contend that some infractuous or unproductive or uneconomic expenditure on this

account has been incurred by the States. All the same, plan expenditure has significantly increased the expenditure of the States.

However, non-plan expenditure is not spared the criticism that States are prone to undertaking some expenditure of doubtful value resulting in waste. Expenditure on social welfare is held out as an illustration of unnecessary expenditure mainly of populist nature and not strictly on economic reasons which has the effect of depleting States' resources. It should be remembered here that economic growth with social justice is the accepted goal of all-round development of the country. Expenditure on social welfare programmes is directed to serve that end. To regard such expenditure as wasteful is a question of value judgement. According to one opinion, improvement in the quality of life, particularly of the relatively backward sections of society, has a definite-development potential and so cannot justifiably be neglected. We subscribe to the view that providing social and economic services to the people is of utmost importance because it makes a definite contribution towards improvement in the living standards of the people. So, the expenditure on social welfare cannot altogether be classed as wasteful or undesirable.

Then, there are two other items of expenditure which have made increasing demands on the States' resources. One is the expenditure incurred by the States on the emoluments of their employees. There has to be periodical revision of pay scales and every time a revision takes place, it results into increase and expenditure on this account. Payment of D.A. at Central rates has further raised the expenditure commitments of the States. The Central Government having set the pace, the States have little freedom of action in the matter and can hardly resist the pressure of their employees to fall in line with the scheme of D.A. of Central rates. This has led to substantial additional expenditure to be borne by the States from year to year. Our experience has shown that the expenditure on this account tends to exceed the estimates because, as the year progresses, more and more instalments of D.A. fall due for payment on account of price rise during the period. This factor has resulted into considerable increase of expenditure of the State putting excessive strain on its finances.

The other item of expenditure to which we will refer here relates to expenditure on relief in the event of natural calamities like floods and droughts. As far as this State is concerned, floods and droughts have become a chronic feature and hardly a year passes when floods do not inundate a large part of the State droughts do not affect large areas, at times both bringing untold miseries simultaneously in different regions of the State. In such a situation, the State Government is called upon to shoulder heavy expenditure on relief operations. Now, this is an extraordinary circumstances which the Study Team on Centre-State relationships of the Administrative Reforms Commission considered as a possible justification for persistent overdrafts. Moreover, during the period of visitation of floods and droughts the incomings of the State Government are severely impaired and the outgoings increase considerably. Since it has become a regular feature every year, it has placed the State finances under constant stress and strain.

The foregoing narrative has dwelt upon two significant causes of persistent overdrafts which, in our view are fundamentally accountable for the problem. First is the chronic imbalance between the resources and responsibilities of the States, which lies at the root of the problem. Inspite of increasing quantum of resources transferred to the States, the imbalance has tended to continue largely uninfluenced in its extent, so that the State finances have not been free from fundamental disequilibrium as a result of increasing expenditure commitments as against inadequacy of resources to meet those commitments. This highlights the second cause responsible for persistent overdrafts, i.e. the burden of increasing expenditure on the States. While accusations of extravagance in ordering expenditure levelled against the States may serve the limited purpose of keeping the erring States on guard against avoiding wasteful expenditure, it should not be foregotton that overwhelming part of their expenditure is inescapable and, howsoever sincere attempts they may try to make, the States may not succeed in reducing to any appreciable extent their expenditure commitments which have devolved on them. For instance, as shown earlier, there is not much scope of substantial economy in expenditure on account of revision of emoluments and payment of D.A. at Central rates to the State Government employees, or on relief where extensive damages by natural calamities have become a regular feature, or on programmes of social welfare.

Needless to add here that the introduction of planning has been the greatest single factor responsible for the increase in expenditure of the States. This is not to suggest that planning has brought no benefits to the people, or that it has served no useful purpose. Yet, it cannot be forgotton that the plans have meant rising expenditure from plan to plan.

Phenomenal increase in expenditure of the States due to plans has created a number of difficulties for them. The emphasis on planning leads to greater emphasis on capital budget and the resultant indebtedness of the States, both to the public and the Central Government (more to the latter), has meant heavy burden on the States on account of repayment of loans and servicing charges. Since substantial portion of Central assistance for the plans consists of loans, the burden goes mounting up from year to year. Interest liabilities have, therefore, added to increase in non-developmental expenditure of the States.

This brings us to one important aspect of non-plan expenditure of the States. Once a plan period is over, the maintenance of schemes taken up during the plan period becomes what is known as the "committed liability" of the States and is borne on their non-plan accounts. Expenditure on committed liability largely consists of establishment charges. On this count, heavy burden has resulted on the State budgets on completion of each of the plans. This is one important factor responsible for substantial additional expenditure undertaken by the States after each plan period is over and has meant considerable strain on their finances.

Thus, heavy plan expenditure with the method of Plan financing and resultant committed liability falling on the States together serve as the third notable cause of ways and means difficulties of the States forcing them to run into recurring overdrafts.

Forthly, we are inclined to the view that the inadequacy of the limits of ways and means advance results in a failure to act as a cushion for fiscal imbalances, so that the States are compelled to take resources to unauthorised overdrafts beyond the prescribed limits. True, the ways and means advances are intended to meet the day to day requirements of States. Nonetheless, it would be unrealistic to ignore the fact of chronic imbalance experienced by the States, practically on a continuing basis, in their receipts and expenditure. The point is demonstrably borne out by the frequency of recurrence of such overdrafts by States over a number of years in the recent past. The Fifth Finance Commission had aptly recommended that having regard to the likely rapid developments in the fiscal situation, periodical reviews of the limits of ways and means advance should be made. It was only recently, that is in the year 1981-82, when after a lapse of considerable time the limits of ways and means advance were doubled. We feel that every time a Finance Commission is set up, it would be called upon to consider the question of overdrafts by States and recommend suitable measures to deal with the problem, because overdrafts exceeding the prescribed limits is a sure manifestation of disequilibrium in States finances and a Finance Commission is entitled to review this aspect of financial transactions of States.

It is our view, therefore, that having regard to the chronic disparities between the receipts and expenditure of States, the limits, so refixed, do not realistically reflect the need for sufficient elbow room to be made available to the States to enable them to operate within the prescribed limits. Hence, further revision of the limits of ways and means advances seems called for.

Having elaborated major causes contributing to the emergence of persistent situation forcing the States to take frequent recourse to overdrafts beyond permissible limits, we would now venture to suggest some measures which, we believe, would go a long way towards remedying the malady.

First and foremost, there is the crying need to so revamp the Centre-State financial relationships as to ensure greater devolution to the States in order that their finances are placed on an even keel, which alone, in the long run, can obviate the necessity for the States to fall upon recurring overdrafts of large size.

Secondly, the scheme of financing the State Plans should be divested of the present anomalous position of establishing a credit-debtor relationship between the Centre and the States in respect of a substantial portion of Central assistance extended to the States for their Plans. The present scheme places unduly heavy burden of outstanding loans and corresponding interest on States, casting a debilitating influence on their finances. This calls for a hard look at the scheme of financing of State plans in order to lessen the rigorous of the arrangement on the financial viability of the States.

Thirdly, both long-term and short-term measures are needed to tackle the problem of increasing debt servicing liability of the States emanating from the swelling volume of Union loans to them. The total repayment liability (including interest) takes away a very large chunk of the total assistance received from the Centre, thus setting in motion a disquieting trend of resources flowing out to the Centre from the State at a greater pace than the flow in the reverse direction. The recommendations of the Finance Commissions in this regard have given *ad hoc* treatment to the problem and have brought temporary relief. The measures suggested to deal with the problem have, however, proved illusive so far in finding an enduring solution. Hence, the need for a penetrating analysis of the impact this problem has exercised on finanancial equilibrium of the States and bold steps for combating the problem.

Fourthly, we suggest upward revision of the limit of ways and means advanced. The Study Team of Financial Administration of the Administrative Reforms Commission had suggested that an important legal safeguard against overdrafts by States would be to impose stautory limit prescribing a certain proportion of current revenue resources of States at any particular point of time and no State should be allowed to exceed that limit. This arrangement would also have the advantage of certain degree of flexibility because with the increase in resources of a State, the permissible limit will also go up automatically.

We are inclined to endorse this suggestion because it proposes to relate the limit of ways and means advance to the scale of resources on which the financial transactions of a State takes place. The present fixed limit is pegged to a point unrelated to and regardless of the volume of financial transactions, which have considerably grown over the years, so that the limit prescribed becomes largely an artificial restraint. At the same time, we also recognise that there should be clear understanding that the limit fixed according to the suggestion should not be taken as relaxable in any case and none should act in the belief that the limit can be exceeded with impunity. Further, such a limit would also better reinforce the moral strength of the R.B.I. and the Central Government to invoke legally available measures against an erring State in the event of recurrent violation of the limit beyond the permissible period of three months.

We are fully aware that the efficacy of the package of measures suggested above rests on strictest economy in public expenditure, whether by the Centre or the States. The States, in particular, should, in their own interest, exercise constant vigil against incurring any expenditure of doubtful value. Every opportunity for observing economy should be fully utilised.

We earnestly hope that given the required resolve and will to combat the problem of overdrafts, aforesaid measures, if implemented, should greatly reduce the possibility of taking recourse to overdrafts beyond permissible limits.

5.22 It would be far too sweeping a statement to say that the States are not exploiting adequately their own sources of revenue. For such a conclusion should be based on a fair appreciation of facts relating to tax efforts of the States. We can do no better than to refer to the observations of the Seventh Finance Commission in this regard. After examination of the total tax revenue of the Centre and the States during the period 1968-69 to 1978-79, the Commission came to the conclusion that the percentage of tax revenues of the States to the total of the tax revenues of the Centre and the States has remained around 31 to

33 per cent except in 1972-73 in which year it had been 29·95 per cent.

Therefore, the Commission observed that in the matter of additional resource mobilisation the States as a whole have not lagged behind the Central Government and the performance of the States has been on the whole creditable. The performance of the individual States in this regard, however, was not found to have been uniform. The Commission attributed this phenomenon not necessarily to the adequacy or otherwise of the tax efforts by the individual States. The differential growth in their tax revenue was partly on account of varying rates of growth of incomes and prices in different States and partly due to varying efforts of mobilising additional resources, tax concessions and withdrawals and such other factors.

The table below will show the picture of total tax revenu of the Centre and the States for the years 1979-80 and 1980-81 (B.E.).

(Rs. in crores)

Year	Total tax revenue (Centre & States)	Centre's tax revenue		State's tax revenue	
		Amount	% to total	Amount	% to total
1979–80	17,683·08	11,973·65	67·71	5,709·43	32·28
1980-81	19,694·07	13,132·59	66·68	6,561·48	33·32

The table above will show that the States have not slackened their efforts for raising revenues from their own taxes. On the other hand, their share in the total tax revenues of the Centre and the States taken together has shown an improvement over preceding years. In fact, if we analyse the figures for the period 1961-62 to 1980-81, we will find that whereas the taxes levied by the Centre increased by 12·5 times, those levied by the States went up by 13·4 times.

Our own tax revenue has gone up from Rs. 203·92 crores in 1978-79 to Rs. 370·14 crores in 1982-83 (RE) and is estimated to be of the order of 439·70 crores in 1983-84. This means more than hundred per cent increase during this period.

As regards our efforts for additional resources mobilisation, at the beginning of the sixth-plan the stipulation was for raising Rs. 600 crores by way of additional resource. As against this, the statement below will show the additional resource raised since 1980-81.

(Rs. in crores)

Year	Additional Resource raised
1980–81	32 38
1981–82	143·75
1982–83	217·57
1983–84 (L.E.)	357·66
1984–85 (Estimated)	418·99
Total	1170·35

Thus, it would be clear that in the matter of additional resource mobilisation too, we have fared well.

Coming to non-tax revenue, the table below gives the picture of the non-tax revenue of the Centre and the States as well as their respective shares in the total.

Year	Centre's non-tax revenue	State's non-tax revenue	Total non-tax revenue (Centre plus States)	Central non-tax revenue as percentage of total non-tax revenue	States non-tax revenue as percentage of total non-tax revenue
1	2	3	4	5	6
1971–72	1,099·9	1,407·2	2,507·1	43·87	56·13
1972–73	1,135·3	1,922·6	3,057·9	37·12	67·88
1973–74	1,177·8	2,084·2	3,262·0	36·10	63·90
1974–75	1,460·2	2,322·4	3,782·6	38·60	61·40
1975–76	2,065·6	2,792·9	4,857·5	42·58	57·50
1976–77	3,171·7	3,323·8	5,494·5	39·52	60·48
1977–78	2,731·8	3,775·5	6,507·3	41·98	58·02
1978–79	2,671·6	4,723·6	7,395·2	36·12	63·88
1979–80	2,771·9	4,552·4	7,324·3	37·84	62·16
1980–81	3,440·8	5,888·2	9,329·0	36·88	33·12

The table above will reveal that the share of non-tax revenue of the States has varied between 56·12 per cent to 63·90 per cent during the year 1971-72 and 1980-81 and correspondingly the share of non-tax revenue of the Centre during the same period has ranged between 36·10 per cent to 43·87 per cent. Moreover, consistently rising trend is discernible since 1978-79 in the share of the States in total non-tax revenue of the Centre and the States taken together.

Our own non-tax revenue has grown from Rs. 83·88 crores in 1978-79 to Rs. 164·89 crores in 1982-83 (RE), representing nearly hundred per cent increase over the period.

The foregoing account goes to show that the States has not lagged behind in the matter of exploiting their own sources of tax and non-tax revenues. Whether the efforts made in this direction are considered adequate is a question of value judgement and depends on how one looks at it. For instance, it may be argued that more revenues could have been raised from the sources which the States have at their command. For many good reasons, such a view would not be appropriate as far as our case is concerned.

The concept of taxable capacity, being dim and not free from confusion, is hardly measurable in quantitative terms with any reasonable degree of exactitude. Even so, national income and its distribution are two basic determinants on which taxable capacity will depend. In both these respects, the conditions prevalent in our State are such would appear to greatly limit the scope of further revenues from internal sources.

The paying capacity of the people of this State is severely limited by their low levels of income. As against per capita national income of Rs. 713·6 (at current prices in 1972-73, the per capita income of the State was only Rs. 480·01 (at current prices), the gap between the two being 32·7 per cent. This gap has further widened over the year as will be evident from the fact that in 1980-81, the per capita national income was Rs. 1537·00 (at current prices) against which Bihar's per capita income was only Rs. 870·00 (at current prices), which raises the gap between the two from 32·7 per cent in 1972-73 to 43.4 per cent in 1980-81.

On the basis of statistics compiled by the N.S.S., in the year 1973-74, 75·26 per cent of people in rural areas and 50·54 per cent in urban areas and 60·76 per cent taking the population as a whole were below the poverty line. The State samples indicate the percentage of population below the poverty line has increased to 75·06 per cent in 1977-78.

The people of this State have been caught in the vicious circle of poverty and backwardness largely on account of their low levels of income, resultant low savings and low capital formation and insufficient outlay on development, so that economic and social development have been slow. Judged against this backdrop, the State's efforts in the direction of raising revenues from its own source should not be rated as inadequate.

5.23 We do not agree that the centre is not assessing and collecting all revenues that it can. We hold that Centre's policy of taxation is growth oriented. The return on capital investment made in public sector is not commensurate largely because of managemnt's deficiencies coupled with increased overhead cost Leakage in central taxation prevails as it is in State's taxation also. However, instead of raising the prices of the products of the Public Sector, the Centre could raise its excise component so that both States and Centre share the resultant increase in the receipt. Similarly, the continued provision of surcharge in Income Tax appears irksome; State gets no share in the receipt from surcharge. Such items which are covered under Additional Excise Duties could be made to yield more revenue. States have a feeling that since the items covered under Additional Excise Duties were under the purview of State's Taxation, the share accruing to them from the returns of the Additional Excise Duties falls short of the buoyancy felt in such items which have continued under the State's Taxation Laws. A Monitoring Committee to regularly review this situation and advise the Central Government accordingly would ameliorate the grievances of the State.

5.24 Our answer is in the affirmative.

We would certainly welcome the establishment of a firm procedure for effective mutual consultation between the Union and the States, on a continuing basis, on all matters affecting the interest of the finances of the States. In fact, we would advocate such consultation to be much more broadbased than merely confined to the taxes and duties enumerated in Article 268 and 269. A large part of the inadequacy in the functioning of Union-State financial relations as reflected in persistent grievances seemingly harboured by the States and the concern expressed by them before different forums could have been taken care of by providing effective means of consultation, on a regular basis, between the Centre and the States on all matters pertaining to financial relationship.

As to the limited point raised in this question, the taxes mentioned in Article 268 are levied under Union laws, but the actual collection is to be made by the States in their respective areas and the amounts so collected are to be appropriated by the States. The taxes and duties mentioned in Article 269 are to be both levied and collected by the Union Government, but the net proceeds are to be assigned to and distributed amongst the States in accordance with the principles that may be formulated by Parliament by law.

Thus, the proceeds of the taxes and duties mentioned in articles 268 and 269 are really sources of state revenue and intended to form part of the Consolidated Fund of the respective states. It is fair and just, therefore, that any variation in their rate structure or a decision to abolish any one of them should be subjected to effective consultation with the states and the views of the states in this regard should be given fullest consideration.

It will not be out of place to recall here the provision made in Article 274 to the effect that no bill or amendment which imposes or varies any tax or duty in which states are interested shall be introduced in either house of Parliament except on the recommendation of the President. One apparent object behind this provision seems to be to bar Private members from initiating any taxation measure so that the financial scheme is insulted against any disturbance by the introduction of private legislation. More than that, this provision should also appear to be indicative of the implied intention that no legislation affecting taxation, either by way of change, alteration, or abolition should be undertaken without effective consultation with the states if it was likely to infringe upon the interest of the states. Even though this Article places no limitation on the President in exercise of his powers in this behalf as different from section 141 of the Government

of India Act, 1935 (to which the provision in Article 274 is analogous) which imposed certain limitation on the Governor General in exercise of the power similar to one given to the President by this Article, really speaking, the President is not free to exercise his descretion conclusively in view of amendments of the Constitution by the 42nd Amendment Act, 1976 and the 44th Amendment Act, 1978, according to which the President is bound to act in accordance with the advice tendered by the Union Council of Ministers. That being the position, the Union government should feel duty bound to enter into consultation with the states before undertaking any measure which imposes or varies any tax or duty in which states are interested.

Unfortunately, in actual experience, we have come across a number of instances in which even though the contemplated measure was likely to have adverse impact on the financial interests of the states, they were not given an opportunity of consultation, and the Government of India proceeded to act unilaterally in the matter. To cite out a few examples, the tax on railway passenger fares was abolished in 1961 without prior consultation, not to speak of their consent, with the states, when the step was going to result in depriving the states of an elastic source of revenues which actually belonged to them. Another instance is provided by amendment of the Constitution brought about in 1959-60 by which the tax on income paid by companies was classed as corporation tax so that it went out of divisible pool of income tax, resulting in reduction of the total kitty available for distribution amongst the states, but they were not consulted before such a step was taken. Imposition of auxiliary excise duties and special excise duties so as to keep their proceeds non-shareable with the states are other examples which can be quoted.

Since the main grievances which the states would seem to harbour lie in the financial field, the foregoing instances have been cited to underline the significance of closer Union-State consultation in respect of all matters which interact on financial relations between the Union and the states. The existing forums—both formal and informal—do provide opportunities for mutual discussions on major policy issues. Conference of Governors, Chief Ministers and, above all, National Development Council have their own utility, but, by their very nature, they mostly deal with particular areas of government and are used more for exchange of views when taking specific decisions. Considering the nature of their deliberations and subject matters which come up for consideration, it is rather too much for them to afford the time required for an in-depth discussion of the vexed issues arising in the course of the working of financial relations between the Union and the States.

One form of informal consultation between the Union and the States has been the usual correspondence with the states, which can at best be a poor substitute for effective consultation. The Fourth Finance Commission had the occasion to consider this matter and referring to Article 274, it observed that "an explicit provision for recommendation by the President should normally entail some mechanism other than the usual briefing and advice from the concerned Ministry at the Centre." It is in this light that we subscribe to the view that a formalised consultative machinery should be established for mutual consultation between the Union and the States, on a continuing basis, on all aspects of matters affecting financial relations between them.

5.25 We are of the view that the assigned taxes mentioned in Article 269 of the Constitution have a vital role to play in strengthening the finances of the states. In fact, they are the courses of State revenue, which except in one or two cases, have not been tapped. Of the seven items listed in this Article, Estate Duty in respect of property other than agricultural land has been levied and the amount has been distributed amongst the States. Another such instance is of Central Sales Tax which the States have been allowed to collect and appropriate the revenues, which means that item 7 in the list in that Article, viz. tax on sale or purchase of goods other than the newspapers where such sale or purchase taxes place in the case of inter-state trade and commerce has been levied. No other tax mentioned in that Article is levied at present.

In fact, even the tax on railway passenger fares, which was levied, was abolished long ago on the supposed ground that it adversely affected the finances of the railways. What was given to the States instead of the proceeds of this tax was a fixed sum grant, which remained pegged since 1966-67 to the valiry sum of Rs. 16.25 crores until 1980-81 (when it has been raised to Rs. 23.12 crores) even though the passenger fare earnings of the railways have been going up from year to year. This is but an example of how the States are being deprived of the proceeds of expanding nature from these assigned taxes under Article 269 of the Constitution.

The Fifth Finance Commission, when called upon to consider the scope of raising revenue from these taxes, thought that, in some cases, practical considerations weighed not in favour of exploiting these sources of revenue and, in other cases, it left the matter for consideration of the Government of India, which has not so far taken any positive step in this direction. Circumstances have materially changed since the Fifth Finance Commission made its recommendations on the subject. Therefore, we have strongly urged upon the Eighth Finance Commission to give a serious thought to the scope of raising revenues through these taxes, because, to our knowledge, this matter has not received the attention it deserves with a view to strengthening the finances of the States.

We would like to emphasis here the point that the Constitutional responsibility enjoined upon the Union Government in this regard has practically remained ignored despite the recommendation of the Fifth Finance Commission in respect of certain measures to be taken with the object of tapping some of the assigned taxes. It was not without purpose or thought that the Constitution made provision for levy of these assigned taxes and omission to honour the Constitutional obligation in this regard can hardly be justified. As a matter of fact, the question was not even referred to the Sixth and Seventh Finance Commissions, nor the Government of India chose to take any initiative in the matter. Now, the Eighth Finance Commission has been

specifically asked to make recommendations on the question of exploitation of these sources of revenue to the States.

It is to be seen what recommendations the Eighth Finance Commission thinks fit to make in this regard. However, we are convinced of the necessity of a comprehensive examination, not hither to made of all the aspects of and different views held about the implications of imposition of these taxes and the likely impact on the economy in general and concerned interests in particular. For keeping the issue aside without an in-depth study of the subject amounts to a casual treatment of the matter inspite of legitimate claims repeatedly made by the states to the proceeds of these taxes which really belong to them.

5.26 We subscribe to the view that this grant in lieu of passenger fares tax should be enhanced in proportion to the increase in the collection of railway fare.

In reply to the earlier question No. 5.25, we have urged that the taxes and duties under Article 269 should be better exploited to strenghthen the resources of the States. A tax on railway passenger fares is enumerated under the aforesaid Article. By implication, therefore, we have suggested re-imposition of the tax on railway passenger fares. The State Government hold the view that there was not ample justification for doing away with this tax.

When the Government of India decided to abolish this tax and merge it with passenger fares with effect from the 1st April, 1961, it was impelled to take this decision apparently on the recommendations of the Railway Convention Committee, which had felt convinced of the submission of the railways about their difficult financial position and the likely adverse impact of this tax on the earnings from railway passenger fares. This plea of the railways could not stand to reason because the continuance of this tax was not likely to add to the bad financial position of the railways nor there was evidence to suggest that because of imposition of this tax there had been a decline in the railway receipts from passenger fares. For earnings from railway passenger fares would depend upon the volume of passenger traffic and there was no reasonable ground to suppose that the number of people travelling by railways was ever going to fall so as to result in reduction in earnings from railway passenger fares. On the other hand, there was good reason to foresee that with greater dispersal of industries, opening up of new areas to rail communication, greater mobility of people, increase in tourist traffic and on account of all round economic progress generally, there was every possibility of the volume of passenger traffic increasing from year to year, more so because railways still continued to be by far the most significant and easily accessible mode of transport for most of the travelling public. in fact, the total passenger traffic has grown from 2431 millions in 1970-71 to 3949 millions in 1982-83 (B.E.) which shows a growth of more than 62 percent over this period. Hence, any presumption of a fall in passenger traffic, which alone could adversely affect railway earnings from passenger traffic, was highly unrealistic and without substance.

The plea of the tax exercising a limiting effect on the scope of raising passenger fares is also not based on sound foundation because the tax alone could not act as a hindrance in the way of enhancement of passenger fares just as levy of surcharge on income tax has not stood in the way of increasing the rates of income. Nor can it be said that unsatisfactory financial position of public enterprises has in any way deterred the Government of India from increasing the incidence of indirect taxes on the products of such enterprises.

As such, the considerations which appear to have weighted with the Government of India in abolishing the tax were not really germane to the issue but entirely extraneous in nature. In fact, as observed by the Sixth Finance Commission, this step of abolishing the tax and substituting it by a fixed grant was not quite in accordance with the spirit, if not the letter, of the provisions of Article 269 of the Constitution.

Moreover, the states were not afforded any opportunity for consultation on the question of abolition of the tax, even though the decision was going to vitally affect the finances of the states, because with one stroke they were deprived of the proceeds of a tax of expanding potential, which, for all intent and purpose, constituted a source of revenue for the States.

For these reasons, we have made a suggestion in favour of reimposition of this tax. If, however, the suggestion is not accepted for any reason, and also for the time till the tax is reimposed in case of acceptance of our suggestion, we would strongly urge the enhancement of the fixed sum of ad hoc grant in view of passenger fares tax.

While recommending abolition of this tax, the Railway Convention Committee had suggested that the State Governments should be paid a fixed grant of Rs. 12.50 crores per year during the quinquennium 1961-66 representing the average of the actual collections for the years 1958-59 and 1959-60. The idea was obviously to compensate the states for the loss sustained by them as a result of withdrawal of this tax. Subsequently, the Railway Convention Committee, 1965 approved the suggestion made by the Railway Board that the grant may be raised to Rs. 16.25 crores in a year, which was done with effect from 1966-67. This annual grant remained pegged to this amount till the Seventh Finance Commission reported inspite of consistent growth in railway passenger traffic during the period, even though increase in traffic during the five years 1960-61 to 1964-65 had formed the basis of suggestion by Railway Board for increase in the annual grant from Rs. 12.50 crores to Rs. 16.25 crores. On the same ground, the ad hoc grant should have been raised from year to year, or at least, long before 1980-81 when again on the basis of recommendation of the Railway Convention Committee, the amount of grant has been raised to Rs. 23.12 crores. During the intervening period, therefore, the states were made to suffer as the principle of compensation of the loss on account or abolition of the tax (which formed the basis for annual grant in lieu of the tax) was not followed.

The state Government are of the firm view that there is absolutely no justification for keeping the amount of the annual grant at the present level. The amount of ad hoc grant, which is supposed to be in lieu of the tax, should not only be related to growth tin passenger traffic but also be proportionate to the increase in the total passenger earning of the railways. And, since the present amount fails to satisfy this condition, there is a self evident case for stepping up the quantum of annual ad hoc grant.

The fifth Finance Commission had been informed that the yield from railway passenger fares tax during three years 1958-59 to 1960-61 constituted 10.03 to 11.69 per cent of the total non-suburban passenger earnings of railways. The average for the three years comes to about 10.7 percent. The Fifth Commission calculated that on this basis the amount payable to the states in lieu of the tax would be of the order of Rs. 25 crores, that is, far more than the amount of grant then payable and also higher than the increased amount of grant of Rs. 23.12 crores effective from 1980-81.

Both the Sixth and Seventh Finance Commissions had said that the amount of grant should be redetermined. The Seventh Finance Commission assumed the same percentage (10.7) of tax component and estimated that the tax collection would have been Rs. 56.21 crores in 1976-77, Rs. 61.17 crores in 1977-78 and Rs. 63.22 crores in 1978-79 (B.E.). As against this, the states cotinued to receive a grant of only Rs. 16·25 crores which works out at roughly one-fourth of what the states would have got had the tax continued in the form in which it was levied.

The Seventh Finance also appreciated the force of the argument but forward by almost all states that a fixed sum was not an adequate replacement of a tax on railway fares, since it did not take into account the considerable buoyancy in the earnings of the railways caused by rapid increase in passenger traffic. Finding that it was not possible to ignore the substantial increase in the extent of passenger traffic since 1961-62, the Commission calculated the growth in non-suburban passenger traffic as reflected by the figures of non-suburban kilometres and came to the conclusion that the traffic had increased by a factor of 1.85 since 1961-62. Applying this factor, the Commission worked out the amount of Rs. 23 crores as representing the amount of grant.

It appears that taking clue from the calculations made by the Seventh Finance Commission, the Railway Convention Committee made its recommendations which were accepted by the Government of India and accordingly the amount of ad hoc grant has been redetermined with effect from 1980-81. Two points need to be mentioned in this connection. Firstly, the Seventh Finance Commission had worked out the enhancement factor of 1.85 taking as basis only the increase in passenger kilometres. It is humbly submitted that this was not an appropriate criterion to adopt for working out (the enhancement factor. The tax. when it was in force, constituted a specific percentage of the passengers fares (the passengers travelling on season ticket and passengers travelling for distance upto 15 miles having been exempted) and was in no way related to net earnings of the railways or to the operating costs. The rates of the tax varied from 5 per cent to 15 per cent depending on the distance of the journey. Therefore, appropriate course would be to work out the quantum of grant on the basis of the percentage the tax element formed of the total non-suburban passenger earnings

Secondly, when the tax was abolished and replaced by a grant in lieu thereof, the wholesome principle of compensation would have been ensure that the states got the same amount every year which they would have received had the tax continued to be in force.

This would require the annual grant to vary with the rise in the total non-suburban passenger earnings from year to year so as to maintain the same percentage, namely 10.7% which was the tax element of the total non-suburban passenger earnings before the abolition of the tax. Assuming the tax element to constitute 10.7 percent of non-suburban passenger fares, the collection for 1978-79 (B.E.) would have been Rs. 63.22 crores, as assessed by the Seventh Finance Commission, so that correspondingly the quantum of grant for the same year should not have been less than Rs. 63.22.

Therefore, even the refixed amount of Rs. 23.12 crores as grant in lieu of passenger fare tax suffers from gross inadequacy.

If the suggestion for enhancement of the annual ad hoc grant is sought to be resisted on the plea of difficult financial position of the railways, it can be rapidly conceded that states too can hold out the argument that difficult financial position is not peculiar to the railways alone and the states are in not very much better placed in this regard. Again, if it is said that the railways have to discharge social obligations, it can be similarly said that the states too have to carry the burden of social obligations not less onerous than those of railways. In fact, railway budgets show that the financial position of railways has been improving gradually, showing a surplus earnings trend since 1976-77. Dividend a General Revenues has gone up from Rs. 224.2 crores in 1978-79 to Rs. 405.1 crores in 1982-83 (BE). Net surplus, expressed as net revenue minus Dividend to General Revenues, has also recorded a rise during the same period. Hence, it would appear that the plea of bad financial position held out as an argument against increasing the amount of grant from time is not related to facts. As a matter of fact, the financial position of railways is not a relevant consideration in determining the sum of ad hoc grant which should bear at least the same proportion to the total non-suburban passenger earnings which the tax element, before abolition of the tax, bore to the earnings from non-suburban passenger fares.

For the foregoing reasons, we are of the firm view hat the quantum of ad hoc grant should be further aised in accordance with the principles elaborated in the foregoing paragraphs, because repeal of the tax was not intended to put the states to loss, which, in fact, has been the inevitable result of the fixed sum grant being kept at low level for years.

5.27 The question relates to Union Territory. This does not relate to the State Government.

5.28 The present policy and arrangements for financing of relief expenditure are based on the recommendations of the Seventh Finance Commission which kept two basis postulates in view, namely (i) that the primary responsibility for relief to the people affected by natural calamities rests on the State Government concerned, and (ii) that there may be occasions when the seriousness of natural calamity would be such as to necessitate extensive relief measures requiring expenditure on such a scale as might be beyond the means of a state, in which case financial assistance by the Centre is called for.

Accordingly, the expenditure incurred on relief would broadly fall in two parts, one to be borne entirely by the state concerned and the other which can qualify for Central assistance by way of grant or loan. All the Finance Commission from the Second onwards have accepted the necessity of providing an amount referred to as the margin money in the expenditure forecast of each state. It was expected that whenever a calamity takes place, a state can draw upon this margin immediately for expenditure on relief measures. Accordingly the amount of margin money has been fixed for each state by successive Finance Commission based on the average of expenditure on relief booked under the relevant head of account for preceding few years. The Seventh Finance Commission took a nine year average and after adding an incremental fifteen per cent worked the margin money for each States. It believed that the margin so computed would enable the states to bear, better than before, the burden of relief expenditure even in calamities of more than moderate severity. The Seventh Finance Commission also recommended that the unspent balance, in any year, of the margin money should be invested in easily encashable securities and not merged in general resources of a state, so that in a year of need it can be possible to draw upon them.

The formula of Central assistance, recommended by the Seventh Finance Commission and accepted by the Govt. of India, makes a distinction between drought and other natural calamities. The state is expected to meet the expenditure on relief to the extent of margin money. In the case of drought relief, the state is required to make a contribution not amounting to more than 5 per cent of its annual plan outlay, which is treated as addition to the plan outlay of the state. This is subject to an assessment by a Central Team and is covered by an advance plan assistance for plan of the state within a period of five years following the end of the drought. It is apparent that this scheme does not invole any additionality from the Central Government and provides only for a kind of temporary advance against the State's contribution from its plan limited, of course, to five per cent of the annual plan outlay of the concerned state.

Additional Central assistance can be available only if the total expenditure requirement, worked out by the Central Team, were such as could not be met by the state contribution, that is, when the expenditure is likely to exceed the five per cent limit. In that case, the Central assistance is half as grant and half as loan.

In regard to expenditure on relief and repair and restoration of public works following floods, cyclones and such other calamities, Central assistance is extended as non-plan grant, not adjustable against the state plan or Central plan assistance, to the extent of 75 percent of the total expenditure in excess of the margin money.

The Seventh Finance Commission also recommended that in case of a natural calamity or rare severity the Central Government should deem it necessary to extend assistance to the concerned state even beyond what is envisaged by the scheme of Central assistance laid down by it.

It is our view that refixation of margin money at a very high level is not so necessary. What is, however of crucial importance is to make the existing procedure of assessment of state's requirements for expenditure on relief more realistic and less cumbersome and time-consuming. It may be pointed out in this connection that even the non-plan expenditure on natural calamities incurred by a state has to be approved by the Government of India for being adjusted against the margin money. This involves fresh appraisal of items of expenditure every year which not only means a repetitive exercise but also leads to the inescapable position that the state government's hands are fettered in respect of items of expenditure out of margin money, because expenditure on a number of necessary items is not allowed to be included in the margin money. We, therefore, consider it desirable that admissible items of expenditure should be listed out so that the state Govt. is certain about them and the Central Team is spared the task of identifying admissible items each time. We would also stress another point in this connection. The Central Teams do not always accept the expenditure incurred on the basis of norms laid down by the State Government. It is needless to point that conditions like, customs and practices, the character of local needs and even prices greatly vary from state to state and a uniform normative approach is difficult to evolve in this respect. Hence, there appears to be little scope to ignore or vary the specific norms accepted by a state, which are based on realistic assessment of prevailing conditions within a state.

The Seventh Finance Commission made a distinction between relief expenditure necessitated by drought on the one hand, and floods, cyclones, earthquakes and such other natural calamities on the other. The distinction was based on the ground that whereas floods, earthquakes, and cyclones are sudden and without prior warning and, therefore, call for speedy relief and prompt measures to provide help and relief which are, in fact, generally of a temporary nature, from before the occurence of the calamity. However, drought last longer and so give reasonable time to the state government to assess the requirements, formulate a plan of action and implement the relief programmes. In other words, certain kinds of relief programme can be taken up as a part of plan programme of the state.

It may be mentioned in this connection that the assumption of a nexus between certain relief programmes in the event of drought and plan programmes is of doubtful practical value. Notwithstanding the size of the total plan outlay, there will be serious problems in adjusting the drought relief expenditure in the plan of the state. Since employment generating

scheme account for very little of the total outlay of the plan and even if expenditure on such relief employment is taken as addition to the annual plan outlay, serious constraints of resources would exercise a definite limitation on such relief employment because a large part of the state plan is prompted by irrigation and power sectors because of their compulsive nature and a considerable portion goes to various infrastructures, which do not necessarily result in creation of services of the nature kin to the employment works required for meeting the drought situation. Moreover it would not be out of place to emphasise the point that when droughts set in, there is not only urgent requirement to provide gratuitous relief, but more than that, it is also essential to provide employment to the large population rendered unemployed temporarily by the calamity. It should not be forgotten that besides able bodied persons there will always be a large number of weak and infirm or old persons, who may not be capable of hand physical labour, yet they do need assistance by way of employment in conditions of distress. Hence the necessity of such employment schemes as could be offered on wages lower than normal wages intended to be only distress wages. Another related point to be borne in mind is that relief expenditure does produce an effect of increased investment on employment oriented works, which in ordinary course the state government might not have undertaken but postponed for a future date had there not been an urgency on account of drought relief. For these reasons, dovetailing relief expenditure in plan programme would entail serious practical limitations.

The recommendations of the Seventh Finance Commission laid down that Central assistance should be made available as a non-plan grant to the extent of 75 per cent of the total expenditure in excess of the margin on relief and on repairs and restoration of public works following floods, cyclones and calamities of this nature. Government of India have, however, restricted such non-plan grants to relief expenditure in the case of floods and cyclones only. It may be pointed out that any distinction between drought relief works and repairs and restoration of public works damaged by floods, cyclones etc. is hardly rational because if such a distinction is made on the presumption that expenditure on relief employment is likely to create durable assets then the presumption is misconceived in as much as in the case of droughts also, the state government has to undertake relief works which are cheaper in terms of wage cost as they do not require skilled manpower so that it is not always that such works create durable assets. Another important point to remember is that since public properties constitute assets created at considerable cost, they should not be allowed to be lost when damaged by natural calamities for want of repairs and restoration. Therefore, the programmes of employment of temporary nature, which of necessity have to be undertaken by the state government in the event of such calamities, should be provided outside the plan.

Our anxiety for a reappraisal of the policy and procedures for financing of relief expenditure arises from the sheer enormity of the problems created for the state by regular occurrence of floods and droughts which has, over the years seriously affected the state's economy and caused severe strain in our finances.

The areas of North and South Bihar are crisscrossed by mighty and trubulent rivers which rise in the snows of Himalayas. These rivers have very st ep slope in the upper regions which gradually grow flatter before draining into the Ganga, whose absorption capacity is limited. The major rivers spill over their banks during and after heavy rains in their catchment areas due to poor outfall conditions. The situation has worsened over the years because of, inter alia, increased encroachment of plains, heavy siltation and deforestation in the catchment areas.

It is not surprising, therefore, that, as the Rashtriya Barh Ayog (1980) found, Bihar accounted for 17 per cent of the total flood affected area in the country and 23 per cent of the aggregate damages in recent years. There has been an upward trend in area affected by floods in the state since 1965 and the increase has been sharper in the seventies. Taking the average damages (at current prices) during the period 1971—78, the Ayog has estimated that Bihar accounted 23·2 per cent of the damage which is highest amongst the stages excepting Uttar Pradesh.

The visitation of drought has similarly been a regular feature, particularly in certain parts of the state extending over the entire plateau of Chotanagpur and Santhal Parganas which covers a total area of 0.80 sqr. KMs. and has a population of 142.27 lacs and this constitutes the drought prone area.

That flood control measures have not succeeded in restraining the extent of damages caused by recurrent floods also finds support from the Sixth Five Year Plan (1980—85) which has noted that while the outlays for successive Five Year/Annual Plans have been increasing and more and more areas are being protected, the estimated value of damage due to floods has been increasing.

Whether aberrations being beyond human control it is not possible to lessen the possibility of occurrence of droughts. Through the implementation of integrated programmes of development in the rural sectors, drought prone areas may be developed, to certain extent, to better meet the adverse effects of droughts. Yet, it has not been possible to reduce, to any significant extent, either the possibility of visitation of droughts or the sufferings caused by them.

So, these aspects of the frequent occurrence of natural calamities like floods and droughts have to be always kept in view while evolving the policy and arrangements for financing of relief expenditure.

Having regard to what has been stated in the preceding paragraphs, we are of the view that there is no point in raising the margin money to any significant extent. However, we feel that margin money should be provided in the annual budgets of the states to take care of natural calamities into plan and non-plan segments, for, as we have indicated earlier, dovetailing any part of relief expenditure in plan expenditure bristles with several practical constraints and may well be counter productive in as much as it may fail to achieve the desired objectives.

Therefore, in the event of natural calamities of extraordinary severity, the Central Team should, in consultation with the concerned state government,

expeditiously make an assessment of the nature and extent of damages caused and assess the total requirement of expenditure on gratuitous relief relief, employment programmes and restoration of damaged public property on the basis of realistic norms of such expenditure, and the total amount required should be given to the state by way of non-plan grant. Distinguishing feature of the financial system laid down in our Constitution is the absence of overlapping taxation powers.

Thus, it would appear that the well conceived distribution of taxing powers is based on recognised imperatives of a federal structure. Other sources of raising resources have also been allotted to respective authorities on similar considerations. For instance, it would be administratively cumbersome for the state government to take upon itself the task of local taxation which has, therefore, been aptly left to the local bodies.

Therefore, it would be pointless to argue that any authority could be vested with plenary jurisdiction in the matter of levying taxes. Taxing powers have to be allotted to respective authorities keeping in view the nature and the base of taxation and in confirmity of with the constitutional structure prescribing limits to taxing powers or the powers of raising resources from other avenues. The authority which can levy and collect taxes with efficiency and economy will be the appropriate authority to be vested with the powers of administering particular taxes. Improper allocation of taxing powers will lead to distortion in the tax system resulting in failure to achieve optimum exploitation of resources of tax revenue. Same can also be said of other avenues of raising public revenue.

For the foregoing reasons, it cannot be said that who collects the funds is immaterial.

Similarly, it cannot be said that how the collected fund is distributed is irrelevant. As has been pointed out earlier, the funds received through various sources of public revenue are meant to meet the needs of public expenditure. Raising of public revenues and managing public expenditure are the two major elements of fiscal policy, which has to serve the paramount goals of achieving economic stability and growth.

Here we would also like to refer to another point. At present, the damages caused by fire are not considered as one caused by natural calamity, perhaps on the presumption that fire is not a natural calamity and is caused by human failure. We would refer to our own experience in the matter. In some parts of our State, particularly during summer season when westerlies blow over most parts of the state, widespread damages are caused by frequent cutbreak of fire on extensive not attributable to the faster of human failure. Such fires at times engulf village after village consisting of clusters of thatched houses belonging mostly to lower strata of people, particularly scheduled castes and scheduled tribes. The damages caused are considerable. Therefore, there is ample justification to treat such damages as caused by natural calamities to qualify for assistance as in the case of drought or hailstorm.

As regards the procedure for extending assistance in the shape of non-plan grants to meet relief expenditure, we do not propose a change in the existing method of on the spot assessment of the nature and impact of the natural calamity and the expenditure requirements by Central Team. However, since we have suggested Central assistance by way of non-plan grant, we see no role of the Planning Commission in the matter and the high-level Committee to consider the report of the Central Team may be headed by the Secretary, Ministry of Finance. Then the high-level committee's recommendations may be placed before the Finance Minister for his approval so that the assistance may be finally decided. In this connection, we are in agreement with the Seventh Finance Commission that the Central Team or the high-level committee should make their assessment with sufficient care and would add that such assessment should be made with promptness and a sense of urgency which the situation in the event of a natural calamity so richly deserves. We also feel that there should be no need to scrutinise the expenditure incurred by the state on relief against the margin money. Further, we do not think that it would be reasonable so much to think in terms of fixing ceilings on different items of expenditure, because such ceilings cannot conceivably be flexible enough to admit of requirements in all possible conditions. More necessary should be to consider, as we have pointed out earlier, to spell out the items of expenditure admissible for assessment of expenditure requirements so that the Central Team may not have to go into various items of expenditure every time to decide their admissibility.

There is another point which deserves to be mentioned here. In case of certain expenditure on relief works as well as expenditure on restoration of damaged property, often it is not possible to confine the expenditure to a particular year because of time taken in completion of procedures of according sanctions etc. and so the programmes undertaken may spill over the next year. At present such spill over expenditure is left out of consideration for the purpose of eligibility of Central assistance. As a result, avoidable burden is thrown on the finances of the state because such expenditure does not qualify assistance. We would, therefore, suggest that such spill over expenditure on relief works should be taken into while deciding entitlements of Central assistance.

We believe that the modifications we have suggested in the policy of financing relief expenditure and the procedure for assessment of expenditure requirements for relief in the event of natural calamities, takes sufficient care against extravagence or waste or expenditure of doubtful value. Assessment by the Central Team in accordance with the procedures.

5.30 It would be risky to make an unqualified statement to the effect that who collects the funds and how the funds are distributed are not very relevant, and it is more important that the funds are prudently spent and the benefits go back to the people.

Who collects the funds and how the collected funds are distributed amongst various spending authorities is equally significant. It is common knowledge that there are various methods of raising resources which constitute public revenues, out of which public expenditure takes place. If, therefore there is excessive

dependence on the source of revenue, to the comparative neglect of other sources of receipts, the result is bound to be disastrous for the economy as a whole as well as the people at large. A wise mix of the sources of revenue is, therefore, always adopted for raising of resources.

Here arises the question of who can be able to raise revenues, and through which sources, efficiently, conveniently and adequately. And, the authorities which would appear more appropriate from these points of view are entrusted with the responsibility of exploiting the sources of revenues, which can be apply allotted to them. Outlined above will mean careful and rigorous determination of expenditure requirements, eliminating the possibility of acceptance of unreasonable claims for expenditure.

Having regard to what has been stated in the preceding paragraphs, we are of the view that there is no point in raising the margin money to any significant extent. However, we feel that margin money should be provided in the annual budgets of the states to take care of natural calamities of localised nature.

It is futile to carry on the discussion in abstraction. The problems of public finance are diverse, for they embrace questions relating to raising of public revenues and deciding upon patterns of public expenditure, consistent with the declared objectives of maximising economic and social welfare of the people. Apart from the complexities involved in devising a system of raising resources with least baneful effects and of public spending in the most beneficial way, an additional factor adding to the complication is the constitutional framework within which the fiscal system has to be operated. Therefore, the power of raising public revenues and ordering public expenditure must form an integral part of the administrative, legislative and financial structure laid down by the constitution.

Our Constitution is federal in character. Hence, there is the presence of two layers of government, namely, the Union Government and State Governments. Our fiscal system, therefore, rests on a division of revenues between the union and the states. The tax system and the distribution of powers to impose taxes and duties have been designed on the mould of the financial arrangements laid down in the Constitution. So where the basis of a tax is country wide, the Union government has been empowered as the authority to impose such a tax. By way of example, we can mention income tax, company taxation, wealth tax, custom duties and such others. As against this, states can tax their own citizens or income generated within their spheres, so taxes like land revenue, agricultural income tax, tax or local sales such others have been placed at the disposal of the states. It may be noted here that one objectives sought to be achieved with the help of an appropriate fiscal policy coupled with suitable monetary policy may include creation of desired levels of savings and investment so as to promote long term growth and at the same time to secure an acceptable. allocation of resources and distribution of income and wealth with a view to stimulating economic development and promoting social justice.

The fiscal policy, therefore, has to aim at achieving the desired objectives. The effects of a fiscal policy would, on the one hand, depend upon the types of taxes imposed, the manner in which they are collected, and the ways in which other measures of raising resources are used, and, on the other hand, the varieties of government expenditure undertaken and the repercussions produced by such public expenditure. Being inseparable elements of the fiscal policy, both public revenues and public expenditure have together to serve the common goals set for the fiscal policy. Both are inter related with each other. If the tax structure is such as to seek equitable distribution of income and wealth to promote social justice, public expenditure cannot have a different aim. Again, if the fiscal and monetary policies are so designed as to stimulate savings and investment, public expenditure has to pursue the same objective.

While the total public revenues set the broad limits of public expenditure, the government spending takes place through different public authorities on different heads of public expenditure. So, one authority cannot take over the spending function of the other. Nor, there is free scope of changing the volume of public expenditure on different items of expenditure falling within the spheres of different spending authorities.

According to the financial plan of the Indian Constitution, while powers of taxation have been clearly demarcated between the Union and the state Governments, the respective responsibilities and the functions of the two all expenditure by them concurrently in same or similar fields. Economic and social planning is a concurrent subject. So, public expenditure on plan projects admits of the possibilities of public spending both by the Centre and the states. Even so, the areas in which they undertake expenditure functions are separated to a significant extent. While it is the state governments which incur expenditure on maintenance of law and order, it is the centre which has the responsibility for expenditure on defence of the country. The examples have been cited merely to emphasise the point that the responsibilities for incurring public expenditure by the Central and the state governments confirm to the constitutional provisions outlining their respective jurisdiction.

All public expenditure, in some form or other, brings benefits to the people. Nevertheless, all public expenditure cannot be undertaken by one public authority, for this will be administratively unsound and economically unproductive. Therefore, division of expenditure functions amongst the Union Government, the state governments and the local authorities meets the requirements of efficient financial arrangements and adds to administrative vitality.

It is necessary that the authority responsible for undertaking particular expenditure functions should also have the requisite availability of resources. It is in this view that distribution of avenues of raising public revenues acquires significance. According to the constitutional provisions, major and elastic sources of revenue are with the Centre, while the states have at their disposal sources of revenue which are comparatively inelastic. Therefore, inspite of demarcation of taxing powers and functions and responsibilities between the Centre and the states,

an imbalance between the resources available with the states and the functions and obligations enjoined on them was inevitable. The framers of the constitution were fully aware, therefore, of the need for appropriate corrective measures to secure better correspondence between the resources and responsibilities of the states, and it was to meet this situation that provision for transfer of resources from the Centre to the states was made in the Constitution.

Hence, the transfer of resources from the Centre to the states serves a definite purpose and its importance cannot be under rated. At the same time, the manner of distribution of the divisible resources amongst the states is no less important, for it must be based on equitable principles so as to strengthen the finances of the states in order to enable them to satisfactorily fulfil their obligations. Broadly speaking, the principles of distribution must aim at rapid economic development of the country and balanced growth of the states.

The foregoing analysis of the different aspects of the issues involved would indicate that who collects the funds and how the distribution of the funds takes place are important ingredients of fiscal policy, and so, consistent with the constitutional framework, should together aim at securing economic growth with social justice. Prudence in public expenditure is incontrovertible attribute of the art of spending by the public authorities. Similarly, using public expenditure as an arm to reach benefits to the people can invite no debate. The cardinal point to remember is that all of these, namely, raising resources, their distribution amongst different spending authorities and on different items of expenditure, and the public expenditure function as such bristle with inter linked problems and only an integrated approach to them would save one from pitfalls that otherwise lie in the way.

5.31 According to the suggestion, referred to in this question, there should be a permanent National Expenditure Commission to assess the nature and quality of expenditure and the need for revenue resources for both the Centre and the States. The crucial point to see is whether there exists a suitable machinery or institutional arrangement to evaluate the usefulness of public expenditure incurred by the Centre and the states and also whether there is a mechanism for assessing their respective revenue requirements.

The authority for government spending flows from the budget. In the case of the Centre the Parliament and in the case of the states their respective Legislatures vote the budget grants and in doing so they exercise basic control on all forms of expenditure. The parliamentary control of public expenditure does not end there. It continues even after the budget grants are voted, the object being to ensure that the funds appropriated by the Parliament, or the Legislature in the case of a state, have been properly utilised for the purpose specified and in the best possible manner.

The instruments of parliamentary control at this stage are the Committees of the Parliament, namely, the Public Accounts Committee and the Estimates Committee. The former is intended to ensure that the expenditure confirms to the authority which governs it and the disbursements have been for the purpose for which voted. The latter *i. e.* the Estimates Committee is concerned with examination of the budget estimates with an eye on securing economy and efficiency in administration and it falls within its duty to suggest suitable modifications if any policy appears it to be defective or such as leading to wasteful expenditure.

Since the time of the Parliament or the State Legislative is valuable, it is these Committees that undertake detailed examination of all expenditure to ensure proper spending of money sanctioned by the Parliament or the Legislative as well as effective implementation of policies and programmes approved by them. There are a number of instances of the reports of these Committees highlighting cases of departure from sound standards of public expenditure and drawbacks of certain policies and programmes requiring modifications.

There is yet another Committee of the Parliament, namely, Committee on Public Undertakings whose duty is to examine if the public undertakings are being managed according to sound business principles and prudent commercial practices. In fact, its functions in relation to public undertakings may include such other functions of the Public Accounts Committee and the Estimates Committee as the Speaker may, from time to time, assign to it. Thus, not only efficiency of expenditure but also of management of public enterprises as a whole falls within the purview of this Committee.

Then, there is the constitutional authority of the Comptroller and Auditor General of India whose duty is to Audit all expenditure from the revenues of the Central and state governments with a view to ascertaining whether moneys shown in the accounts as having been disbursed are legally available for and applicable to the service or purpose to which they have applied or changed or whether the expenditure conforms to the authority which governs it. The appropriation accounts and audit reports prepared by the C. A. G. are placed before the Parliament or the State Legislatures, as the case may be, and form a subject matter of detailed discussion by the PAC with the concerned departments of governments both Central and state–where the propriety of all expenditure are assessed. The Committee of Public Undertakings are furnished with the audit reports of the C. A. G. in respect of public enterprises. Thus, the financial working of these enterprises comes to be subjected to a close scrutiny by this parliamentary Committee.

Thus the parliamentary control over expenditure of the Central and state governments coupled with appropriation and regulatory audit by the C. A. G. provide an institutional arrangement which keeps the public expenditure policy, in all its aspects, under constant review, and the efficiency of expenditure incurred falls under the scrutiny undertaken through these institutional arrangements.

Let us now see how the respective revenue requirements of the Union and the states are assessed. One must look at the question from the angle of union-state financial relations. The Constitution has provided

for a Finance Commission which makes a quinquennial review of the finances of the Union and the states. We are in favour of such a periodical review which affords the Finance Commission a good opportunity to determine the respective needs of the Centre and the states for resources to meet their responsibilities and obligations. True, the Finance Commission confines itself to the non-plan requirements of the states, the plan requirements being left to the care of the Planning Commission. In the process of determining the non-plan need of the states, the Finance Commission makes an in-depth analysis of the revenue and expenditure forecasts of the states for the devolution period and works out the revenue needs of the states. For the purpose of transfer of resources from the Centre to the states, the Finance Commission also makes an assessment of the needs and resources of the Central Government to identify surpluses out of which devolution of funds can take place.

There may be scope for improvement in the methodology adopted by the Finance Commission for the purposes of determining the respective needs of the Centre and the states, and, indeed there is need for some improvement, but it cannot be said that the deficiencies in the methodology are such as warrant a total rejection of the institution of the Finance Commission so that it has become inperative to think of an alternative body to discharge this function.

Coming to plan requirements, it has to be rememberd that planned economic development of the country accompanied with balanced regional growth is accepted national policy and there can be no going back on it. From the point of view of relations between the Centre and the states, it needs little emphasis that planning is an endeavour to achieve nationally accepted goals and objectives with close cooperation and coordination of efforts between the Centre and the States. So, the process of plan, formulation listing out of schemes and projects, fixing of priorities and limits of desired rates of growth are all decided as a result of collective efforts of working groups and the finacial outlays on schemes are determined accordingly after a review of performance in the preceding plan year and taking into account the availability of both physical and financial resources. In this exercise, the focus on needs of the Centre and the states occupied the pivotal positions.

Thus, it would appear that the plan size—both in terms of physical targets and financial outlay is the result of combined efforts of the Centre and the States through the pace set by the Planning Commission and the limits to plan size are set by the constraints of availability of financial resources. Obviously, therefore, the size of the state plan outlay ultimately depends upon the states capacity to raise additional resources for financing the state plan and the availability of funds with the Centre out of which plan assistance can be extended to the states. It is futile to argue that the needs of the states should be determined in absolute terms, independently of these two factors, because neither the states can be expected to bear the burden of raising unduly large additional resources nor the Centre can legitimately be credited with a limitless capacity of finding funds to extend unlimited plan assistance to the states for the plan requirements.

It is against this backdrop that the usefulness or the imperative necessity of a National Expenditure Commission has to be considered. It can be argued that such a Commission is needed to assess the Centre's expenditure and its requirements for developmental and non-developmental purposes with a view to finding out surpluses available with the Centre out of which transfer of more resources could possibly be made to the states. As we have pointed out earlier, functions precisely of the aforesaid nature and discharged periodically by the Finance Commissions. They make a review of the expenditure of the Central and state governments and arrive at assessment of their respective needs for non-plan purposes. The seventh Finance Commission took a welcome step forward in undertaking a close scrutiny of the forecasts of revenue and expenditure of the Central Government and found more surplus than presented by the forecasts. There is no reason to apprehend that succeeding Finance Commissions would not follow the same practice.

The Planning Commission, in consultation with the Central and State governments, does the same for plan requirements. It may be possible to indicate some defficiencies in the methods adopted by the two Commissions, but the same can be removed by suitable modifications in the procedures adopted by them and making them work in close co-operation and harmony, so that each benefits from the Labours of the other hand, in the process, the resultant advantage takes care of the lacuna that may be found to exist in the working of these two Commissions.

A National Expenditure Commission, if established would engage in similar exercise of assessing the needs of the Centre and the states and, to that extent, would traverse the grounds covered by the Finance Commission and the Planning Commission, thus leading to avoidable overlapping the functions at present being performed by the two Commissions. If the proposed Commission is supposed to undertake annual assessment of the respective needs of the Centre and the states, it is difficult to visualise the manner of follow up action on the findings or the recommendations made by it. In what ways its reports would affect preparation of annual budgets of the Centre and the states or the finalisation of annual plans by the Planning Commission is not easy to foresee. The proponents of this idea have not spelt out precisely what exactly will be the role of the proposed Commission *vis-a-vis* the Finance Commission or the Planning Commission. Nor has it been made clear if the needs assessed by the proposed Commission would have mandatory effect on the Planning Commission so that the plan size—both in physical and financial terms—will have to be adjusted accordingly. Similarly, if the needs as assessed by the proposed Commission are to have binding effect on the Finance Commission it would mean taking over of a substantial part of the work of the Finance Commission by the proposed Commission itself. Thus, the inter-action between the functions of the proposed Commission and the work of the Finance Commission and the Planning Commission has all the possibilities of introducing more complexities in the manner of transfer of resources to the states, and may as well result in

acting as further irritant to the Centre-State financial relations.

While suggesting the creation of a National Expenditure Commission, it has been pointed out by some that the total amount allotted to the Planning Commission for state plan outlays is not only inadequate but also the decision of the Union Finance Ministry in this regard lacks objective basis. Looking at this matter realistically, one may ask if there are positive instances of some really good and beneficial schemes suggested by the states which have not been accepted for inclusion in the state plan for the reason that acceptance of such schemes would mean exceeding the total amount available for state plans. We do not think it would be easy to point out such cases. Even if we accept for argument's sake that the total amount available for State plan outlay is inadequate or in deciding the amount on rational principles have not been observed, here is a remedy of which the states can make good use. They can take up the matter in the National Development Council where, if they take a united stand emphasising the merits of their view points, the problem can be dispassionately considered and satisfactory solutions evolved. A National Expenditure Commission may not necessarily be a better forum. Moreover, its recommendations will after all, be subject to acceptance by the Central Government. It is platitudinous to suggest that the interests of the States cannot receive due consideration by the N.D.C. and once the N.D.C. is convinced of the justified claims of the States, there is no reason to suspect that the Government of India will take any different view.

Now let us see what part can possibly be played by the proposed Commission in the matter of evaluating the usefulness of expenditure of the Centre or the States. The Parliament or the State Legislatures, being the authorities to sanction funds, cannot in any sense, be divested of the ultimate control exercised by them over public expenditure. Through their Committees, they can always scrutinise all expenditure incurred by the Government of India or the State Governments and locate infructuous or wasteful expenditure and suggest measures to bring about better ordering of expenditure. The regulatory audit by the C.A.G. can ensure that all expenditure has been undertaken under proper authority and for purposes for which the funds were charged or voted. The Finance Commission will always make periodical review of revenue and expenditure estimates of the Centre and the States to assess possible surpluses with them and their respective needs in order to evolve the scheme of devolution of funds to the States. As such, we do not think that a National Expenditure Commission can take over with some distinct advantage any of the functions assigned to existing authorities concerned with examination and evaluation of propriety and efficiency of expenditure incurred by the Centre and the States. On the other hand, it will mean avoidable duplication of authorities discharging same or similar functions, with practically little tangible gains.

For the reasons explained in the foregoing paragraphs we are not in favour of a National Expenditure Commission.

5.33 The "evaluation audit" can succeed only if the Government has "performance budgeting" system. Both voucher audit and evaluation audit are essential. The twin objectives of audit namely efficiency and promptness can succeed only if evaluation audit also exists besides vouchers audit. Each department executing development programmes should have a small evaluation cell. This cell could make evaluation audit of programmes executed by any other department. Thus departmental evaluation unit should not evaluate the departmental project. Recently the Integrated Rural Development Programme was evaluated by the Planning Commission, though the scheme is being executed by the Ministry of Agriculture. Such sort of monitoring both of progress of expenditure attuned with the achievement of the physical target will help in proper monetary appraisal of any programme.

5.34 The question does not specify the points said to have been made out by Shri Ashok Chandra, Chairman of the third Finance Commission to show that the Comptroller and Auditor General was not doing all that was possible to keep a check on the accounts of the Union and the States. The report of the third Finance Commission does not throw light on observations of Shri Chanda to the effect. One thing, however, seems to be clear. Shri Chanda might have commented upon inadequacy of the duties and functions of the C.A.G. prior to 1971, because till then, the Parliament had not enacted a law under Article 149 of the Constitution defining the duties, powers etc. of the Comptroller and Auditor General, with the result that the Government of India (Audit and Accounts) Order, 1936, as adapted, had continued to regulate the powers and functions and duties of the C.A.G. The 1936 Order, by its very nature, had not conferred on the C.A.G. sufficient powers to perform his duties commensurate with the obligations cast on him by the Constitutional provisions. Perhaps, Sri Chanda intended to highlight the lack of comprehensiveness in the powers and functions of C.A.G.

It would therefore, be useful to point out the areas left uncovered by the functions and duties entrusted to the C.A.G. by the 1936 Order. Broadly speaking, the said order was not comprehensive enough to include within the statutory jurisdiction of audit certain important government activities resulting into considerable expenditure, which had been expanding pretty past in the wake of the plans for economic development. Then local bodies and many authorities or bodies receiving substantial grants or loans from the government fell outside the net of audit by the C.A.G. and had to be brought within his purview by a procedure known as 'audit by consent'. Such audit was, however, not statutorily compulsory.

In specific terms, the functions and duties of the C.A.G., laid down in the 1936 Order, did not extend to certain vital areas which are a spelt out below. While elaborate these particular areas, it will also be shown how fare and to what extent these dificiencies have been made up by the Comptroller and Auditor General (Duties, powers, and Conditions of Service) Act, 1971 (as amended in 1976, and hereinafter referred to as the Act).

Firstly, under the 1936 Order, the C.A.G. was required to obtain prior approval of the President or the Governor, as the case may be, before undertaking the audit of receipts of government or the audit of the accounts of stores and stock maintained by government. Such prior approval is no longer necessary. Section 16 of the Act has made it a duty of the C.A.G. to audit all receipts which are payable into the Consolidated fund of the Union and of each state and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly followed. Similarly, Section 17 of the Act has vested the C.A.G. with the authority to audit and report on the accounts of stores and stock kept in any office or department of the Union or a State. Therefore, it is no longer necessary for the C.A.G. to seek and obtain prior approval of the government before taking up such an audit.

Secondly, the need for audit by consent of local bodies or such other authorities or non-official bodies, which received substantial sums of grants or loans, imposed a limitation on the C.A.G's powers. The Act has made provisions where by these limitations have been removed considerably. Section 14 of the Act empowers the C.A.G. to audit the receipts and expenditure of bodies or authorities financed from the Union or state revenues, provided the amount of grant or loan advanced to such bodies was not less than rupees five lakshs in any year and not less than seventy five per cent of the total expenditure of such a body or authority.

Where any grant or loan is given for any specific purpose from the consolidated Fund of the Union or a state to any authority or body, other than an international organisation, the Act (Section 15) empowers the C.A.G. to scrutinise the procedures by which the sanctioning authority satisfies itself about fulfilment of conditition of such grant or loan, and, for this purpose, the C.A.G. has a right or access to the books and accounts of the concerned authority or body. However, the C.A.G. will not have this right of access to books and accounts of any Corporation, if the law, under which such Corporation has been set up provides for audit by an agency other than C.A.G. except where he is authorised in this behalf by the President or the Governor, as the case may be. Such authorisation can be made after consultation with the C.A.G. and giving the concerned Corporation an opportunity to represent with regard to allowing the C.A.G. the right of access to its accounts.

Then, there are industrial and commercial concerns, which are either government companies or a statutory Corporations, in which substantial government money is invested. There is a self evident case for audit of such government companies or statutory Corporations by the C.A.G. so as to bring them under full Parliamentary control of their expenditure. The position before the 1971 Act was that according to the Companies Act of 1956 the C.A.G. had the right to test check the accounts of the government companies in addition to the audit conducted by professional auditors and thus the Public Accounts Committee was enabled to investigate the working of these companies in the event of malpractices. The position has been recognised by the 1971 Act and it has been specifically provided that the C.A.G. will exercise his powers of audit of the accounts of the government companies in accordance with the provisions of the Companies Act, 1956.

As regards audit of statutory Corporations, Shri Chandra had complained against exclusion of the right of C.A.G. to audit the accounts of the L.I.C. at the time of its nationalisation and had expressed the view that "this constituted a departure from the accepted principle that withdrawal of money from the Consolidated Fund should automatically attract the audit responsibility of the C.A.G." Public Accounts Committee in its several reports, had also concurred with this view that the C.A.G. should have the unquestioned right to audit the expenditure of such concerns, by whatever name called, because they are financed out of the Consolidated Fund.

The Act provides that in respect of corporations (not being companies) established by or under any law made by the Parliament, the C.A.G. can exercise his prowers of audit in accordance with the provisions of the legislation concerned.

According to one view, Sri Chandra's objections have been squarely met by these provisions empowering the C.A.G. to audit the accounts of government companies and statutory corporations in accordance with the provisions of the Companies Act, 1956 and concerned legislations respectively. Another view can also possibility be taken, according to which the C.A.G.'s powers to audit the góovernment companies or statutoty corporations have been made dependent upon provision to that effect in the Companies Act, 1956 and legislations setting up statutory corporations. In other words, notwithstanding the aforesaid provision contained in section 19 of the Act, the C.A.G. may not have jurisdiction to audit the accounts of statutory corporations in the absence of a specific provision to this effect in the laws establishing such statutory corporations. This amounts to conditional exercise of power to audit the accounts of statutory corporations, because the C.A.G. will not be able, on the authority of the provision in the 1971 Act, to audit the accounts of a statutory corporation which may be established in future, unless there be an express provision to that effect in the concerned legislation.

The powers of the C.A.G. to audit the accounts of any corporation established by the law of the legislature of any state are subject to limitation in yet another way, that is, the power can be exercised in case the Governor desires the C.A.G. to undertake such audit, and such a request can be made to the C.A.G. after consultations with him and after giving reasonable opportunity to the corporation concerned to make representation with regard to the proposal for such audit.

Then, there is an enabling provision made by section 20 of the Act. According to it, the C.A.G. can at the request of the President or the Governor, as the case may be, undertake audit of the accounts of any authority or body not otherwise entrusted to him by any law made by the Parliament. Such audit can be assigned to the C.A.G. in Public interest and after giving reasonable opportunity to the concerned. authority or body to make representation with regard to the proposal of audit. There is also a provision in the Act according to which the C.A.G. may, on his own, propose to the President or the Governor, as the case may be, that he may be authorised to undertake audit of anybody or authority not entrusted to him by law, if he is of the opinion that such audit is necessary in view of substantial sums having been invested in any such authority or body. The request of C.A.G. can be allowed in public interest, again, after giving reasonable opportunity to the concerned body to make representation in regard to the proposal of audit.

For exercising desired checks on the accounts of the Union and the state, the Act has cast a duty on the C.A.G., (i) to audit all expenditure from the Consolidated Fund of India and of each state to ascertain whether moneys shown as having been disbursed where legally available for the service or purpose to which they have been applied or changed and whether the expenditure conforms to the authority which governs it, (ii) to audit all transactions of the Union and the states relating to Contingency Funds and Public Accounts, and (iii) to audit all trading, manufacturing, profit and loss accounts and balance sheets and other subsidiary accounts kept in any department of Union or a state, and to submit report on such audit.

The forgoing account of the extent of the powers, functions and duties of the C.A.G. will indicate that the Act of 1971 has gone a long way towards making up the deficiencies in the authority and jurisdiction of the C.A.G., and, except for a little limitation in the case of investment out of consolidated Fund in statutory Corporations (which may, in practical terms, not present a real constraint), he has sufficient authority to exercise his powers of audit to keep a watch on the expenditure of the Union and the States.

5.38 We have explained in our reply to question number 5.31 the reasons why we do not consider it necessary that a National Expenditure Commission should be established.

Moreover, in our reply to question number 5.34, we have explained at length how the Comptroller and Auditor General has been vested with sufficient authotity to exercise his powers of audit to keep a watch on the expenditure of the union and the states and maintain checks on their accounts. Furthermore, the control over government expenditure of the parliament or the state legislature, exercised through Public Accounts Committees and Estimates Committees with the help of the Comptroller and Auditor General, sufficiently meets the requirement of assessment of propriety of expenditure of the Union and the states.

5.39 The State Government feel that clearance of the plans of action of formulated by the States by the administrative Ministry concerned at the Centre becomes irritant only when the concerned ministry assumes the rate of 'big-brother' instead of a co-ordinator.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The shortcomings in the present planning process as listed in the question are generally valid. These can be removed to a great extent by limiting the functions of the Planning Commission and the Ministries of the Govt. of India to, (i) indicating broad national priorities, and frame work for development, (ii) fixing up the national minimum in the various fields of socio-economic activities, (iii) issuing suitable guidelines to the States to achieve them, and (iv) organising appropriate system for monitoring and review of the progress of the implementation the plan programmes in the States. The States should be left free to plan for development on the basis of their specific needs, potentials and priorities keeping in view of course the national priorities. They should also be allowed greater flexibility in making sectoral allocation of approved outlays in accordance with the priorities as perceived by them within the broad guidelines of the National Planning Commission.

6.2 The National Development Council to be more effective must have constitutional and statutory authority. The Constitution of the inter-State Council for achieving effective co-ordination between the States and the Union under Article 263 may be a step in that direction and the Council so constituted could discharge the functions of a National Development of Council also. It is not necessary to have experts as members in the Council, as the Planning Commission is already manned by experts in various fields and the Commission can service the Council. In fact, this will itself bring the Planning Commission within legal frame work and make it more less the Secretariat of the N.D.C. The Council could discuss and approve the broad strategy and the general frame work of the Five Year Plans as well as the allocation of sources between the Centre and States as well as the different constituent States. This implies that it should meet more frequently than the N.D.C. does at present to take stock of the progress in various important fields in the States, and to provide appropriate measures for solution of the problems experienced by the State Governments in development and implementation of the plans.

6.3 The position in this regard is not satisfactory. The Planning Commission, as at present do not have regular adequate inter-action with the State Governments Limited inter-action now takes place once in a year where the annual plans of the States are discussed by the Planning Commission with the State Govt. officials. This also becomes, more or less, an exercise in fund allocation. The Planning Commission should as a matter of fact take greater interest in appreciating the peculiar problems of

each State and finding appropriate remedies in consultation with the State Governments and the Ministries of the Govt. of India and in bringing about necessary policy orientation in the matter of allocation of resources, sanctioning of central projects in the States and getting a better deal for the backward States in various matters including the functioning of central undertakings. They should also devise ways and means to achieve the nationally approved objectives in different States and regions.

6.4 The Commission should act as the Secretariat of the N.D.C. It need not have more Ministers as members, for they may not be able to pay adequate attention or provide requisite expertise to the Commission for working out suitable strategies for the development of the country. The Commission may continue to consist as now of the Prime Minister as Chairman, Finance Minister, Deputy Chairman and one or two eminent publicmen with experience in development as well as a few experts of national standing as members. It should be an independent apex advisory body, free from pressure, political or otherwise. There seems to be no need for appointing any State representatives on the Planning Commission.

6.5 The suggestion made under 6.2 would confer greater autonomy to the Planning Commission. Instead of being a Central Deptt. as at present, it will be an independent expert body under the N.D.C. as envisaged in para 6.2. It is necessary to ensure that the Commission is able to function according to its own needs and has the required expert personnel. It should be enabled to make appointment of appropriate personnel quickly, without going through the various time-taking procedures which a Govt. Department has to follow.

6.6 It is absolutely necessary to ensure incorporation of the national priorities in the State Plans as otherwise in crucial areas for the development of the country as a whole, there may not be any unanimity in terms of priorities or allocation of resources when once Planning Commission has identified the national priorities the State Govts. should be left free to draw up projects and programmes based on local conditions and needs within those priorities, without following any centrally prescribed pattern.

The criticism that the Planning Commission has been examining the State's finances in too great a detail is not valid. This is one of the legitimate functions of the State Govt. The States have necessarily to depend upon the centre for provision of funds and unless the Planning Commission has full and detailed knowledge about the financial position of each State it may be difficult for it to appreciate the needs of the States. The problem is, however, that the P. C. does not share any information with the States as regards the Central resources that may be available for planned development, their deployment as between various sectors and the manner of distribution of the sources as between various regions and State, which is necessary in a federal set up.

6.7 The Central assistance is at present released by the Ministry of Finance, on the basis of the recommendations of the Planning Commission. However, there is no justification for deducting central assistance on the ground that the performance in the earmarked sector has not been as per predetermined targets. This amounts to penalising the financially weaker States. The formula of central assistance (70% loan and 30% grant) has let the increase in the States debt burden. The indebtedness of Bihar rose to Rs. 2,195.48 crores in 1982-83 leaving the State very little surplus from the central assistance after repayment of debt and debt service liability to the centre. As against the central assistance of Rs. 273.15 crores for 1982-83, the repayment of loans to the centre and interest thereon amounted to Rs. 188.97 crores. This is a major factor contributing to the financial imbalances in the States. There is a case for liberalising this formula particularly in favour of the backward States.

6.8 The Gadgil formula and even the Modified Gadgil formula for allocation of central assistance have worked to the disadvantage of Bihar. The Modified Gadgil formula stipulates allocation of assistance on the following basis :—

Population	60%
Per capita income below the national average	20%
Tax efforts	10%
Special problem	10%

The formula seeks to allocate 10 percent of the funds on the basis of the tax efforts made by the States. Naturally the States with weak financial structures are bound to suffer in this account. The criteria for distribution of 10 percent of the total available amount on the basis of special problems lends a degree of arbitrariness in the distribution of the amount earmarked under this criterion. The I.A.T.P. formula used for the limited purpose of distribution of the amount due to the States on account of transfer of centrally sponsored schemes in 1979-83 to the State sector was favourable to Bihar. This formula which stipulated distribution of the assistance on the basis of the population and the inverse of per capita income will be more equitable to the economically backward States. The State would urge that I.A.T.P. formula may replace the modified Gadgil formula. Alternately, the State Govt. would suggest distribution of central assistance on the basis of the following simple and straight formula.

Population	60%
Backwardness	40%

(No. of people below the poverty line or SDP below the national avesage whichever is acceptable).

6.9 The present criteria for allocation of central assistance, as stated above, is disadvantageous to backward States. These States with a weak financial sturcture are unable to mobilise adequate resources to finance their development plans. They have necessarily, therefore, to depend on transfer of resources from the Central Government. But the Central Govt. instead of allocating central assistance on the basis of relative backwardness have been distributing the same on the basis of a fixed formula which aggravates the existing disparities. This

system of allocation of funds has, thus, failed to remove regional imbalances. It has, on the contrary accounted regional disparities, which will be manifest from the fact that the gap between the per capita income of Bihar and the country as a whole which was only 32.7 per cent during 1972-73 has gone up to about 43 per cent during 1981-82. The position of Bihar *vis-a-vis* other State in various spheres of socio-economic activities is also quite unsatisfactory, which will be evident from the enclosed tables. The main reasons for such a situation in the State is that the State's per capita plan outlay has remained the lowest in the country during successive five year plans.

(c) Funds for the tribal sub-plan which is under implementation in the States are provided out of the State Plan. In addition, the Central Govt. sanction special assistance for the sub-plan. The system of earmarking of funds for the sub-plan out of the State Plan has ensured adequate allocation of funds for the tribal development. The system should, therefore, be continued.

6.10 It is true that the State Govt. undertake certain centrally sponsored schemes without much scrutiny simply because of matching funds made available to them by the Centre. Some times there is also pressure from the Ministries of the Govt. of India to undertake such schemes. These results in some distortion of priorities within the State sector and taking up of schemes despite the fact that Govt. does not consider them as schemes of high priority in the local situation. What is more objectionable is that the Ministers suddenly decide to discontinue certain schemes thereby creating a problem for the States in terms of resources. The establishment appointed under such schemes becomes a permanent liability. It is, thus, desirable that such schemes are taken up only when it is absolutely necessary and that too only with full and prior consultations with the State Governments. Provision for creation of new posts under such schemes should be made only after taking into consideration the requirements of the concerned States and the norms and standards fixed by them for creation of new posts.

6.11 The monitoring and evaluating machinery so far established in Bihar is quite inadequate. Most of the Departments do not have a proper monitoring arrangement although the monitoring cells created in some of the Deptts. such as Irrigation have done good work. Such cells remain to be created in all the Departments by creating/readjustment of posts. These cells needs to be equipped with professionally trained personnel. Also, monitoring cells are required to be created at Project and District levels, so that monitoring of projects and programmes could be started from the field level itself. There is also need for establishing a well equipped monitoring cell at the apex level in the Planning & Development Department which could besides issuing guidelines to such cells established in the various Departments and Co-ordinating and reviewing the works done by them can itself undertake monitoring of projects/programmes of importance. As for evaluations, this is an area which has reckoned so far received little attention at the State level. Efforts are being made to remedy the situation.

6.12 Planning in our country by and large continues to remain a highly centralised affair, in which a good deal of initiative and direction lies with the Central Government. Although the country, as a whole, has progressed sufficiently under the present system of centralised planning, it had led to serious regional disparities. It is high time, therefore, that Planning is decentralised at the State level and district levels. The decentralised system of planning has two basic advantages. First proximity of planning to the area of development would help deeper understanding of local problems, the resource avaliability and the felt needs of the people which in turn would help in the formulation of pragmatic and meaningful plans. Secondly, the greater degree of popular participation could be built in the planning process, thereby ensuring greater response from the people. Towards this end, the central plan should only be indicative. The Planning Commission should lay down the national policy and priorities and leave the States free to formulate plans for development of their areas on the basis of local needs and potentials keeping in view the national policy and priorities.

The State Planning Department has been entrusted with responsibility for laying down the priorities and allocation of resources besides approval of plan project/programmes. This responsibility, the Planning Department has been able to discharge to a degree. The Planning Deptt. is, however, yet to be fully strengthened to improve its capability in areas like project/programme appraisal, plan monitoring and implementation. There has to be greater appreciation of the important role a strong and effective Planning Deptt. can play. The personnel in the Planning Deptt. also need training. Further the State Planning Board and the State Planning Deptt. have very little inter-action and some organisational improvements are required. The technical expertise of State Planning Board also needs to be strengthen.

PART VII

MISCELLANEOUS

Industries

7.1 and 7.2 It is true that a large number of industries have been covered by the licence under I.D.R. Act through introduction of these items in the First Schedule to the Act. The process started with only a limited number of industries included in the First Schedule but subsequently from time to time many more industries were added to the list with the result that even such industries get covered which do not actually involve vital public interest or national importance.

Many industries have been added in this list perphaps to ensure that there is no over-capacity in those sectors. The monitoring of over-capacity, however, has not always proved effective as even after the grant of Letter of Intent in some sectors over-capacity has been noticed. In fact, at present there are checks at the demand and supply position in a particular sector at three stages, namely, (i) at the time of formulation of the project by the

entrepreneur, (ii) at the time of issuing Letter of Intent, and (iii) at the time of the sanction of the term-loan by the financial institutions. It may be worthwhile to trust the entrepreneur and the financial institutions regarding the scrutiny of the demand and supply in a particular sector. Therefore, licensing as an instrument for monitoring this aspect could be avoided.

The items in the First Schedule should be limited to those which are of vital public interest and of national importance. These could include industries in the defence sector and other key sectors like steel, fertiliser, petroleum, nuclear energy, aircraft, heavy electricals etc. There is hardly any need for including items like match-sticks, soap, razor blades, paint, varnishes, steel furniture, pottery etc. in this Schedule.

It may be difficult to define as to what is vital public interest and of national importance. Some norms can be developed through practice. There could be periodical exchange of views between the Central Government and the State Government as also between the Central Government and the Associations of Industry regarding the appropriateness of Entries being in the First Schedule.

7.3 The present procedure for industrial licensing and various clearances like those for capital issues, import of capital goods and raw materials and for foreign collaboration are normally decided by the Inter-Ministerial Committees at the level of Central Government. Delegation of powers to Ministries themselves to some extent can be considered. The procedure can be further simplified by Senior officers of the administrative Ministries visiting the State capitals and deciding cases within certain delegated range with the help and assistance of State Government officials.

7.4 State Government is trying to facilitate raw material support and marketing support to small scale industries. This has, however, not been very effective as raw materials and marketing points are really very diverse. Direct intervention by the Government both in the matter of supply of raw material and in facilitating marketing can be done only through sizeable expenditure and considerable financial risk. Infrastructural support could, however, be provided through collection and dissemination of information regarding availability of raw materials, their prices and specifications and through collection and dissemination of information relating to marketing. For very small units, particularly relating to village artisans, a direct role regarding supply of raw materials and purchase and marketing of the products by Government agencies may, in many cases, be necessary and useful.

7.5 National Industrial Financial Institutions have been playing a useful role in providing terms lending to industrialists. It has been noticed, however, that the share of some backward States, particularly that of Bihar, in the total financing of these institutions has been very small, generally from two to three percent. There is a need for some re-orientation in the thinking in these institutions in as much as their role should be encouragement-oriented. This is, particularly, needed in the backward regionsd Certain financial risks are, no doubt, involved in it. Hence, in judging the performance of these institutions, particularly relating to the investment in the backward regions, there snould be some flexibility and relaxation so that these institutions do not have to tread the traditional path of the old orthodox bankers.

7.6 and 7.7 Location of public sector projects and investment in heavy industries should be basically on the norms of techno-economic viability. The need for introducing momentum of growth in backward areas, however, must be kept in view. Considering the constraints regarding transport and the load on our transport system, it may be more prudent to locate heavy industries nearer the site of basic raw materials.

To remove doubts from the minds of the States, the Centre could make available to them the gists of the viability studies of these projects focussing on locational features. The Centre should also welcome dicussions with States on these issues. But ultimate dicision should be based on techno-economic viability alongwith the need for providing nuolist of development in backward areas.

As mentioned above, considering the load on our transport and infrastructure, heavy units should be located as near to the site of basic raw materials as possible.

7.8 The incentives for backward districts have proved to be useful. Regarding the criteria for selection of backward districts, it is sometime seen that merely by the existence of some very old industrial units an area does not come in the 'No-industry' district even though there has been no specific industrial activity beyond some of these very old units. The maximum facilities should not be denied to such areas if these are otherwise industrially backward. In fact, in the State of Bihar, almost all the areas except a few industrial Centres like Jamshedpur, Bokaro, Ranchi, Barauni etc. deserve to get the maximum benefit prescribed for backward areas.

Alongwith incentive for investment in backward areas, what is of utmost importance in the long term is the development of infrastructure in these areas. Therefore, a part of the fund for industries should be allocated to the State under the State Plan specifically meant for development of Industrial infrustructure. The present process of formulating specific infrastructural projects for Growth Centres in 'no-industry' districts may not be very effective. What is needed is that there should be specific allocation in the State Plan for this purpose and that the development of industrial infrastructure should be an integral part of the Annual Plan and the Five-Year Plan of the State.

Further replies to Question on Industries

7.1 Entry 52 in the List 1 of the Schedule enables Parliament to legislate in respect of certain industries if considered expedient in public interest. Keeping the complexity of the country and the stage of development at which different States are, this is a healthy provision. Initially, only some industries which were of vital public interest were included

in the First Schedule to Industrial D.R. Act of 1951 but, through amendments in subsequent years a number of industries have been included in the Schedule which do not prima facie look that important as to be included in the Schedule and an illustrative list of this is mentioned in the question, itself. It will not, however, be quite correct to say that just because some not so important industries have been included, "Industries" has been virtually transformed into Union subject. The provision of the I.D.R. Act is basically related to licensing and control in certain situations and it cannot be said that they have been used to the detriment of the interest of the State. Capacity, creation, safety, interest of small entrepreneurs and artisans etc. are some of the areas which have to be kept in view from a national angle. This aspect has also to be kept in view.

What appears to us is that an Expert Committee may have a look at the industries mentioned in the Schedule whether there is any such industries as need not to be thereafter taking into consideration all relevant materials.

7.2 It will be quite difficult to define or even describe in precise terms what in "National Public interest". In a developing society, the demands of the situation keep on changing and, therefore, what is 'public interest' also evolves. Certain things, however, can be easily seen as in national or public interest. For example, industries connected with defence, civil aviation, pharmaceuticals and drugs, oil exploration and petroleum products, nuclear power are obviously of vital national importance. Similarly, industries which affect larger segments of the society or which are for the benefit of deprieved classes or the backward areas or for environmental control are in public interest. One can thus go on enumerating but it will be difficult to have any fixed or static list of subject in this regard. This is bound to change from time to time depending on the situation.

As regards deleting certain items from the Schedule of the Act, we have suggested above that an Expert Committee may go into this matter.

7.3 What hurts industrially backward States is not on account of producers prescribed in the grant of licences. In fact, they do not get licences as they should. Industrially backward States are handicapped in many ways. Most of them are facing lack of information. By the time these States apply for licence for a particular item, the licences in large number are already granted to advanced States and on the ground of capacity already created, applications for licences from certain States are rejected. In granting licence, therefore, the interests of industrially backward States should be duly safeguarded and an appropriate proportion of desired capacity should be created in these States. Capacity assessment is done by a group on which there is inadequate representation from such States. This is one of the reasons for lack of information with regard to capacity. Assessed capacity should be immediately published by the Government and the financial institutions, as soon as the capacity is assessed in a particular area. Information with regard to that should be given to the State Government and the State level financial institutions immediately. If there is local demand, the licence should not be refused on the ground that the capacity has already been created in a different State. Thus of course, will need constant review and States participation in such reviews is, therefore, essential.

So far, import of raw materials or capital goods is concerned, because of liberalisation of import policy, several items are now covered under open general licence. States like Bihar even do not get due advantage of it, because the local office has very limited powers and practically most of the matters are referred to the Regional Office outside the State. These aspects should be duly looked into. There should be a forum on which the State should be represented and there should be a regular review of the matter at the central level so that the problems are identified, solutions found out and distortions, if any, corrected.

The present procedure for industrial licensing and various clearances like those for capital issues, import of capital goods and raw materials and for foreign collaboration are normally decided by the Inter-Ministerial Committees at the level of Central Government. Delegation of powers to Ministries themselves to some extent can be considered. The procedure can be further simplified by senior officers of the administrative Ministries visiting the State capitals and deciding cases within certain delegated range with the help and assistance of State Government officials. Some reasonable time limit may be prescribed for clearing licences.

The financial institutions should take a liberal view in the matter of debt equity ratio, promoters' contribution etc. so far the medium industries are also concerned. Recently the I.D.B.I. has reduced the debt equity ratio. From 2:1 to 1.5:1 and has raised promoters' contribution by 2½%. It is necessary that the small as well as medium industries are given special impetus, particularly in backward areas where the investment from financial institutions is already low.

7.4 Our small and cottage industries continue to suffer on account of raw material and marketing facilities. We have not been able to organise ourselves sufficiently well to support them. The main reason is the financial constraint.

State Government is trying to facilitate raw material support and marketing support to small scale industries. This has, however, not been very effective as raw materials and marketing points are really very diverse. Direct intervention by the Government in the matter of supply of raw material and in facilitating marketing can be done through sizeable expenditure and considerable financial risk. Infrastructural support could, however, be provided through collection and dissemination of information regarding availability of raw materials, their prices and specifications and through collection and dissemination of information relating to marketing. For very small units, particularly relating to village artisans, a direct role regarding supply of raw materials and purchase and marketing of the products by government agencies may, in many cases, be necessary and useful.

For this it is necessary that the financial base of corporation dealing with raw materials is strengthened. The Central Government no doubt gives a rebate of Rs. 300 per tonne in steel but this is not enough. There is a Corporation dealing with small scale industries in the State. The Central Government undertakings have a vital role in the matter of marketing. Their response, however, is very poor. Although, there are guidelines by the Bureau of Public Enterprises for giving price preference but they are not implemented. The Central Government Organisation dealing with marketing in cottage industries sector should also play a greater role.

7.5 The All India Financial Institutions are generally sympathetic. Their investment, however, is very low. That is primarily because of the lack of the absorption capacity in the State. The response from the banks, however, is very poor and the small scale industries have a very hard time in getting working capital from the banks. This is by and large true even in respect of other industries.

7.6 Location of public sector enterprises has to be done basically on techno-economic considerations keeping in view the overall national interest. It does not seem necessary that there should always be consultation with the State on all such matters. It is, however, necessary that the industrially backward areas get preference in the location of central public sector undertakings. The Oil Refinery at Barauni is one of oldest. Therefore, Barauni deserves setting up of petro-chemical complex. But inspite of all the pursuance by the State Government, the petro-chemical complex is being set up outside Bihar. Similarly, Bihar has very huge coal region. Therefore, large scale coal based fertiliser and chemical industry can be set up in Chotanagpur region. But ignoring the interest of the State of Bihar, Fertiliser, plants have been set up in other States, like Orissa and Andhra Pradesh. The State also has the large reserve of pyrites ore at Amjhore in Rohtas district. Therefore, a fertiliser plant and also a sulphuric acid plant based on pyrites can be set up in Bihar. The proposal has been submitted to the Government of India but without any positive response.

It may further be added that in backward States like Bihar, Assam, Orissa Central Investment should be made on a large scale so that it may catch up with the advanced States and bring an over-all increase in the national per capita income. Special attention is to be paid to the fact that in Bihar basic raw materials like coal, mica, iron ore, lime stone and forest products are abundantly available and this States should be given power to set up such industries. After the Second Five Year Plan, no public sector undertaking has come to Bihar.

7.7 As explained in 7.6 the Central Government's investment should keep techno-economic factors in consideration in making Central investment. The other factors to be kept in view are backwardness of State, regional imbalance etc. From these points of view, Bihar has considerably suffered.

7.8 For purposes of Central Government subsidy and concessional finance from Financial institutions, districts have been categorised as 'A', 'B' & 'C' and difference rates of Central subsidy have been prescribed for these three categories. This categorisation is not on a scientific basis. Sugar industry came up in Bihar, for example, in 1920's and a number of mills were situated in particular districts. Many of them are sick and quite a few closed. Similarly Rice Mills came up in certain districts long back, most of them are now closed. Now, if on the basis of investment made in these industries these districts are disqualified for a higher rate of central subsidy, this will be detrimental to the growth of industries in these areas. The investment by itself should not be the sole criterion. The factors to be taken into consideration should be whether industries are running well, whether employment is being provided and whether income is generated. In absence of these consideration investment, criterion will not be reasonable.

Bihar has some peculiar problems and they have to be appreciated. Almost whole of North Bihar is chronically flood affected, according to the criteria mentioned in the report of National Committee on the Development of Backward Areas in its report on development of chronically flood affected areas. These areas have floods each year, and infrastructure built for industrial development is heavily damaged. Roads, bridges, telephone and telegraph poles are seriously damaged year after year. Such areas, therefore deserve to be treated on a different footing as in respect of hill areas and higher central Government assistance should be available for development of infrastructure in these areas.

It is high time that a distinction is made between a backward area in an advanced State and a backward area in an industrially backward State. Because of historical reasons and socio-economic conditions prevailing over centuries, the ethos in a backward State are different from that in an advanced State. With the same amount of assistance, a backward district in an advanced State will get greater stimulus for growth than that in an backward State. The quantum of assistance in a backward area in a backward State, there should be substantial and reasonably higher than the same in a backward district in an advanced State.

As the National Committee on Development of Backward Areas had suggested, growth centre should be developed. But they should not be confined to category 'A' districts. It should be open to the State Government to select such growth centres in any backward district irrespective of the category in which it may be falling. The reason is that if an area where certain infrastructure facility has already been built up or some other facilities are available is helped it will have a faster rate of growth and a higher spread-over effect. This will help quicker industrialisation of the State while ensuring dispersal of industry. The State will not have commensurate advantages if such growth centres are confied to 'A' category district where infrastructure may be very very poor.

A certain pattern of financing is being practiced for development of growth centres in category 'A' districts. While 1/3rd of the expenditure, of the total of Rs. 6 crores generally, is to come from financial institutions as loan, the rest of the money

is to come as subsidy from the Central Government and investment from the State Government in equal share. State Government resources being limited, it is necessary that this pattern should be changed for backward areas in backward State. The financing pattern may be 10% contribution from the State, 50% subsidy from Centre and 40% loan from financial institutions. The Rs. 6 crores limit is also very low keeping in view the price situation. This should immediately be raised to Rs. 10 crores.

These suggestions are being made as the result of the scheme of the Central Government subsidy and concessional finance has not been as encouraging as it was expected.

In Bihar, District is too large in area. Eeven in advance district, there are extremely industrial backward areas. Therefore, sub-division should be the unit for declaring backward area.

Replies to Supplementary Questionnaire No. 2 on Industries

1. The present arrangement is sound. It is necessary that industries are regulated on an uniform basis throughout the country.

2. The industrial development in the country has not been even. Keeping this in view, it will perhaps be more practial to leave it to the States to earmark industries—whether they be kept in small sector or otherwise.

3. Development of infrastructure and provision of adequate finance are the two important things, among others, necessary for industrial growth. State Governments face serious constraints in developing infrastructure. The Planning Commission, should, therefore, keep certain amount uncommitted in the State Plan to be spent as per local needs. State Governments do not have any say in the Management of Banking institutions and the Banks make their own decisions with regard to investments. In Industrially backward States, banks are shy in advancing money and this arrests the industrial growth of the State. The State Governments should have effective voice in deciding the investment pattern of a bank in the State. It should be thought out how the State Governments can have some control on functioning of banks in the State.

4. Industrially backward States have a greater say in deciding whether a particular industry should be encouraged in the Small or the Medium Sector.

5 & 6. These points have been covered above.

7. Before any change is made in the existing industrial policy, it will be desirable to have deeper consultation with the State Government. This could be given a formal shape and Industrial Development Council could be formed with representation from all States and the view points of the States should be heard before any major change is made in the industrial policy.

8. Not particular. Restrictions under the MRTP are necessary keeping in view larger social objective of dispersal of industries.

Development of small scale industries is vital in our country.

Certain incentives are, therefore, given to this in view, this, therefore, seems reasonable that there is uniform approach with regard to keeping industries in the small scale sector.

The categorisation of industries is with a view to exclude their production in the medium and large sectors. From this point of view also, it is necessary that there is uniformity in this matter all over the country and industries which are reserved for the small-scale sector should be so reserved throughout the country.

State Government can play a bigger role in developing small and medium industries in several ways :

(i) If they have an effective voice in the assessment of capacity of medium industries;

(ii) If they have adequate information about the scope for establishing different types of industries.

There is no harm if some of the industries in the small industries sector are also included in the Schedule I of the industrial Development and Regulation Act and there is no need to remove them from there. Reservation of some of the listed items in the small scale sector only helps the growth of small scale industries if it is in the interest of the State Industrial Growth.

In our view Entry 52 does not in any significant way dilute the authority of the State over industries as it should have industries being in the State List (Entry 24).

Trade and Commerce

8.1. On Trade and Commerce it is proposed that the State Government recommend the creation of a Trade Advisory Council, or a Board of Trade. While at the apex level, this could meet nationally once a year, at the regional level it could meet every quarter, or every six months. The composition of this Council or Boards could include representatives of all State Governments, official as well as non-official, specified either by name or by designation. In addition, representatives of the producers', traders' and consumers' interests must also be included. The Board or Council, at the apex level could have some permanent sub-committees, assisted by a Secretariat, which could meet at frequent intervals to decide and act on matters brought to its notice either directly or through the regional sub-committees.

The national level Board could be subdivided into four or more regional Boards, each with its own secretariat. These Regional Boards could also have permanent sub-committees which would go into various problems and issues at a more localised level, and acting in its wisdom would make suitable suggestions both to the respective State Governments as well as to the apex-level National Board.

While both the National and Regional Boards would function in a purely recommendory or advisory capacity, it would be incumbent upon the concerned

State Governments as also the Government of India to examine all recommedations and take considered judicious action. It is suggested that these Boards be assisted on their secretariat side by suitable Government officers, both administrative and police, who have had direct experience in implementing and enforcing the various control and regulatory mechanisms of the Central/State Governments in respect of trade, commerce and unit supplies.

The proposed Board of trade would be permanent body, apart of course from the State and Central Governments to examine all points pertaining to Trade and Commerce as well as the points pertaining to the enforcement of the Essential Commodities, and others related, Acts (10.2 of the Commission Questionnaire). The questions of taxation, cesses duties, octroi rates, etc., can also be brought within the purview of the Board of Trade by including some financial/taxation exports in the permanent secretariat and permanent sub-committees.

Agriculture

9.1 Since 1967, there has been drift in formulation of State Plans & fixation of targets of agriculture production which is normally fixed at the National level meetings of Planning Commission and also Ministry of Agriculture. On the basis of such recommendations, normally the States fix the targets for different districts, as such the planning process is interlinked between the State and the Centre.

Another significant change has been in the allocation of fertilizers, pesticides and also to some extent seeds for the States. Naturally, the State has no control over supply or allocation of inputs and totally depends upon the Centre.

During aberrant weather situations, even release of relief furds is dependent upon the assessment report by the team of Government of India.

The fixation of statutory minimum price of agriculture produce as also selling price of the major inputs and allocation of agriculture credit is handled centrally. Fixation of uniform statutory minimum price for the whole country sometimes gives rise to local problems. This aspect required further deliberation.

It is felt that the Centre's role is important and the State cannot assume the responsibility because there are many inter-States Coordination problems.

9.2 As per suggestion of the Administrative Reforms Commission etc., Agricultural Development forms part of the State subject. However, major development programmes on the recommendation of the State are initiated by the Centre as centrally sponsored or sectoral schemes which finally form part of the State Plan as per recommendation of the National Commission on Agriculture.

Following points need consideration in this regard :

(1) The developing States or Backward States should get priority in allocation of Plan funds so that more number of development programme could be taken up as sponsored schemes.

(2) Before transferring sectoral schemes/sponsored schemes to State Plan, it may be advisable to evaluate impact of the scheme and its further necessity and only then if required the assistance may be tapered gradually and not suddenly so that it is not a major burden on the State's exchequer all at once.

9.3 There is effective coordination between the Centre and the State. The Working Groups should initiate the dialogue much ahead of the start of the working year, so that annual plans are finalised in time.

Planning bodies at grass-root levels, particularly the Blocks and districts should also be made more meaningful and productive by incorporating location specific problems.

It is felt that there should be more frequent meaningful dialogue between the Centre and the State in course of implementation of various plan programmes.

9.4(a) It is felt that the fixation of minimum or fair price of agriculture produce should be done on sectoral level as conditions throughout the country as also per capita production may not be same for the entire country. Therefore it is suggested that the concerned States may also be consulted while fixing the prices.

(b) No comments.

(c) Normally the critical inputs are allocated on the basis of previous year's consumption and once the supply of a particular input is in short supply due to any reason, the whole chain in subsequent years is dislocated. There should be special consideration in allocation of inputs like fertilisers or credit on the basis of prevalent aberrants weather conditions or crop production requirements.

9.5 (a) In backward and developing States, there should be more number of All India Co-ordinated Research Improvement Projects on the basis of felt needs in different Agro-Climatic Zones.

(b)(a) As regards financing by NABARD, the procedure for financing should be liberalised.

(b) In case of failure of course, NABARD should defer the recovery as per State Government policies.

(c) In respect of advancement by Commercial Banks, there should be some positive consideration of density of population, size and other situations of the State.

Food and Civil Supplies

10.1 and 10.2 The point which must be fundamentally underlined is that whenever any Central Government agency, body or corporation is entrusted with the responsibility of supplies of food or any other essential commodity, it must be clearly specified and clearly understood that there must be apparent and evident a genuine sense of concern towards the problems of the particular State on area in which the Central Government agency is operating. To underscore this, the agency must be clearly responsible for ensuring delivery to the End-point in the distribution chain, be it either the consuming public or the State Government agency responsible. Moreover, in some

manner the State Govt. must have a measure of administrative and operational control over such agencies as that it can be ensured that the agency is performing to the best of its ability in optimizing benefits to the State Government concerned and its citizency.

As regards procurement, where any Central agency is utilized for this purpose, a comprehensive price-support and procurement plan must be drawn up well in advance in consulation with the State Governments to ensure that the primary producer gets a remunerative return on his crops. It must also be ensured that arrangements are made for spot-purchases and spot-payment without unnecessary harassment to the cultivator either by way of transportation, or sampling, or any other storage or avoidable administrative delay. For this prupose, wherever there is no prevalent system of large rural grain centres, effective steps will have to be taken to ensure their opening even for temporary crop-specific periods.

As regards pricing, this needs to be examined in two contexts—one, pricing as pertaining to the cultivator and purchase/procurement of his produce and, secondly, pricinn as pertaining to the issue price of foodgrains and other essential commodities through the Public Distribution Sytem to the consuming public. In the context of procurement/purchase pricing the present system of price fixation by means of the Agricultural Prices Commission of the Government of India is quite adequate. However, for actual benefits to reach the cultivators specially in far flung and inaccessible areas, the existence of a comprehensive location-specific price support and procurement plan (as mentioned in para 6 above) is of vital importance. It will also be essential to consider a variable support price, and this would specially benefit those States or areas where the unit cost of production is higher than the national average.

The question of pricing for issue of the consuming public is another area in which the views of the State Governments have to be considered very seriously. The present national problem of massive foodgrain inventories and poor offtake could, perhaps, be somewhat lessened if a conscious decision were taken to issue foodgrains to the consuming public at a price appreciably lesser than the prevalent market prices in a particular region. This will also have the tangential effect of preventing speculation and hoarding of foodgrains, apart from increasing the offtake through the public distribution system. Constant sale at prices lower than market rates will require frequent adjustments in issue price, and this again must be done only in consultation with the respective State Governments.

Scientific storage of foodgrains is essential to the whole philosophy of a price-support system. In this area, too, the role of the State Governments can be substantially increased not only through direct investment in scientific warehousing facilities but also through associating specified officials of the State Government of a suitable level of responsibility in the matter of periodic inspections of private as well as Central Government agencies, warehouses. This will have the fundamental adavntage of ensuring an end to the common grievance of issue of food-grains not suitable for human consumption, by the responsible agencies.

The question of movement and distribution has been delineated in para 5 of this note. It is imperative that at least one months' revolving buffer stock be permanently maintained in each State in respect of all essential commodities to act not only as a deterrent to price-manipulation by interested parties, but also as a safeguard against any temporary transport bottlenecks resulting in delayed movement.

Education

11.1 It is not correct to say that there is unnecessary centralisation and standardisation in the field of education and too much of Central interference in the initiative and authority of the States.

The State Governments have complete freedom in formulating their own syllabi courses of studies for all levels of education, right from the primary stage up to the University stage. They are also free to appoint teachers in schools and colleges and to sanction grants to them in accordance with the norms fixed by themselves. However in respect of constituent colleges, where UGC scales are sanctioned the State Governments have to go by the standards fixed by the UGC for obvious reasons. This cannot be called in unnecessary interference.

11.2 (a) The UGC's role has generally been healthy in influencing the University eduction. Not only do they prescribe definite standards for educational institutions for clear-cut objectives and facilities, they also ensure that the teachers appointed, against sanctioned posts, are up to certain standards.

(b) The UGC has been some what unduly strict in respect of a few Universities while extending financial assistance. They have a set pattern of extending financial assistance but they also lay down conditions for the Universities to qualify for such assistance. However there have been some instances in which State Governments have felt hadicapped, while taking the usual grants, as the Commission insisted on :

(i) Prior release of funds by the State Government.

(ii) Fulfilment of other requirements.

Undue insistence by the Commission on prior release of fund by the State Government has often led to delay in release of funds by the UGC resulting in non-utilisation of funds within time.

Since the ojectives of the UGC and that of the State Government were some, namely, proper utilisation of financial assistance given by the UGC, it would be better and more workable if the UGC released funds and at the same time lays down guidelines for utilisation of the financial assistance, so as to ensure that the funds released are proper used by the State Government.

11.3 State Government feel that there is no need of any additional institution to be evolved for the purpose. The present system of holding an Annual Conference of State Education Ministers and Secretaries for deciding upon educational policies and

programmes is adequate for the present. Moreover the States get good opportunity for being consulted in the matter of their plan schemes, relating to Education, in the planning Commission and the National Development Council.

11.4 We feel that the constitutional provision Contained in Articles 29 and 30 should be there. But State Government would like to point out that certain instances have come to their notice in which the minority institutions, set up under these articles of the Constitution, have failed to carry out their obligations and conform to the regulations made by the Government, particularly in respect of proper utilisation of funds, quality and standard of teaching staff and due payment to them. Therefore while the minority institutions should have the constitutional right to set up their own institutions, it is necessary to regulate their freedom in such a manner that there are no chances of exceeding the legitimate frontiers of this freedom.

11.5 Nothing particular to mention.

Inter-Governmental Coordination

No reply given.

Statement of Chief Minister, Bihar before the Commission

I am extremely happy to welcome you, Sir, and the Hon'ble Members of the Commission and the officials. I express my gratefulness for the opportunity given to us to express our views before the Commission. The basic question underlining Centre-State Relation is whether we should have a strong unitary system or a system of federalism with the constituent units having enormous freedom. What we have in our country is probably the golden mean and an ideal admixture of the two extremities of an all powerful and autocratic centre on the one side and of a federal system where units are having enormous freedom on the other side. That the system or the set up that we have, is by far the best and the most balanced one has been well evidenced by the fact that this system has stood the test of time and has successfully preserved the unity and integrity of the Nation, so vast in size so diverse in its geographical and climate conditions and a nation with multi-religious, multi-lingual and multi-social set up. There have been attempts, time and again against the unity and solidarity of the country by divisive forces. The recent turmoil in Assam and Punjab can be cited as instances. It goes to the credit of our constitution that it has been able to withstand such turmoils. Our Constitution has built-in flexibility and understanding relationship between the Centre and the States. Absence of rigidity has been its greatest merit. The relation between the Centre and the State has been such that it basically guarantees the unity and integrity of the Nation and at the same time does not neglect the expectation and aspirations of the State as well. Our Constitution has taken proper care of these requirements. In fact with the growing seccessionists trends and tendencies what is required is to strengthen the hands of the Centre.

PART II

LEGISLATIVE RELATIONS

As regards the Legislative Relations, we are definitely of the view that the present arrangements and institutions are adequate to ensure the basic objectives of the Constitution. The scheme that has been formulated in the Constitution was drawn after considerable debate and discussions and in fact had taken into account foreseeable future as well. In fact we should be grateful to the founding fathers of our Constitution to having such foresight. It should be borne in mind that Constitution, however, detailed it may be, can never provide for all the eventualities. A large pool of conventions set created with the passage of time. This has happened in the Indian polity as well.

A point has been raised whether or not before any legislative change is by the Centre undertaken on a concurrent subject, the State should be consulted as provided for in 1935 Act. It should be realised in dynamic and changing state, even minor delays can become disastrous. It would neither be possible nor desirable to go in for a process of cosultation before legislative changes. Besides there exists constitutional safeguard of Article 249 Sub, Art. II which sets limited duration for which such a legislative change can be enacted. The legislative relations as provided for in the Constitution appear to serve the requirement of the present day and possibly for the future as well.

PART III

ROLE OF GOVERNOR

In respect of the role of the Governor, it appears that the present arrangement has been well thought of. The institution of the Governor basically acts as an effective link between the State and the Centre. We have no doubt been a few controversies attached to the said office during the recent past. Such cases have been rather exceptions. The Governor acts as an impartial observer and a shock observer in critical times. The element of criticism that has been attached to the office of the Governor has been more on account of personal aberrations and problems. The Constitution envisages a positive role for the Governor. He reflects the view of the State before the Centre and vice versa. Our experience has been that by and large the role assigned to the Governor in the Constitution and that has come to be expected during the course of time has been performed satisfactorily.

PART IV

ADMINISTRATIVE RELATIONS

Coming to the administrative rêlation, it may be realised that intervention of the Centre in the administrative arena of the State has been envisaged only under the extreme circumstances of different kinds of emergency envisaged in the Constitution.

With the passage of the time certain institutions have grown up which has been alleged as encroachment upon the power of the State. But viewed in the

proper prospective such institutions are very much essential for the trade and commerce, development of water resources, agriculture development. One can reasonably conclude that the legislative provisions in the Constitution have been well conceived and have stood the test of times.

What has been said above is equally true in the field of administrative norms, requirement of law and order and administrative relations where some kind of common approach may be absolutely essential and the Centre in this state of affairs plays at times a complimentary, at times a supplementary and whereever necessary a substitute role as well.

It will be appropriate if I touch upon the question of desirability of having an Inter-State Council. The basic role of such a body is to reconcile the disputes that arise between the States on the one hand and the Union and the State on the other. Setting up of such a Council is perhaps not necessary in view of the fact that there are several other mechanism like the Zonal Conferences of the Chief Ministers, meeting of the Governors and the National Development Council etc. which serve the same purpose.

The most important factor which goes against the setting up of such a Council is such body not have any representative character of democratic base and may even come in clash with the sovereignity of the Parliament. Such a body will not be responsible to the people at large.

PART V

FINANCIAL RELATIONS

We are of the view that both Finance Commission and Planning Commission should continue. As the extent of devolution of fund through the recommendations of the Finance Commission and grant of Central assistance conceived by the Planning Commission have not been able to bridge the gap of economic development between the advanced States and the poorer States like Bihar, it appears essential that the methodology for the estimate of gap in resources so far practised by the Finance Commission should be modified to meet the actual and physical requirements and need of the State's concerned. Unless this is done, the growing regional imbalance in economic development will not be abridged. Finance Commission should be made a permanent body like Planning Commission but its Chairman/Members may change from time to time. In the devolution of the taxes, the principle applied for income-tax should also be followed for Union Excise duties. There should be an uniform yardstick and formula for devolution of receipts from taxes like income-tax, Union Excise duties and additional excise duty. While we admit the requirement of fund for the defence purposes, and therefore do not want that returns from a custom duty should be divisible, but we feel that taxes on the Corporate bodies should come under the shareable pool. Finance Commission estimates the revenue gap of the States and in such estimates it pre-supposes certain return from public undertakings like State Electricity Board, Road Transport Corporation, other Corporations, Cooperative bodies and investment in irrigation projects. Usually such projects are executed to meet the social requirements of the people and to increase their economy. As such these projects do not yield any appreciable return. Yields calculated by the Finance Commission from such institutions create artificial revenue surplus to the States. These are notional surplus and actually States like Bihar has suffered from such erroneous calculation. In this context I would like to point out that though the per capita income of Bihar continues to be lowest in the country it has not been declared a deficit State by the Eighth Finance Commission whereas such States whose per capita income is much higher than Bihar like West Bengal and Orissa, they have been declared as Deficit States. It is, therefore, imperative that the mode of estimates on revenue surplus/gap by the Finance Commission should be made more realistic and should be attuned to the individual requirement of the State for bringing them at par with the economic development of the country.

The Central assistance given by the Planning Commission was the composition as 70% loan and 30% grant. This composition accentuates the burden of indebtedness leaving meagre amount for investment on development works. In the interest of such States whose per capita income is lower than the national average, the Central assistance should constitute 70% as grant and 30% as loan with an end to reduce their volume of indebtedness. Also the grant of loan should be bifurcated in two divisions namely, one which goes for the social cause but is unproductive like expenditure on public health, education etc. and the other which is spent on productive projects like irrigation schemes, energy programmes etc. Such loans which are to be utilised in the execution of social benefiting scheme (unproductive ones) should carry nil payment of interest and recovery of loans in substantially large number of years. Also such loans which are used for productive purposes should bear return of loan and interest either at par with their economic return or should be realisable in perpetuity. I would also like to advocate, as I have already spoken recently in the NDC that the devolution of Central assistance to backward States like Bihar should be on the formula of IATP (Income Adjusted to Total Population). The Gadgil formula may, therefore, require to be accordingly revised. The grant of Central assistance should have the composition of 60% on population and 40% on backwardness.

I also hold the view that the benefits of the Central sponsored schemes have actually not accrued to poor States like Bihar because of their cost over burden. I suggest that the Central sponsored schemes should be under Central plan schemes and should have cent-percent grant in their execution.

We feel that both Planning Commission and Finance Commission should exist as they have immensely benefited the people and hence we do not want that they may be substituted by another agency. We also do not want to create a separate independent agency for distribution of receipts among States as it would be counter-productive and would not be in consonance with the constitutional provisions.

Government of India has discontinued the facility of drawing on overdrafts with effect from 1-10-85. Instead of it has increased the quantum of special ways and means advance. However the quantum is still low as compared to the extent of overdrafts utilised by the States during the Sixth Five-Year Plan. I advocate that the quantum of special ways and means advance should be more or less equal to the extent of overdraft on an average annually drawn by the individual State. This facility, would go a long way to curb likely fiscal imbalance and indiscipline.

States have been utilising deposits in nationalised banks through loan advances but the credit deposit ratio in States like Bihar is quite low as compared to all India average, Steps should be taken to ensure that the CDR gets enhanced to at least 60% for which some explicit formula should be devised. States have been allowed about 33% of the proceeds from the market borrowing. It is not condusive to their requirement. Suitable formula should, therefore, be arrived at so that the State's share in market borrowing gets increased to an appreciable extent.

The devolution of discretionary grants from the Planning Commission should be on the basis of some formula which should be made known to the States. While we want that the divisible pool of Central receipts should increase and should be regulated statutorily under the recommendations of the Finance Commission, we want that the system of grants-in-aid given by the Finance Commission should be minimised. The grants-in-aid should, however, cover special requirements of the States like expenditure on maintenance of bundhs and avoidance of floods. It should also cover such expenditure which are incurred by States to follow the Central pattern of expenditure like payment of additional dearness allowance, bonus, terminal benefits etc.

It has been our experience recently that receipts have increased by lightening the administrative machinery and not by increasing the taxes. We should, therefore, endeavour to strike a balance so as to maximise the return from the existing taxes both in the Central and the States' levels. The volume of taxation need not be enlarged. Neither do we feel that the States' power of taxation should be curbed. What is required at present is that States' fiscal requirement for economic growth should be fully met in the devolution of fund either through Finance Commission or through the decision of the Planning Commission.

Economic and Social Planning

I now come to the Planning process and the questions that have been raised in this regard.

The State Government is of the view that adequate opportunities are available for exchanging views with the Planning Commission. There are opportunities of discussions at the official level and the political level followed by mid-term appraisal also. There could, however be more frequent exchange of views. We would like the Planning Commission to help the State by getting expert studies conducted in various problem areas suggesting solutions and finding ways to implement the same as well. We would like that the Planning Commission should besides formulating the plan, be also given the discretion to distribute grants-in-aid on some formula which may help the States essentially the backward States, so as to achieve the basic objective of removal of regional imbalances and disparities.

It is, however, not necessary for statutory status being accorded to the National Development Council. Its role has been fairly effective even otherwise.

We would like some more freedom to be given to the States in the matter of selection of schemes within of course, the overall national priorities and the given allocations.

In the membership and the composition of the Planning Commission there does not appear to be any need for change.

It is only right that the Commission should examine in detail the States financial plans to ensure that the States are in a position to shoulder the plans and achieve the aims and objectives set up.

As I have observed earlier, central assistance should be available for meeting special problems, specially for the backward States like Bihar. Such assistance should be made available from some discretionary fund that should be made available to the Planning Commission

Planning

We have State Planning Board functioning a the State level on similar lines as of the Planning Commission in the Centre. The State Planning Board prepares prospective Plan, fixes up inter-regional priorities in the States. The State Planning Board has also been saddled with the responsibility of evaluation and monitoring. Thus the State Planning Board functions as the State level counterpart of the Planning Commission and thus it serves as an effective mechanism or instrument in the State Plan preparations in consonance with the national objective and priorities.

Industries

For no industries district financing pattern should be 10% by the State-Government, 50% of the Central and 40% by the Financial Institutions instead of present pattern of the one third of each. The items under IDR Act should be subject to constant review and revision from time to time by an Expert Committee. Growth centres should be allowed to be set up at the discretion of the State Government.

Miscellaneous

Agriculture

In the field of agriculture, a major parameter is the price fixation. While it is desirable that for the sake of uniformity, decisions are taken at the Central level but margin should be provided for local variations in terms of productivity, cost of production etc. Backward States like Bihar are also influenced by lack of infrastructural facilities and

susceptibility to natural calamities which may also be borne in mind at the time of price fixation of various commodities.

Education

In the field of education, it may be pointed out that the States already enjoy autonomy and the role of UGC has been helpful in fixation of norms and improving the quality of education. Education even if non-developmental but from the point of view of financial angle is an investment of far reaching significance. The present system of inter-action between the States and the Centre meets the requirement of the situation. However, it may be mentioned here that in respect of programmes like adult education, non-formal education special emphasis needs be given to the States like Bihar which are admittedly backward and below the national average. Even though we conform to the national policy relating to minority education; we would like to draw the attention to the need and mechanism being devised whereby the privileges and the freedom they enjoy is tempered by certain basic norms in the matter of financial discipline and quality of education as also to qualify for being treated as minority institutions.

In view of the fact that a large number of agencies already exist in various fields of trade like Coffee Board, Jute Corporation of India etc. there appears to be no over-riding necessity to have a separate Board.

We would, however, like to say that the financial institutions should be given some scope to relax basic requirements when it comes to investment in the backward States. Special steps should be taken for development of infrastructure in the areas because the industry is the key to generation of employment which lead to re-generation of the economy of the State.

In conclusion I take this opportunity to thank the Commission for hearing the views of the State Government. Centre-State relations are passings through critical times and, of late, have been subjected to tremendous tensions. The remedy to the problems that have arisen lies not in throwing over-board the well established institutions which have come to stay and by and large worked and served the need of the country but in making them more effective, more meaningful and workable.

The Constitutional Provisions and legislative mechanism already exist and these have been tested by time. What is needed is to make them work in the spirit in which they have framed and devised.

GOVERNMENT OF GUJARAT

Replies to the Questionnaire

Gujarat

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Our Constitution cannot be said to be FEDERAL in the strict sense of the term, but it has federal features with several characteristics, creating a strong bias in favour of the Centre.

1.2. It is felt that there is scope of greater autonomy to the States by suitable redistribution of legislative powers. This State subscribes to the view that a "Strong Centre" and "Strong States" are not mutually exclusive. It is, therefore, felt that it is possible to decentralise powers, including in the area of sharing of overall national resources, without sacrificing the principle of a strong Centre. However, this State does not subscribe to the view that appeals to the Supreme Court should be restricted only to Constitutional matters; but the jurisdiction of the Supreme Court in civil matters may be restricted.

1.3 Yes, we agree that there is a need for further decentralisation and for a dynamic review of the powers and functions with a view to enabling the states to reach their development potential to the fullest extent. However, the question of the decentralisation has to be viewed in the light of the national needs. The optimum Constitutional provisions for achieving the same are discussed under relevant heads.

1.4 No.

1.5. We are in general agreement with the view expressed above, and the relationships have been worked in conformity with the spirit and intent of the Constitution over the years but only for short span of the period in the Constitutional history of India such spirit and intent were not observed and adhered to. Difficulties, issues, tensions and problems which arise in the peculiar federal set-up of our Constitution can be resolved within the broad frame-work of the Constitution by the mechanism of the Inter-State Council under article 263 of the Constitution and by constituting an authority under article 307 of the Constitution and wherever required, also by amending the procedures, practices and laws which tend to strain the relations between the Union and States. Other suggestions are made in replies to various questions.

1.6 Yes. The following provisions in the Constitution, in our opinion, have been designed to achieve that end :

(i) Article 3.

(ii) Part II, regarding citizenship.

(iii) Emergency provisions : Articles 352, 356, and 360.

(iv) Integrated judicial system :
Article 217 (i), Article 217(1), Proviso (b) read with Article 124 (4).

(v) Powers of the Union to confer powers, etc. on the States :
Article 258.

(vi) All-India Services : Article 312.

(vii) Article 315.

(viii) Article 355.

(ix) Article 360.

(x) Inter-State Councils : Article 263.

(xi) Power of Centre to give directions :
Articles 256, 257, 365.

1.7 Yes, generally they are reasonable. However, care should be taken to ensure the judicious exercise of the powers of the Centre under the articles referred to in this question.

1.8 We do not agree with this view.

PART II

LEGISLATIVE RELATIONS

2.1 We endorse the view that there is nothing basically wrong in the scheme of distribution of legislative powers. However, there is a growing feeling that, over the years, the Union has tended to touch the State legislative Field by invoking powers available under entries 52, 54, 92 etc. in List I of the Seventh Schedule to the Constitution of India. Some of the instances are :—

(1) Industries (Development and regulations) Act, 1951.

(2) Mines and Minerals (Regulations and Development) Act, 1957.

(3) Rice-Milling Industry (Regulation) Act, 1958.

2.2 The State Government is of the view that it is necessary to review the Lists in the Seventh Schedule to the Constitution so as to confer more legislative powers on the State. Moreover, where the Centre feels necessity to make legislation on the subjects otherwise included in the State List, such enactments should be made only after consultation with the Inter-State Council. The following entries in the List III (Concurrent List) of the Seventh Schedule be transferred to List II of the Seventh Schedule :—

Entry Nos.—

10. Trust and Trustees—

11A. Administration of justice—

28. Charities and Charitable institutions—

43. Recovery of the claims in respect of taxes and other public demands.

A provision should be made in article 201 to provide for expeditious and time-bound decision of the president in the matter of giving his assent to a State Bill reserved by a Governor for the consideration of the President. When the President withholds his assent therefrom, he should be required to record reasons therefor in writing which should be communicated to the State Government.

2.3 Yes.

2.4 The legislation made by Parliament in 'national interest' or 'public interest' on subjects which are within the exclusive competence of the State Legislature should be only for a particular duration subject to periodic review.

2.5 Article 200 of the Constitution does not specify any time limit within which the Governor should make a declaration as to whether he assents to the Bill or withhold assent therefrom or reserves the Bill for the consideration of the President. It is suggested that a time limit of three months should be prescribed for such declaration and when the Governor withholds his assent he should be required to record reasons therefor in writing which should be communicated to the State Government.

It is suggested that for the purpose of article 201 also a time limit of three months should be prescribed within which the president should declare as to whether he assents to the Bill or withholds assent therefrom or directs the Governor to return the Bill to the State Legislature.

PART III

ROLE OF THE GOVERNOR

3.1 (a) The role of the Governor as envisaged by the Constitution is that of heads of the States in whom the executive power of the State vests, which they have to exercise with the aid and advice of the Council of Ministers. Their role is also to act as a link between the Centre and the State. This role assumes effective significance in the context of the Centre-State relations in the event of the imposition of the President's Rule in the State.

(b) The Governors have generally functioned properly as Constitutional heads of the States. However, during the last 34 years, certain occasions have occured creating impressions that in recommending imposition of the President's Rule in a State, in determining the relative strength of a political party after general elections to the State Legislatures for appointment of the Chief Ministers, and at a subsequent stage appointing the Chief Minister without ascertaining such strength on the floor or the State Legislature, some Governors have not at times acted constitutionally.

3.2 In fostering healthy Union-State relations, the role of the Governor should be such as would effectively ensure discharging of duties by him objectively in the best interests of the State and in accordance with the Constitution.

3.3 In the matter of—

(a) making report to the President suggesting action under article 356 (I), the Governor should function objectively and in the best interests of the State in the setting of the paramount national interest ;

(b) making appointment of the Chief Minister under article 164, the Governor should objectively ascertain the relative strength of the political party in the State Legislature. In the event of no single party getting absolute majority as a result of the general elections to the State Legislature, the Governor should first give an opportunity to the Leader of the single largest party to show that it has the total support of the majority in the House. In such a case, the Governor should test the majority, at an early date, on the floor of the House. When, any *Prima facie* question arises as to whether a Government has lost the majority support in the House, the question should be decided solely on the basis of a confidence motion to be moved on the floor of the House, for which a session should be summoned by the Governor within four weeks of the determination by the Governor that a *prima facie* case exists to justify the ascertainment of the continued majority. If necessary, suitable amendment may be made in the Constitution.

(c) Propogation/dissolution of the State Legislature the Governor should, in the normal circumstances, act on the advice of the Council of Ministers.

3.4 Intent and purpose of the Constitution-makers in providing in Article 200 for reservation of Bills by the Governor and in Article 201 for the consideration of the president is to give reflection time to reconsider the Bill by the Lagislature Assembly. The power of reservation by the Governor and consideration of the State Bill by the President is generally exercised in conformity with that intent, spirit and purpose. However, the Gujarat University Services Tribunal Bill, 1985 which has been reserved for the consideration of the President on 1-5-1984 has not yet received the assent of the President. There seems no instance where the Governor has withheld the asssent to a State Bill or reserved it for the consideration of the President without the advice of the Council of Ministers.

3.5 We agree with the above conclusion. No case of undue delay has come to the notice of the State Government.

3.6 (1) Yes.

(2) As per reply in 3.1.

3.7 No.

Under the Constitution, the Governor acts on the advice of the Council of Ministers, except in discharge of his discretionary functions in making a report under Article 356, in appointment of a Chief Minister and dismissal of a Chief Minister in the event of his losing majority support, etc. and not independently

as in the case of a Judge of the Supreme Court/High Court. So the Governor's post does not need any security of tenure or any special procedure of removal.

3.8 When it is brought to the notice of the Governor that circumstances have arisen indicating *prima facie* that the ruling party has not the majority in the Assembly, the Governor should at once ask the Chief Minister to fix a date for summoning the session of the House, so that the House meets within four weeks of such notice. If the Chief Minister fails promptly to advice the Governor on such date, the Governor should summon the Assembly without the advice of the Council of the Ministers, so that the session meets within the aforesaid period of four weeks.

We, however, do not agree to the suggestion that the Governor should himself verify the fact about the majority of the party on the floor of the Assembly as that can conveniently and more properly be decided by the members of the Assembly on the floor of the House.

3.9 Please refer to the reply at 3.3 (b)

We do not agree that the provision like article 67 of the Basic Law of the Constitution of the Federal Republic of Germany should be made as it will not solve the problem.

3.10 In all matters except making of report under article 356 and matters like appointment of the Chief Minister and dismissal of the Chief Minister on proof of loss of majority support in the House, the Governor is supposed, in the present scheme of the Constitution, to act on the advice of the Council of Ministers. Issuing guidelines does not seem to be necessary.

PART IV

ADMINISTRATIVE RELATIONS

4.1 The purpose, function and use of Articles 256, 257 and 365 is to provide for the effective control of the Central Government over the States and for securing and preserving unity and integrity of the nation.

No instance of such directions has occured so far the Gujarat State is concerned.

4.2 We support the view that Article 365 should be retained in the Constitution. The Article provides the only constitutional sanction to articles 256 and 257.

4.3 We agree with the recommendation but would suggest that in addition to informal channels some formal channels like, Inter-State Council, should also be involved. Efforts of the Centre to explore the possibilities of settling points of conflict by issuing guidelines to cover the points of conflict likely to arise may also help in solving conflicts.

4.4 Powers under Article 356 were exercised four times so far as Gujarat is concerned. But the extra ordinary remedial power cannot be said to have not been properly exercised.

4.5 We do not agree with this view as the exercise of the powers under Article 356 being extraordinary should be sparingly used. The period for President's rule could be extended only in the circumstances specified in clause (5) of Article 356. The question of handicap to the efficacious use of the power by the Union Under Article 356 does not arise as it can be used for the total period of 3 years and during that period the normalcy should be restored.

4.6 The present arrangements are working satisfactorily.

4.7 Even though the Central agencies referred in the question and several such agencies deal with the activities relating to the subjects in the State List and the Concurrent List of the Seventh Schedule to the Constitution, it cannot be said that the Union has made undue inroads in the autonomy of the State. The criticism is not justified as such agencies dealing with mostly policy matters can effectively function in accordance with the policies which are formulated for the entire country. The planning and financial provisions are required to be made on the broad basis considering the policy for the entire nation. It is, however, necessary to restrict the role of such Central agencies as much of the functions require to be performed by such agencies can be conveniently and effectively performed by the concerned states. The functions of the Central agencies, therefore, should normally be confined to formulating the policies, preparing the plans, providing finances and advising the States to implement the policies and of a supervisory nature.

4.8 Under article 312 of the Constitution of India the All-India Services are to be constituted if it is necessary or expedient in the national interest. The objective that the creation of such a cadre protects the national interest is by and large fulfilled as the members of such services are drawn from the entire nation. It has helped the integration of the nation and to that extent the All-India Services have fulfilled the expectations of the Constitution makers.

At present, administrative control over the All-India Services is of the concerned State and only in disciplinary matters relating to the major punishments the concurrence of the Union public Service Commission and the Government of India is necessary. To maintain the All-India character of the services and independence, more control of the State over the services is not necessary.

4.9 Under Article 355 of the Constitution of India it is the duty of the Union to ensure that the Government of the State is carried on in accordance with the provisions of the Constitution. This duty includes the obligation of the Union to ensure that the law and order situation is maintained and the Government of the State is not carried in violation of the provisions of the Constitution. In such circumstances to fulfil the obligaiion of the Union, it may necessary to locate and use the Central Reserve Police and other armed forces in aid of the civil power in the State, even *suo motu*. Entry 2-A in List I of the Seventh Schedule of the Constitution clearly confers the legislative competence to the Union for the deployment of such armed forces in any state in aid of civil power. The extent of the exercise of the power

under article 355, however, should be considered in view of the fact that article 257 A which specifically provided for the assistance to the State by the deployment of the armed forces or other forces of the Union is repealed. It means such exercise of *suo motu* power under article 355 should be sparingly used. We are of the view that the Union is, and should be, competent to locate and use its Central Reserve Police and other armed forces in aid of Civil power in the State even *suo motu* in order to discharge its constitutional duty under Article 355.

4.10 Broadcasting and television should continue in the Union List as it is necessary for national integration. Most of the States having limited financial resources and lacking in required infrastructure may not be in a position to effectively implement the programmes. Television is yet in a formative stage in the country and, therefore, a broad based national policy is necessary for the implementation of the programmes. It is, however, desirable that the States should have effective voice in formulating the policy of the broadcasting and television programmes. This can be done even without including the broadcasting and other like forms of communication in the Concurrent List but by formulating the healthy conventions.

4.11 By and large, the Zonal Councils have effectively served the purpose. However, resort should also be had to article 263 which provides for setting up Inter-State Councils whenever necessary.

4.12 Under article 263 of the Constitution, the President has powers to establish the Council. The duties of the Council should be as specified in the said article. As one of the duties is to inquire into and advise upon disputes which may arise between the States, the Constitution of such council would certainly iron out the inter states disputes. Clause (a) of article 263, however, does not provide for inquiring into and advising upon the disputes between the State or States and the Union and therefore, the Council will have no powers in this regard. Under Clause (b) of article 263, the Council will have only the duty to investigate and discuss subjects relating to the common interest of some of the States or all the States and the Union. For such subjects of a common interest, the difference, if any, can be ironed out by the Council. The Council has, under clause (c) of arricle 263, also duty to make recommendations upon any such subject and in particular for the better coordination of the policy and action with respect to such subjects but that duty is only recommendatory and, therefore, it will not be much effective. To make the Council more effective, it is necessary to amend article 263 of the Constitution so as to enlarge the scope of duty and functions of the Council.

It is also necessrary to make provisions that the recommendations of the Council if not accepted by the Union should be placed before parliament for discussion. Over and above the functions specified in article 263, the functions and powers of the Council should be relating to—

(1) The broad principles of the planning in the states or the Zones ;

(2) The power generation and distribution for the Zones ;

(3) Aid by the Union to the States for the calamities like flood, drought etc.

The Council should be presided over by the Prime Minister and Union Finance Minister, Union Home Minister and Union Minister-in-charge of Planning and the Chief Ministers and Finance Ministers of the States should be the members.

The council should be set up on the premanent basis and the composition, powers and functions should be defined. The Council must have as independent Secretariat.

PART V

FINANCIAL RELATIONS

5.1 A review of the working of the mechanism for devolution and examination of the resources transferred by the Union to the States during the last 34 years clearly establishes that while the Constitution-makers has envisaged that the Finance Commission will be concerned with total assistance to be given to the States other than by way of loans this role over a period of time has been diminished to that of an agency concerned mainly with filling up the non-plan revenue gap of the States which was never intended by article 280 of the Constitution. Consequently, transfer of resources by the Union to the states by way of assignment of certain taxes and duties in their entirety and the obligatory and permissive division regarding other taxes and duties has not kept pace with the increasing needs of the states on account of the responsibilities cast upon them by the Constitution.

5.2 Observations of A.R.C. Study Team are still relevant. It will not be possible to increase the resources of the States by complete separation of the federal fiscal relations of the Union and the States and abolition of the scheme of the transfer of resources.

By transfer of more elestic taxation heads to List II, Seventh Schedule the resources of the State can certainly be increased.

All taxing heads/taxing powers should not be transferred to the Union List to form the shareable pool as it will not be feasible and practicable for the Union to impose and collect all taxes. It is also against the basic principles of federal set up.

It is suggested that the following measures be taken to improve the resources of the States :—

(1) Withdrawing of the scheme of levy of additional duties of excise in lieu of Sales tax on textiles, tobacco and sugar and enabling the State Governments to levy sales tax thereon.

(2) Introduction of a tax on consignment transactions to be levied by the Centre and administered and collected by the State Governments on the lines of the Central Sales tax.

(3) Transforming more taxing heads to List II, Seventh Schedule and also empowering the State Governments to levy the following taxes presently covered under article 269 of the Constitution :—

(a) Terminal taxes on goods and passengers carried by railway, sea or air ;

(b) Taxes on railway fares and freights;

(c) Taxes on the sales or purchase of newspapers and on advertisements published therein.

(4) The present ceiling of Rs. 250 per annum in the case of taxes on profession, trades, callings and employments should be stepped upto Rs. 1,000/-.

(5) The State Governments be permitted to levy tax on the consumption of power by the railways as the railways are a commercial organisation.

(6) More central taxes should be brought into the shareable pool particularly the corporation tax, customs duties, surcharge on income-tax and excise, etc.

(7) As far as possible mobilisation of additional resources by the Centre should be by way of revision of rates of taxes rather than by way of revision of prices and that the additional mobilisation by the Centre should not be at the expense of the State enterprises. The Eighth Finance Commission has after careful consideration of this matter stated that an increase in administered price is justified if there is an increase in cost of production, provided that the public sector undertakings are functioning with reasonable efficiency. But, it obtaining revenue is the sole consideration, then the appropriate course is to increase excise duty.

(8) An important source of financing of developmental expenditures is market borrowings. The distribution of market borrowings between the Centre and the States should be in proportion to the distribution of plan expenditure between the Centre and the States.

(9) The amounts raised by the Centre by way of schemes like compulsory deposits, special bearer bonds, etc. outside the scheme of market borrowings should also be shared with the States.

(10) The World Bank and bilateral assistance received by the Government of India for projects included in the plan should be fully passed on to the State which are implementing the concerned projects.

5.3 While strong Centre with more elastic sources of revenue and discretionary powers can speed up the development of the backward states, it may be stated that the economic development is a complex function depending upon a number of factors, only one of which is finance. Therefore, adequate provision of finance for the respective States should be accompanied by a well worked out strategy of growth keeping in view the level of need of advancement of the state concerned.

5.4. State Government would not recommend the deficit financing beyond a certain limit for covering the resources gap. This could be covered by effective and efficient use of the existing power of the Central Government and effective control on the growth of Central Government expenditure including the budgetary support to Central Public Sector Undertakings.

5.5 In our view the Finance Commission should evolve a scheme of resource transfers based on the assessed surplus of the Union generated on account of the economic advantages of the Centralised levies.

As regards the *inter se* distribution of the share of the States in Central levies the factors like population, collection, consumption, per-capita income and various indicators of the backwardness or otherwise, are taken into consideration by the Finance Commission over and above the special factors of problem are likely the desert areas, saline coastal areas, barren hilly areas should be taken into consideration.

The State Government is of the view that *inter se* distribution of the Central assistance for plans of the States should be determined on the basis of the principles that may be decided by the N.D.C.

The Non-Plan assistance to the States consists primarily of share in small savings in the shape of loan equal to 66.2/3% of the net small savings, collections in the States. This may be steppted up to 80 per cent of net collection of small savings as requested in N.S.S. Committee. It is urged that all savings schemes which are akin to small savings such as capital investment bond, special bearer bond etc., should also be shared with the States.

5.6 In the State Government's view almost every State will have to be provided special funds for development of the economically underdeveloped areas to enable them to contribute their share in the development process of such areas. In a situation where there are only slight shades of differentiation of the average levels of development of the different areas in the country and where there are large pockets of backwardness in all the States of the country there seems to be no special advantage in establishing a special federal fund for ensuring faster development in economically under-developed areas relative to the other developed areas of the country. It will also limit the use of funds for restricted purpose instead it would be desirable that larger transfer are made from the Centre to all the States and in formulating the plans of the Central Ministries like Railways, Post and telegraph, industries, etc. Special Schemes are drawn up for providing infrastructural and other facilities in the backward areas of the country.

5.7 As mentioned in reply to question 5.2 the following Central taxation powers can be reasonably transferred to the States :—

(1) Withdrawing of the scheme of levy of additional duties of excise in lieu of sales tax on textiles tobacco and sugar and enabling the State Government to levy sale tax thereon.

(2) Empowering the State Government to levy the following taxes presently converd under article 269 of the Constitution :

(a) terminal taxes on goods and passengers taxes carried by railway, sea or air ;

(b) taxes on railway fares and freights ;

(c) taxes on the sale or purchase of news papers and on advertisements published therein.

5.8. The State Government would agree with the proposal that there should a mechanism for consultation and co-ordination between the Centre and the States in regard to the levy of major taxes like corporation tax, income tax, wealth tax, estate duty, customs duty, excise duty, sales tax etc. which have a profound bearing on the economy of the country as a whole and considerable damage may occur as a result of fragmentary approach to taxation.

The State Government however does not agree to the sales tax being made a central levy. This is because of the following reasons :—

(i) Sales tax is a levy falling to a large extent on transactions taking place within a state. In vast country like India, there are wide differences between States in consumption pattern of the people, economic conditions and the relative importance of commodities, to the local economy. It is only the State Government which can sensitively operate a scheme of sales tax to suit the local needs of the people of each state.

(ii) Sales tax is a tax which is being used as an instrument of development by State Governments. This is done by granting exemptions to raw materials used in manufacture of goods in manufacturing sectors which are important to the economy of the State. This requires close to the ground operations with variations from time to time depending upon the changing situation and can only be carried out at the State Government level.

(iii) in so far as Sales tax on inter-State Trade or Commerce is concerned, Government of India have already fixed a ceiling on the rate of Sales tax which can be levied by the State Governments on major raw materials and goods declared to be important from the point of view of inter-State trade or commerce.

(iv) a regional forum for inter-State consultation in sales tax already exists in the shape of the regional committees where officials of the Government of India and the Finance Departments of the State Government, and their Commissioners of Sales Tax meet periodically.

There is at present no machinery of consultation of the Central Government with the States on the levy of such Central taxes, such consultation could easily be ensured by a Committee of Finance Ministers of States presided over by the Union Finance Minister. This Committee could discuss policy issues relating to the Corporation tax, income tax, wealth tax, estate duty, customs excise, Sales tax and administration of these taxes and other allied matters affecting the Central and State Budgets. The National Development Council cannot fulfil this role as it is largely concerned with developmental issues.

So far as the distribution of the tax proceeds is concerned, sufficient provisions are made in the Constitution and the Finance Commission has ample powers under Article 280 of the Constitution to make recommendations. However, it is necessary that some more Central Taxes should be brought into a divisible pool particularly the Corporation Tax and Custom duties etc.

5.9 While the constitutional position is that the Finance Commission is concerned with total assistance to be given to a State, other than by way of loans, the emergence of the Planning Commission as an important aid given and more importantly as an active agent in determining the long term trend in the expenditure of the State Government has in practice brought about a progressive diminution in the scope and functions of the Finance Commission. Its role has in effect been reduced to that of an agency concerned with the non-plan side of the revenue budget of the States.

In the State Government's view the Finance Commission should make an objective assessment of the total resources and requirement both of the Union and the States and determine the amount of surpluses of the Union which can be transferred to the States by way of tax devolution and grants (Plan and Non-Plan) to enable them to fulfil the responsibilities cast upon them by the Constitution. The Finance Commission may also determine the inter-se distribution. among the States, of the transfer by way of tax devolution and grants under article 275 leaving the inter-se distribution of plan grants to the planning Commission on the basis of such guide lines as may be evolved by the National Development Council. The Planning Commission will also be concerned with the additionality of Central assistance to the States on account of externally aided projects which could be determined at the plan discussions taking into account the overall plan performance of the States and in particular the efficiency with which the externally aided projects/schemes are executed by them. The Planning Commission could also, in consultation with the administrative ministries, determine the patterns of assistance in respect of the Central sector/Centrally sponsored schemes the Centrally overall outlays on such schemes and the inter-se distribution of these outlays among the states.

5.10 In the matter of statutory transfer of resources by way of tax devolution and grants the Finance Commissions have been obsessed with actual/normative non-plan revenue deficits and surpluses of the states. In the State Government's view the assessment of the needs of the States by the Finance Commissions on the basis of the normative non-plan revenue deficits has not only resulted in adequate transfers but has also been unfair to States which paid greater regard to financial prudence and made greater efforts in raising revenues. This is because the gap filling approach implied that the Finance Commissions would virtually under write the normative non-plan revenue deficits of the State budgets regardless of the factors causing such deficits.

As regards the plan assistance to the State since the Fourth Plan this is now determined on the basis of formula wherein a major portion of the assistance is based on population. Factors like per capita income, tax effort, special problem etc. are also taken

into account. This is a great improvement over the earlier practice where the plan assistance was largely based on the gap between the plan outlay and the state resources.

The absolute level of public expenditure is also not a correct criterion for assessing the levels of welfare programmes undertaken by the State Governments. This is because the efficiency of such expenditure and the type of scheme financed by the State Governments are a more important indicator than the figures of total public expenditure.

5.11 The assessment of the needs of the States by the Finance Commission on the basis of the normative non-plan revenue deficits has not only resulted in adequate resources transfers but has also been unfair to States which paid greater regard to financial prudence and made greater efforts in raising resources. This is because the gap filling approach implied that the Finance Commission would virtually under write the normative non-plan revenue deficits of the State budgets regardless of the factors which cause such deficits. Another limitation of the gap filling approach is that since all non-plan commitments as of a given date are taken into account. The balance of the non-plan gap may take place at different levels of expenditure depending on the nature and coverage of non-plan commitment made by the States from time to time. A normative approach in respect of a few items may not make significant impact on the policies of the State Governments as each Commission has adopted its own norms in respect of specific items.

In view of these considerations the State Government would urge that the approach hitherto adopted by Finance Commissions. that grants- in-aid under article 275 should be on the basis of the fiscal gap of the States, should be given up altogether and instead new ground should be given. We would recommend that grants-in-aid may be provided for (i) equalisation of the standards of specific administrative and social services on the basis of nationally accepted programmes: and (ii) to meet burdens on State finances on account of special circumstances or matters arising as a result of national policies.

5.12 The State is in broad agreement with the suggestion of the Seventh Finance Commission that the bulk of the resource-transfers should be done through tax-sharing and the role of grants-in-aid under Article 275, in the scheme of total revenue-transfer should, as far as possible, be supplementary.

5.13 In our view, the grants should broadly be on principle of equalisation of the standard of specific administration of social service on the basis of nationally accepted programmes and also to meet the burden on State finance on account of special circumstances like financing the relief expenditure.

5.14 The receipts from scheme like the special bearer bonds, Compulsory deposit schemes and National deposit scheme should be shared by the Centre with the States on the lines of the National Small Savings Scheme.

As regards the administered prices in a situation of monopoly or near monopoly by the Government of India the distinction between the prices and the tax element gets blurred because the Government of India has the discretion either to increase the administered price or increase the tax thereon. The State Government agrees with the thinking of the Eighth Finance Commission on this subject. The Commission has stated that an increase in administered price is justified if there is an increase in the cost of production, provided that the public sector undertakings concerned the functioning with reasonable efficiency. Also in fixing the administered prices, provision can be made for reasonable profits. But, if obtaining revenue is the sole consideration then it seems that the appropriate course is to increase excise duty.

5.15 The present methods by which the total savings available in the Community are distributed between the public and private sectors and within the public sector between the Centre and the States and their respective public undertakings are not satisfactory as this is determined largely by the Planning Commission and the Central Ministries which attach greater priority to their own requirements vis-a-vis those of the States. It is suggested that a suitable institutional arrangement such a Committee of State Finance Ministers presided over by the Union Finance Minister could, amount other things, consider the sharing of savings, of the community between the Centre and the State and their respective public undertakings.

5.16 Unlike the Central Government, State Governments taken together cannot resort to deficits in their budget year after year. This is because beyond a limit prescribed by the Reserve Bank of India, any budgetary deficit has to be financed out of the overdraft on the RBI and the State cannot be in an overdraft with the RBI for a long period. It is however true that the States finances have been under severe strain and from time to time Government of India provided on an *ad hoc* basis non-plan medium term loans to certain States to tide over their financial difficulties. In the State Governments view the basic problem has been the inadequate transfer of Central resources to the States to enable them to fulfil the responsibilities cast upon them by the Constitution. It is true that in absolute terms the amount of resources transferred from the Centre to the States has gone up but such transfer as percentage to the total revenue of the Centre has shown a marginal decline, as the Central Government has been taking specific measures as a result of which it has been appropriating for itself revenues which would have rightly been shared with the States for assigned to them.

As regards the mounting indebtness of the States this is primarily on accounts of patterns of assistance by the Centre to the States. At present, the loan component of the Central assistance for the State plan schemes is 70 per cent and grant component 30 per cent of the total Central Assistance. The direct financial returns from the schemes included in the State plan are hardly adequate to pay for the interest, charges and repayment of the loans. Apart from this, the Central Government gives loans to the States for non-productive purpose such as meeting a part of the expenditure on natural calamities, clearaance of overdrafts. etc. Such patterns of assistance add to the financial problems of the States which are

subsequently sought to be resolved by *ad hoc* measures like rescheduling the repayment of the Central loans instead of suitably revising the patterns of assistance.

5.17 As has been pointed out earlier, mounting indebtness of the States is primarily on account of patterns of assistance by the Centre to the States. At present, the loan components of the Central assistance for the States Plan Schemes is 70 per cent and grant components of 30 per cent of the total Central Assistance. The direct financial returns from the schemes included in the state plan are hardly adequate to pay for the interest charges and repayment of the loans. Apart from this, the Central Government gives loans to the States for non-productive purposes such as meeting a part of the expenditures on natural calamities, clearance of overdrafts, etc. Such patterns of assistance add to the financial problems of the States which are subsequently sought to be resolved by *ad hoc* measures like rescheduling the repayment of the Central loans instead of suitably revising the pattern of assistance. This problem can be overcome by :—

(i) a significant step in the transfer of resources from the Centre to the States;

(ii) modifications in the pattern of Central assistance to the States. In the case of State Plan Schemes the Central assistance should be present pattern under which 70% of the plan assistance is in the form of loan. Similarly, for non-productive programmes such as natural calamities, etc. the assistance should be wholly in the form of grants; and

(iii) the additional assistance to the States for the externally aided projects included in the State plan should be passed on to the States on the same terms and conditions on which it is made available to the Government of India.

5.18 The State's freedom to borrow within the territory of India is regulated by the provisions of Article 293 of the Constitution particularly clause (3) of this Article which in effect requires that a State may not, without the consent of the Government of India, raise any loan. These constitutional restrictions on the State's freedom to borrow appear to have been made mainly with a view to regulating such borrowing within the monetary and fiscal policies determined by the Government of India. This requirement in effect restricts the freedom to the States to raise such loans despite the capacity of the States to raise and utilise such funds productively. This is because the total quantum of market borrowings and its distribution between the Centre and States is determined by the Government of India, and there has been a decline in the share of the States in the total market borrowings in recent years. The State Government would suggest that as market borrowings is primarily undertaken for development purposes the criteria for allocating the overall market borrowing between the Centre and the States should be ratio of plan outlay of the Centre and the States instead of the position obtaining today under which the amount allocated to the states is the balance amount after meeting the requirements of the Centre.

5.19 The State Government has pointed out to the Government of India that in respect of State Plan Schemes financed with IDA/WORLD BANK assistance, the IDA/World Bank insist on incurring certain order of outlay within a specified period, thereby imposing an additional burden on State Budgets in the plan period whereas the external assistance accurred to the Central budget. Taking the various factors into consideration the Government of India agreed initially to provide to the States extra Central assistance amounting to 25 per cent of IDA/World Bank disbursements in respect of State plan projects assisted by them which was subsequently raised to 70 per cent. The assistance is in the form of loan and grant in the ratio of 70 : 30. In the State Government's view the additional assistance for the externally aided projects included in the State Plan should be given to the States on the same terms and conditions on which the assistance is made available to the Government of India.

5.20 Instead of setting up the Loans Council it is suggested that the Committee of State Finance Ministers presided over by the Union Finance Minister could decide about the borrowing limits of the different States and the Centre on the basis of principles laid down by the Committee.

5.21 The increase in the ways and means limit enjoyed by the State Government with Reserve Bank of India takes care of temporary difficulties arising from the uneven flow of receipts or expenditure. However, this cannot take care of relatively more chronic imbalance between their resources and functions, inadequate devolution and the absence of suitable mechanism to deal with from unforeseen difficulties. The short term difficulties arising from uneven flow of receipts or expenditure could be met by periodical upward revision in the ways and means limits enjoyed by the State Government with the Reserve Bank of India. The latter problem could be remedied only by control over plan/non-plan expenditure and larger devolution of resources from the Centre to the States.

5.22 It is not correct to say that the States are not exploiting adequately their own sources of revenue. The resource mobilisation by the States as a whole has kept pace with the resource mobilisation by the Centre although the State taxes are much less elastic than Central taxes.

5.23 No Comments.

5.24 Yes, the State Government would agree with this view.

5.25 The views of the State Government to augment the resources by exploiting the duties and taxes specified in article 269 are as follows :—

(a) the *ad hoc* surcharge presently being recovered on all railway tickets issued to and from mela stations be converted into a terminal tax on Railway Passengers Tax Act, 1956;

(b) a terminal tax be levied on passengers carried by air on the internal and international flights at the rate of 1 per cent of the air fare;

(c) a terminal tax be levied on goods carried by air at the rate of 1 percent of air cargo charges;

(d) a tax on railway passenger fares be levied at 15 per cent of the fare on air conditioned and first class travel, 10 per cent on second class express/main travel and 5 per cent on second class ordinary travel beyond 100 kms. Second class ordinary fares upto 10 kms. be exempt from this levy;

(e) a tax be levied on the sale of newspapers and periodicals at 10 per cent in the case of newspapers and periodicals costing upto Rs. 2 per issue and 20 percent in the case of more expensive newspaper/periodicals costing more than Rs. 2 per issue and

(f) a tax be levied on advertisements published in newspapers and periodicals on the lines suggested by the Fifth Finance Commission.

The proceeds of the levies be distributed on the principles that it should secure for each State, as nearly as possible, the amounts which it would have itself collected if it had the power to levy such tax or duty.

5.26 The State Government would like to point out that in providing for an impost on passenger fares as on of the taxes to be levied by the Centre and assigned to the States under Article 269 of the Constitution, the architect of the Constitution had intended to give to the States access to a share of the growing revenues of the Railways. This objective has been thwarted by the substitution of the railways passenger fares tax by a fixed lump sum grant which has not grown in proportion to the increase in the revenue from railway passenger fares. The State Government, therefore, urges the reimposition of the tax on railway passenger fares instead of paying a fixed grant in lieu of the tax.

5.27 No Comments.

5.28 The views of the State Government on the working of the present arrangements in regard to provision of Central Assistance to the State for dealing with natural calamities are—

(1) The additional requirement of funds on account of severe droughts, extensive floods, devastating cyclones, etc. should be assessed by a Central Team;

(2) The team should adopt realistic norms of expenditure on relief, rehabilitation and restoration of damage to public properties while making this assessment;

(3) The Government of India should provide non-plan grant under Article 275 to meet the entire additional outlay recommended by the Central Team in the case of such calamities;

(4) The present distinction made between drought relief works and repair and restoration works/under other calamities like floods, cyclones, etc. should be done away with for the purpose of Central Assistance;

(5) For the purpose of eligibility of Central assistance, the out off point of the expenditure on relief, rehabilitation and restoration of damage should not be the financial year but a reasonable period after the close of the financial year taking into account the nature of calamity and the type of expenditure which the State Government is called upon to bear.

In order to ensure optimum utilisation of relief assistance the State should be free to incur expenditure on any item of relief, rehabilitation and restoration subject to the overall ceiling fixed by the Government of India.

5.29 The role of the National Loan Corporation is not clear. If it is to raise funds from the market and then provide them to the States for financing schemes in various fields like agriculture, industrial development, etc. it will only be duplicating the work of existing all India financial institutions like NABARD, RBI, etc. which are competently discharing these functions. In fact, to day the sectors of development are so many and so specialised that it will be impossible for one loan Corporation to do justice to the Loan requirements of all of them. The role of the National Credit Council is also not clear. At present the RBI is discharging the functions of watching the flow of credit into various sectors of the economy. The State Government does not see any particular advantage to be, derived by the establishment of a National Credit Council.

5.30 The State Government generally agrees with the view that the funds should be spent prudently and in such a way that the benefits go back largely to the people.

5.31 This State Government is of view that the expenditure as well as the revenues of the Centre should be subjected to the same degree of rigorous scrutiny by the Finance Commission as those of the States. After the exercise by the Finance Commission, the monitoring of the expenditure by the Centre and the States should be left to the Union. Ministry of Finance in the case of the Centre and the State Finance Departments in the case of States. A national Expenditure Commission although attractive as an idea will be unfeasible as it will cut into the autonomy of the respective Governments.

5.32 The share of the States in Central taxes like income tax, Union excise duties is finalised on the basis of the actual receipts of the respective taxes as certified by the Comptroller and Auditor General. It is observed that because of the time lag in certifying these figures there are arrears in the payment of share to the States which affects their ways and means position. Similarly, in the case of finailisation of Central assistance for the State Plan Schemes, Centrally sponsored schemes and non-plan expenditure on natural calamities, the Central Ministries required audited. figures of expenditure.

There are delays in getting the audited figures mainly because the form in which the accounts are kept do not contain the details required by the Central Ministries.

5.33 No Comments.

5.34 In the State Governments view, parliament has conferred sufficient powers and enjoined adequate

duties on the Comptroller and Auditor General to enable him to keep an effective watch on the expenditure of the Union and the States.

5.35 In the State Governments view that reports presented by the Comptroller and Auditor General to the State Legislature are reasonably comprehensive and accurate to enable the Legislature to take firm views in the Matter.

5.36 These examinations are important instruments. On ascertaining that expenditure are incurred according to the rules and procedure but they cannot be considered sufficient for controlling the expenditure at the Central and in the States.

5.37 The State Government agree with the view that the Estimates Committee can give useful legislative and administrative advice to the administration.

5.38 The assessment of the propriety of the expenditure of the Union and States is best left to the judgement of the Parliament and the State Legislatures and there is no need for an Expenditure Commission for such assessment. The Comproller and Auditor General of India also cannot perform this role as his powers and functions are limited under the Comptroller and Auditor General (Duties, Powers and conditions of Services) Act.

5.39 This Question, we presume, arises in the context of the Centrally Sponsored Schemes. The irritant and delay in the clearance of Plans and action in respect of such schemes are due to vagueness of the Schemes, and unclear guidelines for the implementation of such schemes. This delay could be considerably reduced if the Government of India circulated clear-cut guidelines for the implementation of such schemes and if the State Governments implement the scheme on the basis of such guidelines. Further, they may not be required to submit their plans and action for clearance.

To ensure that the funds released by the Centre for specific purpose are, in fact, utilised for that purpose, by the States, the States may be required to submit the utilisation certificate to the Government of India.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 There is considerable scope for enhancing the quality and the level of participation by State Government in the formulation of National Plans. The meetings of the National Development Council would be even more purposeful if the States are more effectively associated in the process of finalising the agenda of the meetings. As per the present practice the State Governments are not given an opportunity to suggest topics for the consideration of the NDC. Since the Chief Ministers of all the States are members of the N.D.C. it would be in the fitness of things if the agenda for the meeting be prepared in consultation with them. Apart from annual meetings of N.D.C., there is a need for regular forums such as—

(i) Conference of State Planning Secretaries; and

(ii) Conference of State Planning Ministers

to consider the various issues, from time to time, before submitting the same to the N.D.C. These meetings should be held at regular intervals say twice or thrice a year to follow up action on recommendations of N.D.C. and discussing in detail procedural aspects of planning and formulation and review of Centrally Sponsored Schemes. It is suggested that the conference of Planning Secretaries should be held atleast twice in a year, and that of State Planning Ministers at least once in a year, so that States may have adequate chances to give their views on the implementation of Economic Programmes, emerging new economic policies at various levels. The regular conferences of the State Planning Secretaries will help to identify good practices as well outdated procedures, and enable to minimise shortcomings noticed so far, in the working relations between the Planning Commission and the States. Because of the present practice and procedure some States get favourable treatment as compared to others in terms of definition of key elements of Centrally Sponsored and Central Sector Schemes. For instance, it happens that in the last quarter, amounts not utilised by some States are given to a few States which are adept in absorbing more than their allotment. This situation can be effectively dealt with by publication of concepts, definitions and assumptions underlying Centrally Sponsored Schemes and Central Sector Schemes well in advance incorporating the views of State Governments at the time of their formulation and, reduce the imbalances in inter-State absorption of funds by detailed review at the conferences of State Planning Secretaries twice or thrice a year preferably in the first, second or third Quarter of the year, leaving enough time to take remedial action.

6.2 National Development Council deals with the broad policy parameters of economic development based on the directive principles enshrined in the Indian Constitution. The good of the people and the development of the nation depend upon the co-operative attitudes of all the partners in the federal system of the Government. Clothing this august body with statutory powers will bring rigidity in its approach and may even lead to possible legal challenges at various stages. A legal framework is usually not suitable for dealing with rapidly changing situations through a multitude of impl ementing agencies. What is required is flexibility and dynamism in our efforts in tackling the socio-economic problems keeping in view the changing technology, changes in the pattern of demand along with innovative responses to preserve the quality of environment. The meetings of the National Development Council have generally been held for approving the Approach Paper and Draft Plan Document and the agenda is prepared by the Planning Commission without any consultation with the State Governments. Moreover, it is observed that there is no follow-up of suggestions made in the speeches delivered by the Chief Ministers with the result that the N.D.C. meetings tend to be somewhat one-sided concern as they are, at present, exclusively for approving the documents prepared by the Planning Commission.

It is, therefore, suggested that the meetings for the N.D.C. should be held regularly to discuss the issues of national importance with the agenda prepared in

consultation with the State Governments with arrangements for the follow-up action on the points and suggestions made by the State Government, and a system of reporting back to the Council details thereof. A Standing Committee of the N.D.C. or some other suitable machinery may also be constituted which can meet at regular intervals and prepare the ground for the N.D.C. meeting. We are in agreement with the proposal in 6.2 that once the development plan is approved by the N.D.C. the States should be free to implement them as per approved pattern and adequate financial resources should be provided to the States.

6.3 At present, the process of consultation seems to be top-down i.e. States take their draft plans for detailed scrutiny to the Planning Commission, the States have no real say in the Planning for sectors, like coal, steel, cement, petro-chemicals, railways, major ports, airways, tele-communication, etc. All these are Central subjects. But these sectors are vital to the States' progress, given their role as key elements in infrastructure (Railways, P&T) or as critical raw materials (Coal-Steel) for industrial development. Given the vital role these sectors play in the development of the State's economy arrangements for more detailed consultation with States seem necessary. At present there are Advisory Committees in some of the Central agencies such as the Railways and Telephones at State level, but these deal with operative aspects and the day to day functioning of these organisations rather than future direction and intensity of development. It is suggested that there should be intensive consultation between Central and State agencies.

The Central Government should provide detailed information in advance to the States regarding location of the Central projects. In fact, the Central Government should actively call for suggestion from the State Government highlighting the potentialities and technical aspects regarding location of the Central Government projects. This might help to ensure that the choice of investments is made on economic, scientific and technical criterion and safeguard against the possibility of the projects deemed to failure or serious under-utilisation of capacities for reasons of inappropriate location.

Abundant information of State Sectors is provided to the Centre in the various formats prescribed by the Planning Commission as well by the Central Ministries, whereas the information pertaining to various Central Sectors is seldom available to the States. The information is available in some of the formal publications usually limited significance because of a time lag of two to three years. It is suggested that at the official level. Key economic data and features of central plans affecting the States should be properly analysed and disseminated by the Planning Commission ideally, before the proposed conference of State Planning Ministers or Secretaries. This would enable State Govt. to project its economic indicators on the latest data available through this process. As regards the present composition and procedures of the Planning Commission, it cannot be said that they allow for close understanding and consultation with the State Governments as envisaged at the time of setting up of the Planning Commission in 1950. The Planning Commission being a creation of Central Government is placed in close relationship with the Centre. But, as also observed by the Administrative Reforms Commission in its interim report (1967) on the machinery for planning, the Planning Commission should at the same time be independent of the Centre in order that the States may have no cause for dissatisfaction with its working. Over a period of time, the Planning Commission has been well integrated in the organisational frame work of the Centre but it cannot be said that the Planning Commission have achieved close understanding and consultation with the State Govts. From the point of view of the States, the Planning Commission has become a wing of the Central Government. Though its role was intended to be advisory, in actual practice, the Planning Commission has come to discharge certain functions of the executive, it has also assumed the role of final arbiter or decision making authority in many areas of Planning.

We are of the view that the Planning Commission should be an advisory body only. And it should not work in close understanding not only with the Centre but also the State Governments. The Planning Commission should also have necessary independence to advise the Central Govt. and the State Govt. in a technical and professional manner. The composition of the Planning Commission can be enlarged to provide for representation to the States. To this end, the States can be represented by a system of rotation.

6.4 We should support a mix (ii) and (iii) above. The Planning Commission should be a high grade advisory body of economists, statisticians, technologists, experienced practitioners and management experts and free from the pulls and pushes experienced by the normal Government Department. There should be frequent consultations with the State Government. A fair share of experts in the Planning Commission should be drawn from the States, so that their experience at State and Regional Levels could be fruitfully utilised in the National Planning apparatus. There is a danger that experts drawn solely from the academic world and foreign universities might not be sufficiently grounded in the local environments to formulate workable solutions; for this reason experienced practitioners should also be viewed as essential parts of the System.

Many elegantly drawn programmes have floundered on the alter of implementation underlying the need for involvement of experienced practitioner who might bring with them a touch of realism and an insight of working conditions in the field.

It is therefore suggested that atleast half the personnel in the Planning Commission should be picked on the basis of their track record in the field.

It is also suggested that the Planning Commission should include representatives of the States as members by rotation, so that the States are closely involved in the Planning process. The number of such members may be kept at 3 to 4 at a time with a minimum tenure of 2 years. The representatives of States may be chosen amongst academicians, people of high standing in public life, administrators, etc. on the recommendation of the State Governments

6.5 In our view the planning Commission should not have the rigidity of a Government Department. Its role should be to counsel the Governments—both Central and States in regulating the Socio-Economic activities, investment decisions and overseeing the implementation of the plan programmes.

The role of the Planning Commission should not be only for approving plans once in a year and relying on formal reports thereafter, but to stimulate fresh thinking, act as transmission belt for replicating elements of successful operation of key programmes and to look for new factors in implementation that could be built into the formulation of further programmes.

The Planning Commission should be an independent body representing both Central and State Governments. The Planning Commission's proposals for the nation's plan will be subject to the adaptation and approval of the N.D.C.

6.6. In federal system it is essential to incorporate national priorities in the State Plan. 'Economic and Social Planning' being concurrent subject in the Seventh Schedule of the Constitution recognises the vital role of national priorities. The Planning Commission might determine the key national targets and goals. The national norms are based on average, some States may be behind, and few States with potentialities may be ahead. The States lagging behind will, no doubt, have to be brought up; but the States having higher capabilities should also be allowed to go ahead without having to stagnate out of respect of national norms based on the performance of a few large States lagging seriously behind the rest of the country. This is particularly so in respect of the programmes of Minimum Needs. The Planning Commission has espoused the cause of decentralised planning; which has prompted local initiative and participation in the planning process. The Planning Commission's role shouod therefore be to set up national targets and goals but ensure that States are free to draw up their programmes and targets to fulfil the local aspirations as well the national goals.

6.7 The Chief merit of the present system of channelising Central Assistance by way of loans and grants through the planning Commission is that it takes into account the special requirements of hill areas, tribal areas, North-Eastern Council and special category States like Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Nagaland, Sikkim and Tripura. For the non-special category States the modified Gadgil formula has introduced objectivity in the matter of allocation of Central Assistance and achieved a judicious balance in the principles of allocation.

The disadvantages of the system are that for most of the States 70 per cent of the Plan assistance is by way of loan and 30 per cent by way of grant. The bulk of the Plan expenditure is incurred on schemes which do not yield a return which can cover the interest and repayment of the loan. Such interest and repayment are subsequently taken into account by the Finance Commissions in assessing the non-plan revenue and capital gaps of the States which are then covered by non-plan grants or rescheduling of the repayment of Central loans. Such a system unnecessarily inflates the revenue and capital budgets of the Centre and States. It is suggested that the entire assistance to the States for the State Plan schemes should be by way of grant-in-aid instead of the present system where 70 per cent of the assistance to most of the States is in the form of loans and 30 per cent in the form of grants.

As regards additional assistance on account of the externally aided projects at present 70 per cent of the IDA/World Bank disbursements are passed on to the States as additional plan assistance. This additionality is also in the form of loan and grant in the the ratio of 70 : 30. In the State Government's view the additional assistance to the States for the externally aided project, included in the State Plan should be given to the States on the same terms and conditions on which such assistance is made available to the Govt. of India.

6.8 & 6.9 In the State Government's view, the present system of determining plan assistance is a great improvement over the earlier system when the Central Assistance was more or less treated as a balancing factor between the resources of a State and its plan size. Under the present system apart from providing special assistance for Hill Areas, Tribal Areas and North-Eastern Council, the requirement of Central Assistance in the cases of Special Category States viz., Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Nagaland, Sikkim and Tripura is prompted to enable them to have viable plans. The remaining States are allocated Central Assistance on the basis of the modified Gadgil formula which, *inter alia* assigns 20 per cent weightage in the allocation to backward States having a per capita income below the national average. It is, therefore, clear that the present system does not operate harshly against economically backward States. The provision in respect of Tribal and Hill Areas Sub-Plan in the Sixth Five Year Plan was Rs. 5415 crores. The Special Central Assistance provided during the Sixth Five Year Plan was Rs 40.81 crores, which is only 9.83% of the flow towards Tribal Area Sub-plan. The provision of the Seventh Five Year Plan for Tribal Area Sub-Plan is Rs. 540.01 crores. In the Seventh Five Year Plan Rs. 62.89 crores is likely to be provided as special Central Assistance. This works out to Rs. 11.5 % of the State Provisions towards TASF. With the help of special Central Assistance some vitally important but almost untouched sectors like rehabilitation of displaced tribals and development of forest villages, can be taken up by formulating various schemes. More number of families could be covered from families below poverty line. Considering the above aspects, more funds will be required for the Seventh Five Year Plan period. Special Central Assistance is also used in schemes of infrastructure directly incidental to the family oriented scheme and poverty amelioration. This should be enhanced so as to have more coverage.

The present level of Central Assistance provided is not adequate to take up an individual economic oriented programme for all families below the poverty line and infrastructure incidental to support this

economic oriented programme. The State resources being meagre for the development of this down trodden class, it is necessary that the more Central Assistance should be provided. It is suggested that the scale of assistance should be stepped upto 25% of the total Tribal Area Sub-Plan flow of the State.

At present, the allocation out of the Special Central Assistance is made as per the directions issued by the Central Government. Some more liberty should be given to the State Government to decide the pattern of utilisation of Special Central Assistance, rather than tightening down to the schematic pattern suggested by the Central Government.

So far as the mechanism of earmarking of State Plan Outlays is concerned the comments of the State Government are: The present system of earmarking the State plan outlay for whole of the sector/sub-sector, should be avoided, so as to provide flexibility to the State Government in adjusting the programmes during the course of the year. The earmarked outlay should not be more than 30 to 35 per cent of the toal Plan outlay. The selection of the projects/programmes and the initial earmarking of the outlays should be settled in consultation with the State Government, within the finally agreed sectoral outlays. The initia earmarking of the outlay should be with the agreement of the State Government.

The present system of linking the release of Central Assistance to the full utilisation of earmarked outlays should be dispensed with. Having determined the quantum of Central Assistance as per Gadgil formula, any condition for the release of the Central Assistance does not seem reasonable. By fully utilising earmarked outlays, the State Govt. are not given any incentive assistance, whereas shortfall is penalised by proportionate reduction in the Central Assistance.

In order to avoid loss of the Central Assistance, the State Government has to plead with officials in the Planning Commission to get approval of the revised outlays, involving lot of correspondence and discussions which turn to be irritative, especially when the large portion of the plan outlay is financed by the States' own resource. Therefore, it is suggested that release of the Central Assistance should not at all be linked with the utilisation of earmarked outlays.

6.10 The State Govt. is of the view that the criteria laid down in 1979 by the N. D. C. are, by and large, relevant to the choice of centrally sponsored schemes. The criteria laid down by the N.D.C. are as follows:—

(a) Centrally Sponsored Schemes should relate to demonstration, pilot projects, Surveys and research; or

(b) they should have a regional or inter-State character; or

(c) they should be such as to require lump-sum provision to be taken down territorially; or

(d) they should have an overall significance from the All India angle.

In 1979, the number and coverage of centrally sponsored schemes was considerably reduced. However, as the years pass by the number of schemes has increased substantially, particularly on sharing basis. Introduction of such schemes in the mid-Plan period, tend to distort State Plan priorities. In the absence of Information it is very difficult for the State Government to verify whether the resolution of the N.D.C. in 1979 has in fact been strictly adhered to. The State Government is of the view that the broad agreement on the nature and scope of the schemes should be arrived at the beginning of the Five Year Plan period. The details of the schemes should be published in advance and discussed in the forums of Planning Secretaries. The Schemes should be of relevance of national level and need not be exclusively in favour of selected areas/States. The discipline of the Five Year Plan should apply to all agencies whether Central or State for this purpose. Planning Commission views each Annual Plan as a part of the Five Year Plan. State Govts. find it especially difficult to fulfil such Annual Plans, if large sized participatory Centrally Sponsored Schemes are initiated in the intervening period.

6.11 The monitoring and evaluation machinery, need to be streamlined and strengthened with the induction of experts and availing of consultancy services. The system of monitoring by having quarterly returns of expenditure and physical targets have not been entirely adequate, though this primary aspect of monitoring is important and useful and should continue. The focus of monitoring system is on the utilisation of budgetory provision without its linkage with physical performance. Monitoring should also cover such aspects as the unit cost of services. The efficiency of a programme should be judged not only from the point of view of utilisation of outlays; but on the efficiency and the level of services. Progressively computerisation might have to be introduced in this process in turn, the data base will have to be strengthened by providing training at the District level, so that the flow of information should be purposeful. The reporting system should be more effective and timely if monitoring is to be meaningful.

Apart from the capital intensive programmes for which unit cost studies would be necessary; it is also desirable to undertake impact studies on the relevance of programmes for alleviation of poverty and their impact in bringing up the levels of income of the targetted groups. Evaluation of Plan Schemes should be taken up on a large scale. Evaluation studies should be completed in time so that the results are available to the Planners who can review and if need be improve the content of schemes to make them more purposeful. For quick evaluation instead of relying on limited departmental efforts, the services of independent agencies of repute could be engaged.

6.12 We are in favour of decentralised planning. In the process of decentralised planning, Gujarat is already in the forefront. The system of discretionary and incentive outlays placed at the disposal of the District Planning Boards has been effective and popular. This system has induced public participation and involvement of people in decision making process and the implementation of the programmes at local level. The States should be directly and actively associated in the process of determining national goals and targets and in developing the approach and strategy for the plan. Once the appr cachand guidelines

are so formulated in mutual consultation, the States can have a free hand in chalking out the Plan Programmes with reference to the needs and ambitions of the people.

6.13 The States have acquired experience in the Planning progress and have developed the system of plan formulation and implementation. The State Planning Board with experts as members provides the direction and guidance and coordinates the State's planning process. Consultations with research and academic institutions within the State and at national level have enabled the State Governments to enhance Planning capabilities. The State Government is of the view that the national plan should be progressively indicative, giving adequate scope to States to chalk out their programmes, within the national objectives. It is suggested that the members of the Planning Commission and senior officials should associate themselves with the State Planning Boards as observers or better still as members and actively participate in deliberation of the State Planning Boards. Such a showing of views and expertise, on a regular basis, at State capitals would go a long away in overcoming some of the inadequacies in the extent of participation by State in the Planning process in the country.

PART VII

MISCELLANEOUS

Industries

7.1 We do not agree with the view that enlargement of the Schedule to the Industries (Development and Regulation) Act, 1951 has worked to the deteriment of public interest. However, it has been noticed that in the enforcement of the Act, certain avoidable difficulties have arisen. There are many instances of rejection by the Central Ministries of the proposals of Units, which are recommended by the State Governments for the manufacture of particular items on the ground of excess licenced capacity in the country. Such a view often does not take into consideration how long the present holders of licencee would take to start actual production and on this account a decision to deny an opportunity to a late comer to enter that industry does not seem to be quite appropriate.

Many adverse decisions in respect of granting a licence for a particular product has been taken on the perception of the Central Government that a particular product has excessive or adequate capacity for production in relation to demand. The basis of this perception is not shared with State Government and so, the conclusions based thereon tend to appear arbitrary. In some cases, licenced rather than actual capacity is taken as the basis of calculations. In other cases, adequate capacities are deemed to exist even when imports of that product continue. The tendency of some business houses to corner Letters of Intent and Industrial Licences with a view to pre-empt others from entering the industry is well known.

Two examples may be given to Central Public Sector Units, the location of which is Gujarat was regarded suitable, but, nevertheless, they were finally approved for other States. These are : Electronic Switching Factory with an investment of Rs. 100 crores. This factory would well have been sited at Baroda or Gandhinagar in Gujarat, but was finally approved for Gonda in U.P. The Railway Coach Factory, with an investment of Rs. 50 crores, might have been suitably located at Dahod/Gandhinagar/Kashipura in Gujarat, but was finally approved for Punjab. There have also been occasions, when industries located in Gujarat have been required to go to other States for their expansion or diversification projects although the enterprises had repeatedly pointed that managerial and technical overheads for doing so would render the unit uneconomic. Examples of such decisions include the following cases :—

1. **Messrs : Asian Paints, Item : Phthalic enhyiride 9000 TPA.**

At present located in Ankleshwar, Bharuch District in Gujarat, this unit was directed to go to a backward area in M.P. for issue of a Letter of Intent for the above project although the facilities at Ankleshwar can easily be extended to include this project at much lesser cost.

2. **M/S. Hi Temp Glass Conductors :**

The unit had applied for a location in Himatnagar district for manufacture of 1200 TPA Hi Temp Glass Covered Conductors, but they were asked to shift this project to a No Industry District somewhere in Northern India, although economic, technical and other criteria fulfilled the location in Gujarat.

3. **M/S. Tube Investment of India Ltd. :**

The unit had applied for a location in a backward area in the State of Gujarat for manufacture of (i) Tie Rodwands (ii) Pistons, Piston Pins, Piston Rings, and (iii) Engine valves, but was asked to go to a No Industry District somewhere in Northern India in place of their original application for a location in Gujarat.

Further, the efforts of the State Government to encourage the production of offshore drilling equipment through a reputed private sector enterprise has been rejected on the ground of excess capacity, although it is known that many of the public sector undertakings, in which the capacity is alleged to have been exceeded have hardly the capabilities for meeting the demands for this product in the foreseeable future.

In short, barring industries dealing with defence or products of strategic importance, only economic and technological criteria should prevail in decision making rather than reliance on licensing mechanism.

7.2(i) Some of the norms or criteria governing 'national public interest' might include the following :

Industries based on scarces and rapidly depleting raw materials,

Industries based on strategic raw materials, such as Uranium, etc.,

Industries relating to ordinance or national defence;

Industries which have a pervasive effect on the national economy-such as manufacture of power plants, components for atomic research, space research, etc.

7.2(ii) A list of items that can be deleted from the First Schedule to Industries (Development and Regulation) Act, 1951, on the ground that they are not really crucial to national or public interest are as follows :

I. Metallurgical Industries :

Ferrous.

1. Iron and steel castings and forgings.
2. Iron and steel structurals.
3. Other products of iron and steel.

II. Electrical Equipment :

1. Equipment, transmission and distribution of electricity including transformers.
2. Electrical Motors.
3. Electrical Fans.
4. Electrical Lamps.
5. X-ray equipment
6. Electronic equipment.
7. Household appliances such as electric irons, heaters and the like.
8. Storage batteries.
9. Dry cells.

III. Telecommunications :

1. Radio receivers, including amplifying and public address equipment.
2. Television sets.

IV. Transportation :

1. Motor-cycles, scooters and the like.
2. Bicycles.
3. Others, such as fork lift trucks and the like.

V. Industrial Machinery :

General items of machinery used in several industries, such as the equipment required for various "Unit processes".

1. Size separation units-screens, classifiers and the like.
2. Centrifugal machines.
3. Evaporators.
4. Distillation equipment.
5. Crystallisers.
6. Driers.
7. Power-driven pumps-reciprocating, centrifugal and the like.
8. Fire-fighting equipment and appliances including fire engines.

VI. Agricultural Machinery :

Agricultural implements.

VII. Earthmoving Machinery :

Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers and the like.

VIII. Miscellaneous Mechanical & Engineering Industries :

1. Plastic moulded goods.
2. Hand-tools, small tools and the like.
3. Razer Blades.
4. Pressure cookers.
5. Cutlery
6. Steel furniture.

IX. Commercial, Office and Household Equipment :

1. Calculating machines.
2. Airconditioners and refrigerators.
3. Sewing and Knitting machines.
4. Hurricane lanterns.

X. Medical and Surgical Appliances :

Surgical instruments—sterilisers, incubators and the like.

XI. Industrial Instruments :

1. Water meters, steam meters, electricity meters and the like.
2. Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels and the like.
3. Weighing machines.

XII. Scientific Instruments : Scientific instruments.

XIII. Mathematical, Surveying & Drawing Instruments :

XIV. Chemicals (Other than Fertilizers)

1. Fine chemicals including photographic chemicals.
2. Paints, Varnishes and Enamels.
3. Man-made fibres including regenerated cellulose rayon, nylon and the like.
4. Insecticides, fungicides, weedicides and the like.

XV. Fermentation Industries.

1. Alcohol.
2. Other products of fermentation industries.

XVI. Food Processing Industries.

XVII. Vegetable oils and Vanaspathi.

XVIII. Soaps, Cosmetics and Toilet Preparations.

XIX. Leather, Leather Goods and Pickers.

XX. **Clue and Ghlatin.**

XXI. **Glass.**

XXII. **Ceramics.**

XXIII. **Timber Products.**

7.3 Although many steps have been taken for streamlining the procedures for industrial licences and central clearance for import of capital goods, etc. there is considerable scope for place in the form of :

(i) increasing considerably the financial and administrative powers of regional offices of concerned central agencies, such as Joint Chief Controller of Imports & Exports, the branch offices of the National Small Industries Corporation, MMTC, Coal India Ltd., Indian Oil Corporation, Area Superintendents of the Railways etc.; and

(ii) adopting a time-bound procedure for decision making, whereunder an application is deemed to have been granted, if no reply is forthcoming from the concerned governmental agency within the time limit. Such a procedure is in vogue in respect of grant of permission of conversion of agricultural land to non-agricultural land under the Bombay Land Revenue Code.

To cite an example, the National Small Industries Corporation, which deals with hire purchases, assistance in marketing etc. to small scale industries, has only a Junior Officer posted at Rajkot in Gujarat (far away from the State capital) with powers only upto Rs. 1 lakh for sanction of plant and machinery. Any items beyond this limit have to be referred to the Bombay office for a decision. Even this office has powers only upto Rs. 4 lakhs. All other cases, upto Rs. 20 lakhs have to be sent to Delhi for a decision.

Similarly, though Gujarat produces 60 per cent of the total salt in the country and has over one-third of country's coast line, the Salt Commissioner continues to be located at Jaipur in Rajasthan. The Deputy Salt Commissioner, only recently sanctioned and located at Ahmedabad, has very restricted financial powers or approval of welfare schemes meant for improving the lot of salt workers. So also, a decision with regard to critical raw materials, such as, alcohol, molasses, coal, steel etc. continues to be taken at Delhi. Many of the central agencies have no offices at many State capitals, in case where they have, the powers of officers are very limited and hardly in proportion to the requirements of the bulk of the beneficiaries in the State.

There is, thus, a case for location of more branches of appropriate central agencies and sub-Units of Central Corporations at the State capitals so that the procedural formalities, documentation, etc. in respect of majority of cases from small and medium enterprises are decided at the State capital itself.

7.4 Gujarat has a fairly good net work of organisations for the development of village and cottage industries and providing them financial support. The Directorate of Cottage Industries and the District Industries Centres have played a significant role in channelising bank finance for traditional cottage industries in the recent years. The Handloom Development Corporation and the Handicraft Development Corporation have taken several steps for improving the production practices of craftsmen in their respective areas. The Gujarat State Forest Development Corporation has also played a significant role in improving the incomes and skills of adivasis in gathering, storing and processing various products.

The Rural Technology Institute, set up a few years ago in Gujarat, has also tried to modernise the methods of production processes in selected activities.

The Gujarat Small industries Corporation has assisted in many ways the marketing of products of S.S.I. sector in the State. The State policy on purchases for the Government also is weighted in favour of the products of S.S.I's and cottage industries. Marketing of products of cottage industries, such as ready made garments, footware, woodwork, etc. has also been facilitated in recent years through the efforts of Gujarat Industries Marketing Corporation. This Organisation has also tried to assist the marketing of salt produced by small scale cooperative agencies and individual salt workers, producing salt on a very small scale.

Almost all these activities have Apex Central Organisations, which meet once or a twice year. There is no reason why some of these items of modernisation could not be discussed in detail at these forums and appropriate central assistance not provided to induce states to take up the critical elements in this modernisation.

While the State Government has attempted to provide service to the small scale and village industries, to the extent feasible, it is to be remembered that the vital aspect of raw materials is controlled by the Central Government on which State Governments have no control whatsover. This applies to the supply of pig iron, steel, cement and coal. The difficulties relating to such scarce raw materials arise in respect of quality, quantity, price and uncertainties of supplies and transportation. There are significant time lags between the emergence of critical shortage in such raw materials and a decision to import. Even in the case of imports, decisions relating to waiving or reducing customs duties, etc. on items exclusively meant for small scale industries and import through the Small Scale Industries Corporations often take its own time. It is as important as to take care of existing small scale industries, through supplies of scarce raw materials in adequate quantity and at reasonable price, rather than the excessively concerned with the setting up of more scale industries. Since the entrepreneurs in charge of small scale industries are too small to make the kind of representation as can top managers in medium and large industries, the corporation of Central Government in assuring, in all the facets indicated above, industrial raw materials to small industries is of utmost significance. Very often, the small scale industries are worst sufferers in respect of supply of these raw materials, as compared to DGTD units. The level of satisfaction appear to be much higher in the case of D.G.T.D., as compared to small scale industries for various scarce raw materials.

7.5 The Centrally controlled financial institutions have generally played a useful part in financing medium and large enterprises and in re-financing appropriate activities of financial agencies in the State. Some agencies such as Industrial Development Bank of India, Industrial Finance Corporation of India have regional offices in the State at Ahmedabad, their presence has been very helpful in many ways especially in cases where joint financing of units has been necessary. Their representatives are also conveniently placed to attend various meetings convened by State Financial Institutions and offer expert advice and counsel. This process of providing regional offices should be extended to other central financial institutions so that similar benefits could flow from them.

It must be emphasised that these central financial institutions should be left entirely free to make decisions based on financial and technical criteria and not bound by any directives with regard to preference for any particular region. Such references are already built into decisions in various other forums and they should not be replicated in institutions of this kind, who would base their decisions entirely on technical and financial considerations.

To enable them to play a more useful part in financing medium and large enterprises, the following suggestions are made :--

(i) The present limit of I.D.B.I. refinance should be raised to cover the project cost upto Rs. 5 crores, so as to be in line with the limit of D.G.T.D. Registration.

(ii) The automatic refinance limit should be raised to Rs. 30 lakhs.

(iii) There is a need for a single window approach with regard to documentation and clearance of project proposal. Even now, despite all calims, there is still room for effective coordination amongst the All India Financial Institutions, in terms of sanctions, documentation, etc.

7.6 There is a feeling that locational decisions on central investments in public sector are not always taken in a manner that appears fair to all the States. It is of course, not possible to satisfy all the States at the same time, but due opportunity for being heard and where practicable, publication of criteria for selection, might greatly help in reducing the extent of such criticism.

Quite often, the location of the central public sector projects do not appear to be based purely on techno-economic considerations. In some States, there has been preponderance of public sector projects possible, without consideration of availability of raw material or nearness to the market, while in the case of others, they are deprived of projects which can be based on the availability of local raw material. For instance, in Gujarat, except for those public sector projects, which have necessarily to be located in Gujarat on the consideration of availability of local raw materials, such as refinery and petro-chemicals complex, hardly any worthwhile investment has taken place in Central public sector projects, which are in the foot loose category such as projects in heavy industry category. Ultimately, the cost to the nation in terms of such sub-optimal location will be higher.

7.7 In addition to what has been stated in Answer to Question No. 7.6 much of this criticism possibly flows from the fact that so little information is available in such matters. If the decision making process is some what more open and the criteria for decision making known in advance, quite possibly, the extent of such criticism could be brought down.

7.8 The methodology adopted for identification of industrially backward districts is not adequate. In the first place, districts are hardly the suitable unit for identification of backwardness because there are many talukas which are large enough to cover the area of a district even in advanced districts, there are many talukas without any industry at all and conditions of which compare favourably with the industrially most backward districts in the country. In Gujarat the presence of a modern dairy for processing milk in some of the backward districts, has been sufficient to ensure their exist from the list of 'No Industry Districts'

The only district recognised as 'No Industry District', in Gujarat, is the district of Dangs. This is predominantly a district covered with forests. Under the new policy for preservation of forests, the State Government has to approach the Central Government for permission for taking over even very small area of land under the forests for development projects such as power projects and industrial projects. In this way, what is being sought to be encouraged as 'No Industry District' by one agency of the Central Government (Ministry of Industrial Development) is being taken away by another agency viz. Agriculture Ministry/Forest Ministry.

Similarly, development of mining and mineral based industries has also been atrophied in some backward areas on account of the contiguous forest lands, requiring Central Government approval. The procedures for getting permission for release of various lands for mining purposes also take considerable time, often coming in the way of rapid development of these industries in backward areas.

A procedure for compensatory forests planting of equal or even double the number of trees in adjoining areas in lieu of what is proposed to be cut down could vary well be the basis of a creative solution. Despite remarkable advances . Gujarat State has made in the matter of social forestry and farm forestry, it finds itself in serious difficulties in acquiring even very small areas of forests for bonafide industrial and economic development projects on this account.

It is for this consideration that the Government of Gujarat has been pressing for adoption of Taluka as a 'unit' for backwardness. An Expert Committee, under the Chairmanship of Dr. I. G. Patel, former Governor of Reserve Bank of India, has also recommended that talukas be adopted as a 'Unit'

for promotion of industrial development. An investment of Rs. 30 crores or above, at a particular location in a taluka could be taken as a criteria for identification of a taluka as industrially developed and not more than two units of such a size be permitted to come up in the same taluka.

The various fiscal and financial incentives have been given mostly for fixed assets such as land, buildings, plant and machinery. This has led to acquistion of much larger extent of land than necessary, construction of over size building and choice of more sophisticated plant and machinery, often to displace labour. Such incentives do not help to promote employment of local people or training in industrial skills. At least a part of the subsidy should be linked to the wage bill or towards training costs incurred by the industry.

A part of the incentive, at least is towards compansating industrial unit for absence of various elements of social infrastructure such as schools, technical institutions, roads, drinking water supply, public health facilities and housing for industrial workers. In many cases it has been seen that these elements have hardly developed inspite of large subsidies to units in backward areas. Even where a few elements of these items of a social infrastructure have been developed, they have always been almost exclusively for the workers within the factory premises, severely curtailing access to these facilities to the general population in the neighbourhood. Thus, the effets of industrial development on the neighbourhood has often been minimal in spite of hopes that industrial development would help in trigger general economic development of the neighbourhood. To this extent, it may be worth while to think in terms of earmarking a certain proportion of the Central Subsidy, say 25% or 33% towards provision of social infrastructure in the neighbourhood, in association with the District Planning Boards for specifically earmarking these funds for the development of an area within a specified radius of the industrial units in the backward area.

Trade and Commerce

8.1 Authority, as contemplated in Article 307, should be for the purpose as specified as that would help the freedom of trade and commerce of the States and also restrictions which may be imposed for such inter-State trade and commerce. It is suggested that the report of the authority should be placed before both the Houses of Parliament so that the Members of Parliament representing the States will have opportunities to discuss and represent the view point of the respective States.

Agriculture

9.1 The State Government fully agrees with the view expressed by the Administrative Reforms Commission on Centre-State Relations (1967). The position with regard to agriculture including animal husbandry, forestry and fisheries has not materially changed since 1967 and if anything, there seems to be an increase in the Central sector and Centrally sponsored scheme in agriculture. Since development in agriculture and allied pursuits is dependent on the diverse agro-climatic conditions prevailing in different parts of the country, the State Governments, are better equipped to implement schemes, in these areas, keeping in mind the local factors. On the other hand, the Central sector schemes and centrally sponsored schemes by their nature tend to be stereotyped with very little flexibility. The State Government is, therefore, of the view that the substantial responsibility for implementation of schemes in the field of agriculture should be that of the State and the role of the Central Government should be that of supporting one.

9.2 The State Government agrees with the view expressed by the National Commission on Agriculture regarding Central and Centrally sponsored schemes. In the few of the State Governments the number of Central Sector and Centrally sponsored schemes should be kept to a minimum and they should be confined to only innovative schemes. Even such schemes should be formulated in consultation with the State Government so that maximum flexibility can be provided.

Since the major responsibility for preparation and implementation of schemes in agriculture and allied pursuits will be that of the State Government, adequate provision in the State Plan should be made.

9.3 It is the view of the State Government as expressed earlier that the number of Central and Centrally sponsored schemes should be to a minimum and funds meant for such schemes should be provided in the State Plan. However, wherever Central Sector Schemes are to be launched, the same could be done after consultation and with consent of the State Government so that the actual requirement on the field is taken into consideration. While there is a dialogue between the Centre and State Governments on the implementation of the schemes there is actually no effective voice of the State Government in any decision making on the Central sector scheme.

Further such Central sector schemes should only lay down broad guidlines about the objectives target growth and outlay leaving further details like inter-sectoral allocation, etc. to the State Government.

9.4 The present practice of fixing uniform support and procurement prices for agriculture products for the entire country is irrational as it does not take into account the regional variations affecting cost of the production. Censequently, the State Government has to very often declare support prices at levels higher than the prices fixed by the Government of India, so that the farmers in the State can get reasonably remunarative returns. Therefore, the views of the State Government regarding the cost of production of various agricultural items and the recommendations for support prices, deserve to be given a greater weightage.

The present arrangements for strategic inputs including credit like seeds, fertilizers and pesticides seem to be working fairly satisfactorily. However, with regard to availability of credit the State Co-operative Institutions often face difficulties on account of Central directions to the National Banks and Agriculture Financial Institutions. Since Agricultural credit requirements in the State are being

met substantially by Co-operative Institutions, their requirements should be fully met by the Financing Institutions. So far as the forestry policy and administration are concerned, the involvement of the Centre in the decision making process of the State comes to light only with regard to the Forest (Conservation) Act, 1980. According to this Act, lands designated as reserved forests cannot be transferred for any purpose by the State Government without the prior concurrence of the Government of India. This restriction has considerably curtailed transfer of lands to traditionally demanding departments like Irrigation and Industry (for Rehabilitation, Submergence, Mining etc.) In a forest poor State like Gujarat the Conservation Act has definitely had a positive effect, in that land reserved for forests cannot now be easily transferred for non-forest use.

In the matter of day to day administration no particular implication of Union Government's involvement is felt.

9.5 No problem is faced in the sphere of Centre and State relations with regard to role of agricultural research. However, with regard to National Bank for Agriculture and Rural Development, its developmental role which is more crucial than more credit disbursemen role is yet to manifest itself by way of new initiatives. A development Agency like NABARD has to establish closer links between the State Government and the Nationalised Banks, issue guidelines for better implementation of Agriculture and Rural Development Programmes, study and analyse the local problems and bring out solutions keeping the special local problems in view and generally work as a catalyst for Rural Development. NABARD cannot and is not expected to become a more refinancier to the commercial and co-oparative banks. A greater qualitative involvement, in the rural development process is expected from NABARD.

Food & Civil Supplies

10.1 We feel that there is some scope for improving Centre-State liaisen in the above areas. Out comments/suggestions are as follows :—

Distribution of foodgrains, etc. :

At present, the allocation of State quotas of foodgrains and edible oil and generally made on *ad hoc* basis by the Centre from time to time. Since this is done considering various factors such as availability in the Central Pool, production in various States, special requirements arising out of drought and other natural calamities, it may not be possible to adopt any set formula for allocating these quotas. We however, feel that this does not permit the States to plan their distribution policy on sound footing. We suggest that the quotas should be decided on an accepted formula taking into account State's population, deficit supply on trade account, etc. This formula should be made public in order to dispel doubts about unequal treatment among the States. Based on certain variable parameters discussions can be held with the States after commencement of marketing season of the concerned commodity and allocations can be decided. Allocations can be made known to other State Governments. For special circumstances like natural calamities, special quota can be allocated, which should also be more or less automatic and should not be left to the discretion of the concerned Central Ministry.

In case of edible oil, it will be easier to adopt such formula because the Central Pool consists of imported quantities. Import programme can be drawn up in advance and since the availability is also known in advance the State should be earmarked definite quantities based on their requirements.

Procurement Pricing Policies :

Considering the wide variations in production of essential commodities like foodgrains, oil seeds, etc. amongst different States levy, procurement, movement and prices have got to be planned and regulated at National level and can be regarded as in larger interest of the country as a whole. However, there are certain minor matters which can be left to the discretion of the State Governments without affecting the overall policies and programmes at the National level. Following can be cited as instances of such matters :—

(i) In the pulses, Edible Oilseeds and Edible oil (Storage Control) Order of 1977, issued by the Ministry of Civil Supplies & Co-operation, Government of India (as amended in 1978), there is a clause 7(A) providing for granting exemption in sum special cases either generally or for any specified period. Even, for using these powers of giving special exemption in cases of hardship or for any just and sufficient reason previous approval of the Government of India is to be obtained.

(ii) Similarly, while issuing the levy on rice, wheat etc., there are normally similar provisions empowering the State Government to give exemptions or make minor modifications as may be warranted by special circumstances. Here again prior concurrence of the Government of India is obligatory.

One more area is grant of such credit by the R.B.I. for procurement of coarse grains. When the State Government desires to procure coarse grains for distribution through P.D.S., the R.B.I. has to be approached for cash credit facilities for the purpose. It, in turn, insists on the coarse grain programme to the approved by the Ministry of Food or Agriculture. Since, there are no Central Pool operations for procurement of coarse grains and since there is no national policy or programme excepting support price operation in the case of coarse grains, purchases by the State Government agencies are not likely to interfere into any of the national foodgrain policy operations. Thus, this control cannot be regarded as warranted by overall national considerations. The State Government should, therefore, be allowed the freedom of availing R.B.I. cash credit for procuring coarse grains for their P.D.S. The Government of India can always intervene, if situation so demands, by directing the R.B.I. or the State Government to tailor their programmes so as not to cause any adverse effect or any other State.

10.2 We do feel that the said arrangements need to be periodically reviewed. The Essential Commodities Act is designed for the control of the production, supply and distribution of various commodities in the interest of the general public. The State Government have passed various regulations under the said Act. Formally these regulations are in tune with the Essential Commodities Act but may sometimes differ from State to State. It may happen that a particular regulation in a particular State may harm the interest of the neighbouring State or may come into conflict with the interests of that State Government. Sometimes, it is also necessary that the Centre reviews the arrangements made by different State Governments for administering the Essential Commodities Act and other such regulatory Acts. This can be done by seminars and workshops in addition to regular meetings.

Education

11.1 Gujarat does not share the view that there is unnecessary centralisation and standardisation or that there is too much of Central interference. There has of course been an emphasis on following of a national policy of or re-structuring of education. Thus, the 10+2+3 pattern bringing about common structure was suggested on the basis of recommendation of Commission, keeping in view the basic requirement of relating the world of learning with that of working. The State Government after due deliberations had accepted the recommendations. The Central Policy directives have not restricted any initiative or authority of the State. On the other hand, it has given the State Government the much needed advice and perspectives in this field. It is true that looking to the vastness of the country and the various cultures and different levels of development, it is not possible to fit the education pattern into a straight jacket and any such attempt would even otherwise lead to failure ; but the Central Government has not imposed any such policy.

11.2 (a) At present University Grants Commission exercise only indirect influence on the decision of the State Government for starting a new University. It has practically no significant authority in regulating the functions of the existing Universities. As a rule under Universities should be treated as autonomous organisations in their academic pursuits but the way higher education has been shaped it would be desirable to have national policy in this regard.

(b) University Grants Commission motivates and encourages the Universities to introduce new subjects/courses by a liberal grant-in-aid pattern. Thus it helps bringing about diversification in courses. However, all new courses are not necessarily need based not they are finalised in consultation with the users namely industries, commerce and other establishments or the State Governments. Many times courses are started without adequate infrastructure. Ultimately such courses leave a heavy and avoidable burden on the limited resources of the State Government in a non-priority area.

11.3 There is of course a need to evolve consensus among States and Centre in the field of education through the process of discussion, consultation and pursuation. Such consenses is normally developed at the meetings of the State Advisory Board of Education and at the annual meetings of the Ministers of Education and Secretaries of Education. The Planning Commission provides another forum where a review and coordinated view is taken both at the stage of formulation of annual plans and the finalisation of the 5 Years Plans. Such discussions could be frequent and could be also institutionalised.

It is also necessary to see that there is provision in the Central budget on education for specific programmes to be implemented in the State. Even in simple matters like allotment of paper at concessional rates which is a genuine demand of State Governments they were never satisfied in time. The Government of India should take the State Governments into confidence on the obstacles of rapid development of educational sector. Appointment of a National Commission of teachers should not generate undue demands on State Governments and their recommendation should be adequately backed up by financial assistance from the Centre.

11.4 Articles 29 and 30 which guarantee the rights of the minorities to preserve their identity and culture through establishment and management of educational institutions fulfil a genuine need of minority communities. However, an institution though managed by a minority group should be subjected to the same rules and conditions which apply to general institutions, especially when all of them are governed by same grant-in-aid rules. The rights of minority to shape and maintain educational institutions should not be exercised in a way to deny fair and equal treatment to citizens at large. The rights of the employees working in the minority institutions should also be protected. The minority institutions should fulfil the minimum basic requirements of qualifications of teachers, syllabus and fair policy of admission, etc. and these should not be considered as unreasonable restrictions. Care, however, will have to be taken to see that the minority rights are not used specially in the field of education as a means to perpetuate a different system without specific academic benefits.

11.5 There have been no specific area of conflicts or issues between the Central and this States in regard to problem of education development. As stated earlier, education policy is not one which can be operated within straight jacket formulation and conflicts or issues can arise when in the formulation policy specific needs of different areas are not adequately taken into account. To the extent that flexibility is available within the system to make such changes there should be no fear on this ground.

Inter-Governmental Co-ordination

12.1 In view of the exhaustive specific provision of the powers of the State and Centre in the Constitution and the jurisdiction of the Supreme Court under Article 131 of the Constitution and provisions for establishing the Inter-State Council under Article 263, the Finance Commission under Article 280 and the authority under Article 307, Constitution of India, we do not think it necessary to have an Institution like the A.C.I.R. in U.S.A.

GOVERNMENT OF HARYANA

Replies to the Questionnaire

Haryana

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Yes, our Constitution can be termed as federal inspite of its embodying unique features not found in other federations.

1.2 Allotment of more tax resources in list II to the State and abolition of appeals to Supreme Court except in constitutional matters are only favoured.

1.3 We agree. Existing Constitutional provisions duly safeguard the State interests.

1.4 No, as far as we know.

1.5 Formation of consultative body or bodies envisaged in Article 263 of the Constitution of India would rectify the deficiency. A reasonable time should be given for taking decision on the recommendations of the consultative body. If no decision is taken within this period, the dispute should be automatically referred to the Supreme Court for decision.

1.6 Yes. There are numerous provisions in the Constitution which adequately safeguard the integrity of the country.

1.7 Yes.

1.8 No. Article 3 of the Constitution does not require reconsideration.

PART II

LEGISLATIVE RELATIONS

2.1 There are certain powers in the field of industrial licensing, and levy of additional excise duty in lieu of sales tax which should properly vest in the States.

2.2 Allocation of river waters should be a concurrent Subject.

2.3 Yes.

2.4 Under Art. 249 of the Constitution, such laws remain in force for a period not exceeding one year. This provision is satisfactory.

2.5 There should be a provision in the Constitution to the effect that once the Centre has agreed with the States to introduce a particular legislation, such legislation should be brought before the Parliament within six months.

PART III

ROLE OF THE GOVERNOR

3.1 The Governor have acted, by and large, in accordance with the Constitution.

3.2 A Governor should work strictly in terms of his constitutional authority, keeping in view welfare of the State. He should keep himself above party politics.

3.3 The present practice should continue.

3.4 There has been no instance where the assent to a Bill has been withheld by the Governor.

3.5 Yes. There was never any undue delay by the Centre while granting presidential assent to Bills promulgated by Haryana State Assembly.

3.6 Yes.

3.7 The existing provisions are adequate. However, a convention might be established that all Governors submit their resignations on a change in the Central Government.

3.8 We do not agree.

3.9 The existing system is working well already. No change is, therefore, suggested to be made in it.

3.10 Guidelines are called for and should therefore be issued.

PART IV

ADMINISTRATIVE RELATIONS

4.1 There has been no case where directions have been issued under threat of invoking Art. 365. Article 256 does not empower the Union to interfere in any matter pertaining to the exclusive concern of the State. If the Central Government issued any directive to a State in the exclusive State sphere, such directive shall not be binding upon the State. Issuance of directions aforesaid does not give rise to any justifiable cause of action in favour of the State for declaration or injunction. Nor has a private party any cause of action arising out of default on the part of a State to comply with any direction of the Union under Article 256 of the Constitution of India.

4.2 Haryana State support retention of Article 365 in the Constitution because it is a consequential enabling provision. The provision should be invoked in suitable cases, such a non-execution of the Sutlej Yamuna Link canal project by the Punjab Government.

4.3 Recommendation of the Administrative Reforms Commission is sound and may, therefore, be accepted. In fact this is the normal practice.

4.4 Power under Article 356 of the Constitution has generally been exercised fairly.

4.5 Existing periods set out in clauses (4) and (5) of six months and a year are adequate.

4.6 Arrangements are working satisfactorily hence no comments.

4.7 There should be a representative of the State Government on the Agricultural Prices Commission. The working of the other agencies has not caused any serious inroads into the State autonomy. There should be provision of arbitration between the Food Corporation of India and the States, in case of disputes. There should be one director from each of the States which make significant contribution to the foodgrains procured by Food Corporation of India.

4.8 Parliament and Central Government should consider constituting more all-India Services e.g. Engineering, Education, Medical and Higher Judiciary.

The All-India Services have largely fulfilled the expectations of the Constitution-makers. The control of the State Government over the All-India Services appears to be adequate.

4.9 For preserving the unity of the country and upholding the Constitution, the C.R.P. could be deployed in States by the Centre suo-moto.

4.10 Broadcasting and television should be included in the Concurrent List.

4.11 The Zonal Councils have promoted better understanding among the States, in a spirit of mutual give and take. These Councils have generally not worked on party Lines. These could, however, be made more effective.

4.12 Such a Council should be established to resolve inter-State disputes. Representatives of the States concerned as well as of the Centre should be on the Council. The Council should be formed for a specific period for deciding specific issues.

PART V

FINANCIAL RELATIONS

5.1 No. The scheme of devolution as practised by the Union Government has not come up to the expectations of the States at least of Haryana.

A detailed note is attached.

5.2 The observations of the A.R.C. Study Team on Centre-State relations seem to be by and large valid even today that the Centre is the Giver and the latter the Receivers. However, some of the States are able to raise resources adequate to meet their non-plan expenditure. Substantial modification in the existing constitutional provisions and the devolution schemes is called for. Either some of the heads should be transferred from the Union List to the State. List in the Seventh Schedule or more of the receipts of the Union Government accruing through the taxing heads in the Union List be shared with the State Governments and in a larger measure. Specific mention needs being made of the revenues accruing from the Corporation tax, the surcharge on income-tax and the union excise duty etc. The proportions of States' share needs also to be increased.

There have been occasions where the Central Government has shown keenness on measures which would lead to further erosion of the States' taxing base. The suggestion to replace sales-tax by additional excise duty, restriction on licensing of distilleries and bottling of potable liquor which are major sources of revenue to the State Governments are some such examples.

5.3 Certainly the Centre has the major responsibility for removing regional inequalities and for attaining social and economic justice. However, the taxing powers of the Union Government are alredy wide and, in the ultimate analysis, since the residual powers vest in the Union Government one would consider that the resource raising capacity and the legal powers of the Central Government are unlimited. The suggestion to share some of the existing financial powers of the Union with the States would not make any serious dent on the capacity of the Central Government in this behalf.

The concept of the rich and poor States also needs to be spelt out more clearly. The constraint of resources of some of the States in the country is not because they are poor in resources, human or material, but because they have not fully exploited their potentials. On the other hand, States like Haryana have gone all out to realise their potential and have taxed their citizens rather heavily. In such a context, showing undue consideration to deficit States may even mean putting premium on inefficiency while efficiency will go at a discount.

5.4 The alternatives suggested by the Commission in the body of the question are not mutually exclusive. The objective which has been set forth in question No. 5.3 can be attained by a judicious mix of additional taxation, better control over expenditure better collection of taxes due and partially by deficit financing. The Commission would be aware that there are very heavy income-tax arrears, which are almost as much as the total income-tax revenue in one single year. Even if 50% of these arrears are collected by the Central Government and distributed to the States, this would help them substantially.

The suggestion regarding subventions from richer States to the poorer States is unacceptable. While financially well managed States like Haryana may be able to meet their non-plan expenditure out of their resources, they need substantial funds for their plan expenditure. Since the size of our development plans is inveriably fixed on the basis on the likely available resources in a given year, transfer of resources from one State to the other would mean unwarranted reduction in the size of the development plans of that State. Such an arrangement will be most unfair and against equity.

5.5 The suggestion that the methods of devolutions through the Finance Commission and the Planning Commission do not appear to bridge the gap in resources between the poorer and richer States is not correct. On the contrary, through the recommendations of the Finance Commission the shortfall in resources of a State in meeting the non-plan expenditure is covered. Similarly, in the case of plan grants also larger share goes to the poorer States. In fact the States who are unable to cover even their non-paln expenditure, their total plan is met through Central assistance. As such States like Haryana are already placed at a disadvantage.

The devolution of funds from the Centre to the States and the plan assistance should take into account the tax efforts made by the respective States as well as the efficiency and economy in management exhibited by them. The principle of uniform per capita devolution of resources needs to be adopted while determining assistance to the States.

5.6 We think the agency of the Finance Commission and Planning Commission are adequate. If a funds is to be created, it should be financed as a Central Scheme from the Centre's non-shareable resources.

5.7 The need for transferring some of the taxing powers of the Centre to the States has been felt from time to time. In fact, this need has already been acknowledged to some extent by way of declaring procurement transactions, works contracts etc. as 'sale' to enable the States to tax these transactions. Steps are being taken to introduce sales-tax on consignment transfers. In addition, the power to impose excise duty on some more items like mollasses and sugar could easily be transferred to the States without causing much problem on production or movement of these commodities. The Commission may consider the desirability of authorising the State Governments to levy their own corporate tax on companies whose factories are located in the States. Also please refer to the detailed note in Answer to Q. 5.1.

5.8 We agree that such a Council would be useful or imposition and distribution of major taxes.

5.9 From the over-all national point of view, it looks better if there is one single organisation which could handle on a permanent basis the responsibility discharged by the Finance Commission and the Planning Commission. Naturally, it would be a permanent body and not a periodic phenomenon like the Finance Commission. From the point of view of the States also, it would be better to place all their cards before one body rather to argue their case with the separate bodies having separate objectives which are not always identical.

5.10 It is difficult to say that the recommendations of the Finance Commissions have promoted efficiency and economy in expenditure because these are not aimed at these objectives. They have not encouraged tax efforts of the States either.

5.11 Yes. We agree with the views which have been quoted in the question. For corrective measures please refer to the detailed note in answer to Q. 5.1.

5.12 The views expressed by the Seventh Finance Commission were correct and wholesome. More weightage must be given to resource transfers through tax sharing and the role of grants-in-aid under Article 275 should be restricted to the minimum. Unfortunately, the principles enunciated by the Seventh Finance Commission were abandoned by the Eight Finance Commission to the detriment of the State like Haryana.

5.13 In addition to the principles cited above, the Seventh Finance Commission had also averred that consideration should be given to the tax efforts made by the individual State, the economy in expenditure consistent with efficiency and prudent management of public sector enterprises. The gap filling approach has put the surplus States at a disadvantage because a substantial part of the total divisible pool is consumed in filling the gap of the deficit States, which could otherwise be distributed among the States as larger devolution. The tax efforts of States and the success achieved by them in curbing the non-plan expenditure should be rewarded instead of being penalised.

5.14 The revenue and yield from measures like the Special Bearer Bonds Scheme and the administered prices of petroleum and coal etc. should be brought within the divisible pool. Similarly, the collections accruing from the Compulsory Deposits Scheme for Income Tax Payers should also be brought within the divisible pool. The justification is obvious. These are resources raised by the Centre through the contribution of the citizens all over the country living in different States. In the case of the administered prices of petroleum and coal, etc. these are in the nature of excise duty. If excise duty had been imposed on these items, it would have been shared with the States.

5.15 The savings effected by the Community should be shared by the Centre with the States. In the case of small savings at present 2/3rd of the net savings collection in a given year are reimbursed to the States as long term loan. It has been felt that this scheme should be transferred to the State Govt. for raising its own resources.

The premia of Insurance and the contribution towards the Employees Provident Fund Scheme are also deposits in the nature of savings. Presently, the lion's share is retained by the Central Government. There should be a larger and more substantial sharing of these resources with the States. In fact the Employees Provident Fund Scheme should be transferred to the States.

5.16 and 5.17 It is a fact that the percentage of Centre's resources being transferred to the States has declined. It is also a fact that the fiscal imbalance of the States has been increasing and their indebtedness is also rising. As a consequence, the net blow of resources from the Centre to the States in a given year now is minimal.

The reasons for the mounting indebtedness primarlily are limited resources of the States and heavy demands on the State's resources. This situation can be remedied in the following manner :

(i) Larger devolution of funds from the Centre to the States;

(ii) Conversion of a substantial part of old loans into grants;

(iii) Substantially re-scheduling the remaining loans.

The difficulties of the States have also arisen because of the Central Assistance formula which is 70 % loan and 30% grants. If the ratios is inverted it would help the States substantially. Even if there is a 50 : 50 mix between grant and loan, it would put a lesser strain on the States' resources in future years. Yet a third aspect is regarding locking up States' resources in the projects of the State Electricity Boards. Since very heavy assistance is extended by the States to the Electricity Boards and the Boards have not been able to repay the debts to the States, it is suggested that the repayment of loans by the States to the Centre to the extent of loans advanced to the State Electricity Boards be deferred for a reasonable period, say for 10 years. The Electricity Boards are a public utility service like the Railways and they do not operate only for the people of the State much less for the State Government.

5.18 The criticism is well-founded. The States' option for raising loans has been severely limited. In regard to market borrowing, the trend has been overwhelmingly in favour of the Central Government. While in the Third Plan period the share between the Union and the State was 37% and 63% respectively, it was totally reversed in the Sixth Plan period to 77% and 23%. Obviously, the Central Government has been appropriating unduly larger share of market borrowing while the States have been starved of funds. It is suggested that a reasonable ratio say 50 : 50 be fixed for market borrowing by the State and Central Governments if the earlier ratio of 2/3 and 1/3 in favour of the States is not restored.

5.19 The allegation is correct in regard to some loans. The Centre should not charge a higher rate of interest from the States. They may however retain a certain portion of these borrowings for their own budgetary requirements.

5.20 We have no comments on the suggestion to have a loans council on the pattern of Australian Loans Council because we have no information in reagard to the latter. However, as has been stated in reply to Question No. 5.18 above, it is reiterated that the States' share in market borrowings needs to be substantially raised. The policy of the Government of India and the Reserve Bank in this behalf would have to be made more liberal.

5.21 The primary reason for the States' exceeding the limits of ways and means advance is inadequate resources in contrast to mounting obligations. The problems of States like Haryana have also multiplied on account of factors like natural calamities, increase in the administered prices of petroleum products and coal etc. and release of additional D.A. instalments by the Central Government to their employees with similar release being required to be paid by the State Government. In this background it is quite natural for the States to exceed their ways and means advance limit. While we agree with the view taken by the Government of India that the ways and means advance and the special ways and means advance are not a resource yet they do act like one and for that ceiling needs being raised. The present ceiling of ways and means advance for Haryana is only Rs. 12 crores and an additional special ways and means advance is Rs. 6 crores, making a total of Rs. 18 crores. This should at least be doubled if not raised to Rs. 50 crores.

5.22 No. It is not fair to suggest that states like Haryana are not exploiting adequately their own sources of revenue. On the contrary, we have been trying to raise resources in all possible manner. In fact, Haryana is one of the most heavily taxed States in the country.

5.23 We agree with both the points made. The public sector of the Central Government made substantial profits in 1982-83 but have slumped in performance in 1983-84. It may be added that the over-all performance of the public sector units of the State Governments is hardly any better. There is also substantial leakage of revenue mainly in income tax and Central excise and customs duty. The arrears are also mounting. These must be effectively and quickly realised. If that is done, both the Union and the States stand to gain.

5.24 It would be a sound principle for the Union to consult the States while imposing fresh duties or taxes or while varying the rates of duties and taxes enumerated in Articles 268 and 269. However, it may not always be possible for them to do so in practice.

5.25 Yes. We are in agreement with this view.

5.26 The view expressed on behalf of certain States is quite correct. Had the tax not been abolished there would have been a substantially larger accrual under this head as compared to the grant of Rs. 23.12 crores being given to the States. As per calculation made in 1978-79 it would have been Rs. 63·22 crores. By now it would have exceeded Rs. 100 crores. Either the tax should be reimposed or the grant should be raised proportionately.

It may be added that it is not only in this regard but also in the matter of imposition of 'Additional Excise Duty in lieu of sales-tax that the States have suffered heavy financial loss. The disbursement of revenue receipts on tobacco, textiles and sugar under additional excise duty in lieu of sales-tax have been a fraction of what would have accrued to the States had the States continued to levy sales-tax.

5.27 No comments.

5.28 Haryana experiences hailstorms very frequently causing extensive damage to its valuable crops. But the relief given for hailstorms is not recognised by the Central Government for assistance alongwith other calamities like floods, cyclones, droughts etc. As the damage due to hailstorms is very heavy and very frequent this should also qualify for such assistance.

Whenever the natural calamities occur the State Government is to undertake some unforeseen expenditure for the welfare of the people which are best seen by the States in the local context. But the expenditure incurred out of the State's margin money for some essential items which are not covered under the schemes prepared by the Centre are not accepted

by them as qualifying expenditure. The States should be at liberty to spend the margin money keeping in view the local expediency.

In case of droughts the advance plan assistance given does not in real sense benefit the States as it is adjusted towards the later year's allocation. The plea that expenditure incurred on drought relief works is of normal-plan nature only is not tenable because the funds for the expenditure incurred for creating some assets at the place of calamities are diverted from other places where for it was meant.

The schemes submitted by the States in its memorandum for relief should not be altered in nature and principle except that some of the schemes may not be taken up for want of resources. The plea is that the States are in the best position to judge the suitability of scheme to benefit its people in a particular situation.

5.29 As has been discussed in reply to earlier questions, the matter regarding devolution of funds and Central Assistance should be decided by one single agency, combining the functions of the Finance Commission and the Planning Commission. Also that such an agency will be a permanent body and not periodical in nature.

In regard to the credit needs of States both in the public and private sectors for industrial projects etc., a more coordinated approach is certainly called for. If a centralised National Agency is set up representing not only the States but also representing industries interests like FICCI and AIEI and the apex public sector financing institutions, that would help. Such an agency can monitor and look into the difficulties in implementation of the letters of intents and licences issued by the Government of India and also take care of the needs of various States and the units being set up in each State.

5.30 We do not agree with the view expressed in the first part of the question. Who collect the funds and how these are shared is a very substantive matter. Of course, there cannot be any disagreement with what has been stated in the second sentence of the question. Though it has been noted that in some schemes the benefit which flows to the beneficiaries is not commensurate with the investment which has been made in implementing the schemes.

5.31 The way the finances of the Union Government are being managed, there is a sound mechanism for the audit of both the revenue and expenditure of the Union Government by C. and A. G. and as such a periodical assessment by another agency does not seem to be necessary. Government at the Centre is also responsible to the people as the Government in the States are.

The impression is by and large correct. While we would not like to be specified for obvious reasons, it has been noted that some of the States have embarked on schemes and projects which are very costly and could, perhaps, have been avoided on consideration of sound economy.

No. National Expenditure Commission seems to be necessary. The Centralised National Agency, referred to in reply to the earlier question, should also reserve as a wing, which would scrutinise the schemes both of the Union Government and the States having sufficient implications. Broadly, it may be stated that any scheme involving an expenditure of Rs. 10 crores in case of the State Government and involving expenditure of more than Rs. 100 crores in the case of Central Government, may be scrutinised by this Agency.

5.32 The procedures that have been devised and the conventions which have been established are of a nature which cannot be regarded as detrimental to a healthy relationship between the Centre and the States.

5.33 No comments.

5.34 No comments.

5.35 We have no comments in the matter.

5.36 We think that the present system is adequate and provides for a sufficient check on expenditure by the States. We have no comments in regard to the system of expenditure checking in the Union Government.

5.37 Even under the present arrangement the Estimates Committee is not precluded from making recommendations to the State Government.

5.38 No comments in view of our reply to Question 5.31 (c).

5.39 No specific difficulty or undue interference has been noted by us. Hence no modifications are suggested.

(Note referred to in replies to questions Nos. 5.1, 5.7 and 5.11)

The successive Finance Commissions, while recommending non plan grants to the States under Article 275, have been following the revenue gap filling approach which has worked to the detriment of the revenue surplus State like Haryana. We have received no Central assistance on this account. In case of devolution of Central taxes to the States the Finance Commissions have not been following a progressive approach. Surcharge on Income Tax and the Corporate Income Tax have been kept out of the shareable pool. The size of divisible pool in case of Central Excise Duties has also been restricted to forty per cent. This needs to be expanded. Further the Central Government have been encroaching upon the already meagre resource raising powers of the States. Due to the levy of Additional Excise Duties on textiles, sugar and tobacco in replacement of sales tax on these items earlier levied by the States, States like Haryana have suffered heavy financial losses. Though the entire net proceeds of Additional Excise Duties are assigned to the States, our share in these is much less than the proceeds of sales tax, had the sales tax on these items been in force. Next, the grant in lieu of tax on Railway passenger fares given to the States is too meagre as compared to the tax proceeds had this tax been levied by the States. Thus

the imposition of these Central levies in place of the State levies has led to the erosion of the States' resources. The share of the States in the public sector market borrowings has been sharply declining. With the passage of years the Centre has been appropriating more and more share of these market borrowings.

The revenue gap filling approach adopted by the successive Finance Commissions has led to the pursuance of financially imprudent policies by various States and bred financial laxity. As averred by the Seventh Finance Commission the role of grants-in-aid in the total transfer of resources should, as far as possible, be residual and the attempt should be made to make bulk of transfer of resources through tax sharing. Even in the case of tax sharing due weightage should be given to tax effort and economy in expenditure.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The National Development Council is the highest forum for policy formulation regarding planned development. In this forum the view expressed by the Central Government take into account the requirement at the national level and the views expressed by State Governments take into the account the requirements at the State Level. Thereafter a broad policy framework is prepared. The present system of consultations is appropriate.

The involvement of the Centre should be confined to providing guidance and broad monitoring of programmes. Working groups tend to dictate the scope and coverage of programmes falling within the jurisdiction of States. This can distort the developmental coordinates within the State. The role of the Central Government should be advisory and not decisive under such programmes.

6.2 We do not agree with this proposal. However, the existing N.D.C. could meet more frequently to discuss specific issues.

6.3 Yes.

6.4 We would support the first view.

6.5 We do not agree.

6.6 We have been drawing up our plans keeping in view that State's priorities and requirements without any interference by the planning Commission. There has never been an instance where national priorities have come into conflict with state priorities rather these state's resources are necessary to avoid overdrafts but determination of the size, scope and phasing of physical programmes should be left to the State.

6.7 Grants/loans for schemes in the Central sector and Centrally Sponsored schemes are linked with performance. However, State should have greater leaverage and flexibility in allocating resources for other schemes in the States. The Centre should also allocate as grants larger sums for relief on account of natural calamities.

6.8 The present formula of fixing the Plan size of the States is not harsh to the poorer States. In fact, through the channel of Finance Commission the poorer States have been gaining at the cost of the better managed States. The modified Gadgil formula and IATP formula also give sufficient weightage to poverty and backwardness.

6.9 The Central assistance is given on the basis of certain criteria which do not take into consideration the potential for growth. Allocation of Central assistance for removal of regional imbalances and poverty is important but at the same time the maximum utilisation of physical resources and potential for growth of linking Central assistance with earmarked outlays should be dispensed with. Although the earmarked outlays cover economic development and minimum needs sectors which should receive the priority, yet if due to any reason the States are unable to spend the earmarked outlays the Central assistance should not be reduced. The quantum of Central assistance once determined should be treated as a State resource. Suitable premium should be given to better management by States.

6.10 No distortion has taken place in the plans of Haryana.

6.11 The monitoring and evaluation machinery is not adequate at present. The Central Government has been encouraging expansion of this machinery by providing 2/3rd of the expenditure on staff in the Planning Department. The expansion of the activities in the Planning Department will mean additional feed back from implementing departments. Therefore, the system of Central assistance be extended to all departments concerned with planned development.

6.12 Between the Centre and the States the system of decentralised planning already exists. Plan formuation and implementation is the responsibility of lStates. The system of scrutiny of State Plans by the Centre is, however, necessary as otherwise the States will find it very difficult to determine sectoral outlays within the available resources. For this purpose an agency outside the influence of the State Government is necessary. However, the present system of "summary trials" by the Working groups needs to be made equitable in favour of the State's view point.

6.13 The Planning Boards are in a position to take stock of the existing situation, potential for growth, regional requirements, etc. They can give proper direction to the development process in different areas. As a coordinating body it can determine the outlays for different activities within the given resources. They can also exercise better control over the implementation process and effectively monitor the development policy of the State Government.

As far as the States are concerned, the national Plan is even now indicative. Rather it includes the requirements and perspectives of different states and areas. Real difficulties arise only when final shape is given to the Five year/Annual Plan in terms of outlays and physical targets.

PART VII

MISCELLANEOUS

Industries

7.1 The First Schedule to the Industries (Development and Regulation) Act as pointed out included only a few industries which were of vital public interest and national importance. During the period since the implementation of industrial policy Resolution, 1948, a number of additions have been made in the First Schedule of this Act. These additional items included cannot strictly be termed as of vital public interest and national importance. It is well known that items of common usage by the public which are not very critical need not be grouped under the first schedule of this Act. This would help such industries to come up in different areas. It is well known that it takes considerable time to get an Industrial Licence for setting up industries, Besides, one has to make considerable efforts. Keeping this in view, it would be useful and necessary for such industries which are based on local demand or based on local raw materials to come up without any constraint.

7.2 (i) There should be norms, but there should be no legislation on the subject of norms. The guidelines will also require change from time to time.

(ii) The following items can be considered for deletion from First Schedule :

1. Electric Fans.
2. Electric Lamps.
3. House-hold appliances such as electric iron heaters.
4. Bicycles.
5. Fire Fighting equipment and appliances.
6. Plastic Moulded goods.
7. Hand tools.
8. Razor blades.
9. Pressure cookers.
10. Cutlery.
11. Steel Furniture.
12. Sewing and Knitting Machines.
13. Hurricane lanterns.
14. Sterlizers, incubators.
15. Paper board and Straw board.
16. Malted foods.
17. Flour.
18. Vegetable oils including solvent extraction oil.
19. Soaps.
20. Perfumery.
21. Leather and leather goods.
22. Oil stoves.

7.3 It would be useful and necessary to decentralise, particularly with reagard to giving clearance for import of capital goods and raw materials for industries wherein the percentage of capital goods to be imported to the Total value of capital goods is less than say 15% and percentage of raw material to be imported to the total value of the finished products is less than 10%. This procedure of decentralising would expedite setting up of new industries.

7.4 The State Government have taken sufficient steps to support small sector and to ensure raw-material supply of such materials as are available at fair rates to small scale industrial units. Haryana State Small Industries and Export Corporation looks after the raw-material supply and provides marketing assistance to small and tiny units. However, supply of essential raw materials depends on Central canalising agencies or public sector units.

7.5 Central financial institutions do not provide loans in the State Plans, but they provide loan for industrial projects to be set up in the State. Financing of Industrial projects is supplemented at the State level by the assistance granted by the SIDCs and SFCs (HSIDC and HFC) in our State. The resources of State institutions for providing assistance for Industrial projects are the refinance being made available by IDBI and the funds allocated by the State. Central institutions raise resources from the market by way of bonds while no such facility is made available to the State institutions. It would be desirable if a part of the market borrowings is allocated to the State institutions to augment their resources for industrial development in states. This could be done by sharing of total market borrowings allowed under the yearly plans between State and Central institutions and all India Institutions could give a share of their bond quota to the State institutions and thus help them in accelerating the pace of development.

7.6 The criticism does not appear to be justified. It is not possible to locate a central sector unit in a State without taking the State into confidence.

7.7 Since the matter is of great interest for the State, the Government of India should circulate the proposals to all the States for their comments and the States may like to support their claims. Then the Government of India should decide/finalise the proposals, preferably associating the interested State governments by calling them to a meeting.

7.8 The new list and policy regarding Centrally notified backward areas was announced on 1-4-83 while indentifying industrially backward district/areas, State Government was not consulted. Certain areas which the State Government considers quite backward have not been included in the Central list of backward districts.

There is no doubt that Central incentives for industries in backward areas have succeeded in dispersal of industry in backward region but still more could be done.

It is suggested that only the amoumt of subsidy may be earmarked only by the Central Government and the State Government could decide its policy for promotion of backward areas. Individual State governments are better aware of their problems and could formulate their policies according to their needs and situation prevailing in the State.

PART VIII

TRADE AND COMMERCE

8.1 We do not consider such a body is necessary at the present stage.

PART IX

AGRICULTURE

9.1 The working of the Government as enshrine in the constitution of India is based on the principle of "Co-operative federalism" under which there is scope for inter-action between Union and the State governments for the achievements of various goals. Agriculture is one sector which requires maximum initiative at the national level. Therefore, there is no harm if the Union Government take initiative in agricultural matters by exercising certain powers entrusted to it under the "Union and concurrent List". However, this does not mean that the constituent State lose all initiative for tackling the problems connected with the agricultural sector, which entirely depend on local conditions. By and large the Union and State governments have been working within the above framework and no problem has been faced in this regard. As a matter of fact, the Central initiative has always served as a helping hand and it has never run contrary to the interests of the State. Similar views apply to forestry, animal husbandry and fisheries.

9.2 The ultimate inclusion of Central and Centrally sponsored schemes within the State sector largely depends upon the availability of resources within the State Plans. More than that, it is felt that certain important Central and Centrally sponsored schemes can not be brought within purview of the State sector because of the resource gap. The additionality of funds which devolve upon the States through Centrally sponsored schemes are not linked with the State Plan resources. Therefore, there should be no hard and fast rule regarding transfer of Centrally sponsored schemes in the State sector.

9.3 It has become a normal practice that nominee of the State governments are represented on the working groups of the Central and Centrally sponsored schemes and by and large, the views of the representatives of the States are given due consideration while finalizing the recommendations of such working groups. These working groups also take into account the resources available in the State Plan for implementation of such schemes within States either through 100% central assistance or on sharing basis. To sum up, there also exists an effective cooperation between the Centre and the States on this aspect. However, in the preparation/formulation of Centrally sponsored/Centrally assisted schemes, the State Governments are not consulted which is against the recommendations of the National Commission on Agriculture, 1976 wherein it has been suggested that the Centrally sponsored schemes should be formulated in consultation with the State Governments and the work should be done by a joint working group.

(a) Fixation of minimum Fair Prices of Agricultural Items :

9.4 No doubt the views of the State Governments are sought by the Agricultural Prices Commission before fixing support prices of various agricultural commodities, there is a common feeling that the cost of production as worked out by the States is by and large not accepted by Union Government. This results in fixation of almost non-remunerative Prices. In agriculturally advanced States like Haryana, the farmers are highly advanced, progressive and they by and large adopt recommended package of practices including application of costly inputs on their crops. The initiative of the farmers results in higher yields but the benefits accruing to them in form of support prices are not commensurate with the high cost of cultivation because of costly inputs. The State Government feels that there should be some system of payment of bonus to the farmers for every additional unit of yield contributed by the farmers. In the present system of fixation of prices at the level of Government of India, these factors are perhaps not taken into account.

The State Government should also be compensated for providing cheap electricity and water to the farmers at subsidised rates, e.g. electricity is supplied for agricultural use at about @0.20 paise per unit, while the cost of production is about 0.60 paise per unit. In addition the Board subsidises the energisation of tubewells. All these subsidies should be reimbursed by the Central Government to the State Government. Permanent arrangements should be created for this purpose.

(b) Irrigation (including inter-state aspects) :

There are serious inter-state difficulties in the distribution of river waters. These arise from the fact that river waters are not a central subject. There should be a national council with Prime Minister as Chairman to decide finally over the inter-state distribution of river waters.

(c) Provision of strategic inputs, including credit :

Fertilizer is one input where the allocation to various states are made by the Government of India under the Essential Commodities Act and quite often the states are allocated fertilizers from manufacturing plants situated at far off places within the country. On the other hand, allocation from the Major manufacturing plans within the state are made for other states. Sometimes because of shortage of railway wagons etc., the movement of fertilizers from one state to another is greatly hampered. Therefore, it is suggested that although such allocations are made at the level of Government of India, as far as possible efforts should be made to allocate fertilizer from the plants situated within the state or in the neighbouring states only. In addition there is need to decentralize the quality control regulations. At present, the quality control of fertilizer is regulated through Fertilizer (Control) Order 1957, which is a central legislation. By passage of time it has become necessary to make drastic change in the Fertilizer (Control) Order but the same are not coming through because of cumbersome procedure involved in amendment at the central level. It is felt that states should be given powers to amend the Fertilizer (Control) Order, 1957 in so far as it relates to its application within a particular state.

(d) Forestry Policy :

Adequate powers should be delegated to State Governments for permitting felling of forest trees for the sake of development works. Certain safeguards could however be provided.

9.5 No problem worth mentioning is being faced in the sphere of Centre-State relations with respect to the role of agricultural research and financial institutions.

It is suggested that ICAR may formulate need based projects depending upon the problems and requirements of the states. The financial institutions like NABARD should make substantive allocation for the development of inland fisheries.

PART X

FOOD AND CIVIL SUPPLIES

10.1 There is scope for improving Centre-State liaison in the areas of procurement, pricing, storage, movement, distribution of foodgrains and other essential commodities. The Constitution envisages food to be a State subject but by the Central policies on the aforesaid matters, very little initiative/options are left to the States. As a result, Govt. of India seems to have powers without responsibilities and the State governments have responsibility without adequate powers. One way to restore the balance in the national interest is to create a standing committee at official level for taking a composite and integrated view on matters relating to procurement and distribution of foodgrains and another standing committee for other civil supplies. The adhoc consultations resorted to do not serve much purpose, and leave a lot of scope for further improvement. In particular, levy of sales tax on foodgrains, imposition of quality cuts., reimbursement of incidental etc. are constant areas of difference between the State and Centre. The Central Government/FCI should provide funds in advance to the State governments for purchase of foodgrains. The States supplying foodgrains and crops to the Centre should be compensated for the subsidy given by the States to the farmers in the shape of cheap electricity and water.

10.2 Yes, such a periodical review must take place and constant monitoring should be done. To start with a complete review of the existing Acts/ Rules should be undertaken by a Committee, in which the government of India, concerned Ministeries, a few State governments and a few experts may participate, which should complete this exercise in 6 months or so. Thereafter a standing Committee meeting every 6 months could meet emergent needs and situations.

PART XI

EDUCATION

11.1 The Government of Haryana feels that there is hardly any justification for the criticism regarding centralization and standardization in the field of education. Inspite of the fact that education has been brought on the concurrent list, there is no Central interference and the State governments are free to take any initiative for the spread and promotion of education. The State governments are also free to formulate any programmes and policies with regard to improvement of education standards.

11.2 Universities of the State are of the opinion that no difficulty have ever been experienced with regard to UGC exercising its influence over various areas of higher eduction.

It is the statutory obligation of the UGC to lay down procedures and guidelines for the improvement of standards of higher education and research in universities system. The policy frame of the UGC enjoins on it the improvement of the quality of New University education making expansion of educational facilities both by way of opening Universities, centres for post-graduate studies and new colleges. The policy framework for the functions assigned to it is laid down by the various education commissions on the advice of the specialist panels and after the same has been examined in depth and approved by the regional conference of the Vice-Chancellors. This ensures uniformity of approach regarding the various academic and administrative matters to be dealt by the universities such as the reservation of seats for weaker sections, restructuring of courses of study at the undergraduate stage etc. Therefore, it can be concluded that the influence exercised by the UGC on the institutions of higher education, as central agency helps in the development of higher education by bringing the needed transformation and to remove the regional disparity in the length and breadth of this country. It ensures uniformity and planned development. As such we feel that UGC is crucial for the development of higher education.

(b) UGC extends greater cooperation in the form of financial assistance for the development of higher education. Both the Universities of the state are satisfied regarding the cooperation of UGC in releasing the grants within its 'policy frame work'. Even then at certain levels it is desired that UGC should critically identify the real development needs of the institutions of higher education and assign them relative priorities for making available financial assistance out of the funds placed at its disposal. The developing universities/institutions should be allocated more development grants as compared to the developed ones. The real financial needs of the areas should be determined on the basis of various survey studies and reports of the specialists panels. Financial assistance in the form of matching grant is given to the colleges for the following development purposes:—

1. Books and journals.
2. Various equipments including library facilities.
3. Extensions/construction of coollege buildings.

The share of the UGC for the above mentioned purposes in the form of assistance is 75% for items at Sr. No. (1) and (2) and 50% for the item at Sr. No. (3). Rest of the share is met by the State government or by the managing committee as the case may be. But it has been observed that UGC share of the matching grant is usually delayed and is not sanctioned before the end of the financial year with the result that the proper utilization of the

grants becomes difficult. It is suggested that UGC should take steps to ensure that their share of financial assistance to government/private colleges is sanctioned upto June of every year.

11.3 Central Advisory Board on education can be of much help in arranging discussions and consultations on the various issues concerning the field of education. Education Ministers and education secretaries conference organised, at the national level can take up various educational issues of mutual interest and evolve consensus in initiating action as per need of the society and the nation.

11.4 It is felt that the institutions run by the religious & language minorities should be subject to the regulations of the education department in all matters except those which have a bearing on religion or language. For this purpose Article 30 of the Constitution of India should be amended.

11.5 The relationship between the state and the centre in the field of education has always been cordial and that of mutual understanding and amity. The goal is common and there is no question of any conflict between the State government and the Central government.

PART XII

INTER-GOVERNMENTAL COORDINATION

12.1 There is no necessity of having a separate body for this purpose. The National Development Council can be entrusted with the necessary powers to deal with such problems.

GOVERNMENT OF HIMACHAL PRADESH

(a) Replies to the Questionnaire

(b) Memorandum

Himachal Pradesh

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 It is our view that the Constitution cannot be termed federal in the strict sense because it provides for the division of powers in such a way that the Central and the State Governments are each within their spheres not substantially independent of the other. In addition, it may be mentioned that only one of the six major ingredients of a Federation as specified by the Administrative Reforms Commission are met in the case of our Constitution. It is, therefore, our basic approach that the country is a Union, being an indissoluble partnership on States, with the Centre playing a more prominent role by virtue of its all India coverage and responsibilities and its primary task of cementing the links among the States and itself, and strengthening their sense of national identity.

1.2 The Rajamannar Committee has urged for greater autonomy for the States by a re-distribution of the legislative powers in the three lists of the Seventh Schedule; and has suggested deletion, revision or substantial modification of certain provisions such as Articles 251, 256, 257, 348, 349, 355, 356, 357, 365 etc. As far as the Government of Himachal Pradesh is concerned, our comments with regard to the Rajamannar Committee recommendations are as follows:—

(a) No changes are required in respect of Articles 251, 256 and 257 of the Constitution.

(b) It is our recommendation that the Articles 348 and 349 should be kept intact.

(c) It is also our view that the Article 355 is absolutely necessary so as to shield the country from external aggression and internal disturbances.

(d) No changes are required in Articles 356, 256 and 257 of the Constitution as also in Article 355 as also in Entry 52 of List-I.

1.3 The present constitutional provisions provide the optimum balance. No changes are, therefore, necessary.

1.4 It is our belief that today there does not exist any federation of the traditional type wherein national and regional Governments are co-ordinate and absolutely independent within their respectivte jurisdiction. The nearest approach is that of the United States but even there the federal role has increased tremendously over the years.

1.5 It is our view that the Constitution is basically sound and flexible enough to meet the challenge of the changing times.

1.6 We agree that the protection of the independence and ensurance of the unity and integrity of the country is of paramount importance. It is our view that the Preamble, Article 3, the Articles concerning with fundamental rights and directive principles of State Policy and the Articles dealing with the administrative relations between the Union and the States, trade, commerce and interçourse within the territory of India, services under the Union and the States and the Emergency provisions as provided by the Constitution have been designed essentially to achieve this end.

1.7 We have already commented about the Articles mentioned in this question. The Articles are eminently reasonable.

1.8 We do not think that Article 3 of the Constitution requires any changes.

PART II

LEGISLATIVE RELATIONS

2.1 We feel that there is nothing basically wrong with the scheme of distribution of legislative powers between the Union and the States.

2.2 Strictly from the standpoint of Himachal Pradesh we have the following suggestions to offer :—

(a) Article 288(2) be so amended as to ensure that the Legislature of a State may impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority whether subservient to the Central or State Government.

(b) List-I item 56 be redevised so as to ensure a State's power to control taxation on its hydle potential.

2.3 We do not agree that such a course will be useful.

2.4 It is our view that the present Article 249 of the Constitution which deals with this matter should be kept intact.

2.5 We have no other suggestions to offer.

PART III

ROLE OF THE GOVERNOR

3.1 It is our view that by and large the agency of the Governor has in the context of Centre-State relations been able to show high fidelity to the role assigned to it by the Constitution.

3.2 It is our view that the Governor can be major link between the Centre and the States in terms of fostering healthy Union-State relations Even those

who have disputed the discretionary powers of the Governor are now of the view that Governors have played a positive role in ensuring the stability and progress of their States.

3.3 (a) It is our view that the Governor has been fair and unbiased in exercise of his powers to submit a report on the breakdown or failure of the constitutional machinery.

(b) & (c) The Governors have exercised their discretion in this regard from time to time fairly and objectively.

3.4 The State Legislature may at times legislate in such a manner as to either affect national security, controvert national policies or give rise to considerable national controversy. It is, therefore, our view that powers exercised under Articles 200 and 201 should not be taken away from the Governor and the President of India. However, a reasonable time limit may be prescribed for assent of rejection under Article 201 of the Constitution.

3.5 We agree with the conclusions drawn from the case study conducted by the Indian Law Institute. We agree that assent has been withheld only in very few cases, and that the Article has not acted as a threat to the autonomy of the States.

3.6 The Governor has a dual role to play and his position makes him a major link between the Centre and the States. Governors have generally acted impartially and fairly in accordance with the Constitution and its conventions in discharging their dual responsibilities.

3.7 No.

3.8 We do not agree with the suggestion.

3.9 We feel that such a provision will not be feasible in India.

3.10 We entirely disagree with the view of the Administrative Reforms Commission with regard to formulation of guidelines on the discretionary powers of the Governor. The crisis in a dynamic political situation are so varied that it will not be proper to tie up the hands of the Governors.

PART IV

ADMINISTRATIVE RELATIONS

4.1 It is our view that the purpose of Articles 256 and 257 is to ensure that the States do not in any way impede or prejudice the exercise of the executive powers of Union, whereas Article 365 deals with failure of State Governments to comply with the directions given by the Union Government. It is our view that none of these Articles have been till now misused and therefore there is no point in omitting them. These Articles can be used effectively for ensuring not only high fidelity to national policies and national goals but also to maintain definitive authority in the hands of Union so as to ensure national integrity and national security.

4.2 We support the view that Article 365 should not be deleted and may remain as a reserve provision.

4.3 Since no direction has been issued under Article 256, the question is hypothetical.

4.4 It is our view that this extra-ordinary remedial power under Article 356 has been exercised properly.

4.5 The Forty-fourth Amendment Act, 1978 which restored the original period of six months in Article 356(4) has to a certain extent handicapped the efficacious use of powers under Article 356 by the Union. It is, therefore, our view that the Forty-fourth Amendment should be substituted by the clause specified by the Forty-second Amendment Act of 1976.

4.6 It is our view that the present arrangement regarding census, elections, etc., in which many of the functions of Union Government are being implemented by the State administration are working satisfactorily.

4.7 Central agencies have performed a vital role. Most of them have been helpful in giving a fair deal to less developed and different States.

4.8 It is our view that All-India Services have fulfilled the expectations of the Constitution-makers not only in providing uniformity in administrative quality and procedures and in fostering stability and a broad national outlook amongst the services, but also in promoting national integration. We are of the view that the present control of State Governments with regard to the All-India Services is sufficient.

4.9 It is our view that the Centre's ability under Article 355 to locate and use Central para-military and police forces even *suo motu* should not be hampered in any way.

4.10 It is our view that the present situation in which broadcasting and other like forms of communication are in List-I should continue.

4.11 It is our view that the Zonal Councils have till now been successful to a fairly great extent in collectively pursuing States' interests by cutting across party lines.

4.12 The National Development Council is a forum where all States are represented and where co-ordination regarding policy and programmes can be discussed usefully. This forum has been working effectively and there is no need for any change.

PART V

FINANCIAL RELATIONS

5.1 The scheme of devolution has worked well. There may be a case for a closer look at non-plan expenditure on a sustained basis, so that maintenance and upkeeps of existing assets and schemes do not suffer.

5.2 A complete separation of fiscal relations of the Union and the States is neither desirable nor practicable. Similarly, concentration of all the tax powers with the Union is also not desirable. In the context of planned development, it is necessary to take an overall view of the financial needs of States,

All income taxes (including corporation tax and surcharges) and all excise duties, by whatever name called, should be shareable with the States and the States should get most of the resources transferred through assured devolution but the principles of inter-State distribution should be such that advanced States are not left with large surpluses. There should also be institutional arrangements for more equitable distribution of resources other than tax revenues between the Union and the States. At the same time, the Central resources would be sufficient to meet the Centre's own requirements as also the emergency needs of regions and States, and there should be a surplus left with the Centre to be able to give it to backward and hilly States for bringing their development at par with the rest of the country.

5.3 We agree that in order to reduce regional imbalances the Centre has to be fiscally strong. The scheme of distribution itself should contain elements which lead to removal rather than accentuation of regional disparities.

5.4 It is our view that better control over expenditure would be the basic option available to the Centre. Deficit financing can also be resorted to a limited extent.

5.5 (a) With regard to share of taxes, our suggestions are as follows :—

(1) **Income-Tax**

The share of the States should be increased from the present 85% to 90% of the net proceeds as this minor increase in the States' share would not make much difference to the Centre whereas it could mean availability of some more funds to the States to meet their multifarious responsibilities.

The present basis of distribution *viz.* 90% on population and 10% on contribution basis needs to be changed. The head offices of factories are located mostly in metropolitan cities and the income-tax is deducted from the salaries and dividends/interest at source, even though the employees and shareholders/depositors may be living in other States. Moreover, this basis of distribution is not progressive because the more industrialised State generate higher revenue from sales tax etc. and thus their need for transfer is correspondingly less. The need of such States as have under-developed economies is more and as such the divisible pool of income-tax should be distributed on the following basis :—

(i) 25% for providing equal percentage of surplus to the revenue deficit States;

(ii) 65% on population basis;

(iii) 10% on collection basis.

(2) **Basic Excise Duties**

The sharing of these duties should be made compulsory. The share of the States should be raised to a minimum of 60% to make more resources available to the States.

At present, the share of the States in the divisible pool of excise duties is determined after giving equal weight to the population factor, the inverse of the per capita State Domestic Product, the percentage of poor in each State, and a formula for revenue equalisation.

The high cost of living and peculiar geographical position does not make per capita income a correct indicator of the economic backwardness of the hill States because the higher cost of transporting essential commodities and the larger requirements of the necessities of life due to the climate inflate the money value of income considerably, giving a distorted picture of the standard of living in the hills.

The calorific requirements in the hills are considerably higher than in the plains due to severity of climate and housing, warm clothing and food have also to be on a much more substantial scale in the hills than in the plains.

In the case of such hill States as also happen to be border States so there are always a large number of army and border security forces stationed within their boundaries, with the result that the per capita income of such States is artificially inflated by the expenditure on account of these forces.

Again, consumption of excisable goods if taken as a preponderant factor in the determination of share of individual States in the matter of excise duties is likely to distort the picture since in a State with large area and low population which is also economically backward, consumption of excisable goods may not be much because such a State is often a source of raw materials which are converted into excisable goods and consumed elsewhere, for example resin from hilly States.

Further, the scheme of devolution and transfer should be such as provides revenue surplus to economically backward and revenue deficit States after filling their revenue gaps. This surplus could be used for development purposes.

In view of all these factors, *inter-se* distribution among the States should be :—

(i) 25 percent on population basis;

(ii) 25 per cent for Surplus Equalisation Pool;

(iii) 10 per cent for hill States; and

(iv) 40 per cent for backward States.

(3) **Additional Excise Duties leviable in Replacement of Sales Tax**

The rates need to be restructured so that their incidence reaches 10.8% of the value of clearances of all 3 items (textiles, sugar and tobacco taken together) as recommended by the National Development Council. The ratio of 2:1 between the yield of basic and special excise duties on the one hand and additional excise duties on the other should also be reached.

Sugar, textiles and tobacco are considered items of mass consumption and naturally consumption varies from State to State due to climatic conditions, social and other customs and habits. Thus

the per capita consumption of tea and consequently of sugar is very high in Hill States as compared to the plains and as such it will not be fair to assume that the consumption of any commodity depends on population or sales-tax revenues.

Similarly, it will not be correct to adopt State Domestic Produce as a criterion as it could hide a wide variation of consumption levels and as such it is a very vague indicator at best. Moreover, production is also no indicator of the sales tax revenues accruing to a State if we take into account the fact that the Companies usually have a number of branches and depots at various places and that they transfer manufactured goods to them on self-consignment basis.

Similarly, despatches as a criterion in case of sugar is also not a fair indicator of its consumption because apart from official despatches there are usually despatches on private account of considerable magnitude which also need to be taken into account to arrive at any correct estimation of sugar consumption in any State.

In case of tobacco and textiles, population and per capita State Domestic Product cannot indicate the consumption of these articles a correctly. For example, it would be wrong to conclude that because of higher per capita income, the consumption of tobacco would be higher in Punjab than in a hill State like Himachal Pradesh and as such altitude and climatic conditions as well as habits of local population also need to be taken into account. A 20 percent additionality over the per-capita Domestic Product should be given to the hill States because of their cold climate which results in larger consumption of tobacco and textiles.

(4) **Passenger Tax**

Being dealt with against Question No. 5.26.

(5) **Plan Assistance**

In national interest the Central Government should provide extra financial help outside the plan/ to States with hydro-electric potential to tap all the viable hydel power projects.

Similarly, the Central Government should fully meet the loss of revenue on account of the imposition of a total ban on felling of trees in the Himalayan region. It should also finance the afforestation of these areas on a crash basis outside the plan.

Non-Plan Assistance

In addition to covering the revenue gap of the deficit States the non-plan assistance in the shape of grants under Article 275 should be provided in such a way that it leaves such deficit States with a surplus equal to 25% of their non-plan expenditure. Further, such grants should also be given to cover the increasing expenditure by the States on the payment of Additional Dearness Allowance to employees. For drought and rehabilitation purposes, Central assistance should be in the form of outright grants instead of loans as these are for financially unproductive purposes.

5.6 The establishment of a "special federal fund" for ensuring "faster development in economically under-developed areas relative to other developed areas of the country" is a good idea, as the Finance Commisson and the Planning Commission have to look after the needs of all the areas of the country, whether developed or under-developed.

5.7 No change in the existing scheme of taxation powers is advisable in view of the principles mentioned in the question. What has been recommended by this State is : —

(i) Increase in the share of States in the divisible Central taxes.

(ii) Change in the principle of their *inter-se* distribution among States.

(iii) Making sharing of basic excise duties mandatory.

(iv) Bringing corporation tax into the divisible pool.

5.8 It is no doubt true that a fragmentary approach to the taxes should be avoided and that taxation should not be so undertaken as to damage the economy or cause harassment to trade and industry. The taxation should be simple and the collection should be efficient. From this point of view, there is no justification for developing the taxation powers of income-tax, corporation tax, wealth tax, estate duty, customs duty, excise duties etc.

5.9 We agree that difficulties arise on the side of non-plan under the present system. We suggest that there should be a non-plan wing in the Planning Commission to ensure that non-plan needs are balanced with plan needs.

5.10 So far as Himachal Pradesh is concerned, the transfers, both statutory and discretionary, from the Union to the States, on the advice of successive Finance Commissions or otherwise have promoted efficiency and economy in expenditue on the one hand and narrowed down the disparities in expenditure among the States on the other hand to some extent. Yet they have not been able to wipe out the disparities totally.

5.11 It is true that the present mechanism of transfer of resources has some inbuilt propensities towards financial indiscipline and improvidence. This is because the Finance Commissions were largely following the procedure of filling revenue gaps. Increasingly, Finance Commissions have been adopting standard to be attained—for example the minimum returns to be earned over a period of 5 years by Road Transport Corporations and Electricity Boards etc. Similar standards have to be adopted in a variety of other cases also through continuous studies. While States which have indulged in improvident expenditure are not to be encouraged, States which have implemented programmes in accordance with the directive principles of State Policy or the nationally accepted programmes should be assured of adequate resources.

5.12 If this broad proposition is agreed to, it would not be possible to fulfill the laudable principle laid down by the Seventh Finance Commission

itself as enumerated in Question No. 5.13 and the backward hill States are likely to suffer.

5.13 There is nothing to dispute so for as the principles are concerned. So far as the methodology is concerned it needs to be deliberately weighted in favour of backward hill States keeping in view the peculiar nature of their problems, like sparse population, large distances, high cost of living, lack of infrastructure, high cost as compared to the plains of providing and maintaining such infrastructure, poor revenue base, etc.

5.14 We do not agree with these suggestions.

5.15 The suggestions as given in reply to Question No. 5.20 and 5.29 should go a long way towards removal of imbalances.

5.16 & 5.17 There is no doubt about the increase in the fiscal imbalances of the States and about the growth in their indebtedness. The causes specially in backward hill States like Himachal Pradesh are that their tax base is limited and most of their tax resources are inflexible. Again there is little scope for indirect taxation. The hill States, keeping in view peculiar nature of their problems like sparse population, long distances, high cost of living, lack of infrastructure and high cost as compared to the plains of providing and maintaining such infrastructure, lack of industries, high cost of transportation, peculiar climatic conditions, etc.. have to invest a lot in the basic infrastructure so that development could start in a meaningful way. A major chunk goes toward the construction of roads which in a hilly State do not contribute directly to the generation of, the State's resources. The vast distance and poor means of communications further complicates the matters. Even the provision of basic administration costs much more due to large areas, long distances and lower density of population. Such a backward hilly State as Himachal Pradesh has further to incur considerable expenditure on or socially productive but financially non-productive purposes like drought and rehabilitation, expansion of health and education facilities. construction of rural roads, the Central assistance which is to a certain extent in the form of loans.

Unless and until economic development (for which massive financial doses are a pre-requisite) becomes a self-sustaining process in such backward hilly states where a major part of the population depends on agriculture and horticulture for their livelihood and where the area under cultivation is only 15% of the total area, and unless massive resources are pumped in by the Centre for construction of power projects the income from which is given over to the State, there is little hope of any improvement in this regard, and the State is likely to continue to have a large deficit in its budget in in the foreseeable future.

5.18 We do not favour any major change in the policy relating to market borrowings. For, if States are left free to raise loans from the market, only the richer States would benefit.

5.19 The payment system is adequate.

5.20 The present arrangements is satisfactory.

5.21 The tax base of the States is limited and most of their taxation resources are inflexible. Again there is little scope for the States for indirect taxation. The backward hill States have to depend mostly on transfer of resources from the Centre either from the divisible pool of Central taxes or in the shape of grants and sometimes the delay in the release of such transfer leads to Way and Means difficulties.

The question of large over drafts generally arises from the third year of the plan period in the case of those States which do not have a sufficient revenue surplus as a result of the recommendation of the Finance Commission. While the requirement of funds increases with the progress of schemes and the rising costs during a plan period, the States find that there is a substantial erosion in their resources due to grant of instalments of Additional Dearness Allowance and other items of expenditure related to rise to costs. Since there is no corresponding increase in Central Assistance to the State plans, the State's resources are squeezed between the increasing demands both on the non-plan and and plan sides leading to over drafts.

During the course of a year, the over drafts are also due to the fact that a considerable part of the Central assistance to the Contrally sponsored schemes, externally assisted schemes etc. are released towards the latter part of the financial year. Though considerable improvement in payment through instalments have been made in recent years, since these schemes form a large part of over all plan outlay in a State, the effect of payment, based on claims filed after expenditure is incurred on the State's Ways and Means position is quite adverse.

5.22 So far as Himachal Pradesh is concerned it would not be correct to suggest that it is not exploiting its own revenue sources. There is not much to exploit in a backward hill State like Himachal Pradesh. Given its peculiar geographical conditions and lack of communications, the per capita tax burden in Himachal Pradesh is already quite high.

5.23 No comments.

5.24 We are of opinion that any move which may effect the financial interest, existing or prospective, of the States should be introduced in the Parliament after consultation with the States. This is already being done in many cases.

5.25 So far as Article 269 is concerned, out of the seven taxes enumerated under it, the Central Government has chosen to impose taxes only in two, namely, the estate duty in respect of property other than agriculture land and the tax on railway fares. Regarding tax on railway fares it is being dealt with in reply to Question No. 5.26. The remaining five taxes yet remain to be exploited by the Centre. Naturally, if the Centre imposes the remaining five taxes it would go to some extent towards improving the resources of the States.

5.26 The earlier Finance Commissions had recommended distribution on the basis of passenger earnings from non-urban traffic of each zone as

indicated by the actual route length in each State. The Seventh Finance Commission suggested that it should be in proportion to the non-suburban passenger earnings from traffic originating in each State. These criteria discriminate against the States who have very small length of railway lines, but which nevertheless contribute to railway passenger traffic to a large extent. The population of hill States, travels in the railway systems in the neighbouring States, adding to the passenger earnings in those States considerably. This is because in the absence of broad gauge rail lines in hill States, the people of such States generally go to the junctions in the neighbouring States to board the trains. Since route lengths in various States is unevenly distributed due to historical reasons, it would be only fair that the grant in lieu of railways passenger tax is distributed entirely on the basis of population in each State.

5.27 No comments.

5.28 It is our view that the margin money made available to the States should be increased, after applying a growth rate of 7% in view of the recurrent nature of these calamities. Also a State Relief Fund may be set up for relief of distress arising out of natural calamities. Funding for this may be on a statutary basis. Relief assistance granted by the Central Government should not be treated as advance plan assistance, to be adjusted in the next 3 annual plans, but as an outright grant. The 25% State contribution should be vaived for deficit States.

5.29 We do not favour these proposals.

5.30 As a broad proposition, one could agree with it. However, the level of collection is also important due to administrative factors.

5.31 (a) The State Government does not agree with the criticism that the expenditure of the Union is not being organised in the best interest of the nation's growth or that there are trends towards incurring of infructuous and unnecessary expenditure.

(b) So far as Himachal Pradesh is concerned it is not true that there has been any indulgence in unnecessary expenditure of a populist nature resulting in depletion of resources available for developmental purposes.

In view of the above there is no need for a permanent or ad-hoc National Expenditure Commission to assess the nature and quality of expenditure.

5.32 None.

5.33 There has recently been a re-organisation and audit and accounts branches have been separated to give more emphasis to audit. Whereas evaluation audit should be extended to cover as many Government activities as possible, routine audit should not be dispensed with.

5.34 The Act of Parliament confers sufficient powers and enjoins adequate duties on the Comptroller and Auditor General to enable him to keep a sufficient watch on the expenditure of the Union and the States.

5.35 In this State, the reports presented by the Comptroller and Auditor General to the State Legislature are comprehensive and accurate.

5.36 The probes into important issues by the Public Accounts Committee and Committee on Public Undertakings, with the help of the Comptroller and Auditor General, are a sufficient check in the matter.

5.37 The State Government agrees that the Estimates Committee is a useful committee.

5.38 The view of the State Government is that there is no necessity for an Expenditure Commission, in view of the existence of the Comptroller and Auditor General and the Public Accounts Committee. This will merely result in duplication.

5.39 The present system is working satisfactorily. Experiences of irritation may be with individual offers, but not with the system.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 In the matter of overall economic policy planning the Centre has to play the leading role. It is wrong to say that the States do not participate in the planning process.

6.2 We do not subscribe to the view that the National Development Council be set up on a statutory basis. The existing system at the Centre is already participative.

6.3 There is no scope for improvement in the system.

6.4 The State Government does not endorse any of the three views expressed.

6.5 The State Government does not subscribe to the view. The Planning Commission's role for over seeing planning at the national level should continue.

6.6 The existing system should continue.

6.7 The State Government has not faced any difficulty with regard to the channelising of Central assistance by way of loans and grants through the Planning Commission. Rather, we feel that there has been a judicious allocation among various States according to the existing principles, at the procedure has worked fairly well.

6.8 We feel that the non-plan resources of deficit States should be assessed on a more realistic basis, so that there is no undue pressure on non-plan expenditure. No other change is necessary.

6.9 In so far as Himachal Pradesh is concerned, the mechanism evolved by the National Development Council for allocating Central plan assistance to

States is considered to be equitable. It has, by and large, contributed significantly to the attainment of the basic planning objectives. We also endorse the specific earmarking of Central assistance for Tribal and Hill Area Plan and the Special Component Plan for Scheduled Castes.

6.10 We do not agree with the view expressed.

6.11 The monitoring and evaluation machinery should be strengthened at Central, State and District levels.

6.12 The State Government agrees with the concept of decentralised planning. It should however be introduced gradually so that we have an adequate data base and infrastructural machinery at the District and Sub-District levels. The Planning Commission is already working on right lines for introduction of decentralised planning below the State level.

6.13 In Himachal Pradesh, a State Planning Board has been set up. Besides, technical staff has been appointed in the form of State Planning Machinery. This staff has helped to develop necessary expertise in the preparation of the State Plan. Steps are underway to strengthen this machinery.

PART VII

MISCELLANEOUS

Industries

7.1 We feel that this view is valid.

7.2 The present situation needs no change.

7.3 The present procedure for licencing is advantageous to a State like Himachal Pradesh which has been declared as an industrially backward State, with 25% Central investment subsidy. The Central policy is an effective method for persuading industrialists to shift to backward and no industry districts.

7.4 Much has been done for Cottage and Village industries, but a lot remains to be done. The DICs need to be developed further as a co-ordinative mechanism, the Boards, Corporations and Cooperations have to assume a bigger role for supply of raw materials and marketing of products, and even the private sector has to be authorised to come forward.

7.5 The Central institutions are working satisfactorily, whereas they do not have an office in Himachal Pradesh, it need to be opened at the earliest. As in the past, the Central Government should continue to lay emphasis on release of funds to backward and hilly States, even by relaxation of standard norms.

7.6 It is not practicable to take the States collectively into confidence on such issues. Several criteria are being followed in taking the final decisions.

7.7 We feel that there is no justification do for such criticism.

7.8 The present methodology is satisfactory.

Replies to the Supplementary Questionnaire on Industry

1. The present system is conducive to the removal of regional imbalance in the context of industrial development in the country. In the absence of central authority regulating the growth of industries, particularly, larger units, the industrial backward areas, especially the hilly regions will continue to remain backward. The present system should continue.

2. We subscribe to the view of uniform Central legistation covering the entire country in the context of reservation of certain categories of industries for the small scale sector. The definition of small scale industry in terms of investment limits and the type of industries should also be with the Central Government. Under the system, the States do have freedom to promote industrial items best suited to the local conditions.

3. The State Govt. plays an important role in promoting the small scale and medium industries. This role consists of provision of infra-structural facilities and financial assistance in the form of subsidies, loans and concessions in the context of States taxation. In so far as, however, the industrially backward States, particularly, the hilly regions, are concerned, they are seriously handicapped in performing their role on account of severe constraint on resources they are confronted with. In case the basic objective of planned development, e. g. removal of regional imbalances, is to be realised in the forseeable future, the outlays for industrial development in the States have to be considerably stepped up. However, again the plan resources of the State Governments are limited. The only way the out-lay for industrial development could be augmented is the increased flow of financial assistances to these States through the National Level Financial Institutions and the Central Govt. by way of making larger provisions for various types of subsidies allowed for the setting up of industries in the industrially backward areas.

4. This view is valid as has been stated in the reply to Question No. 2 above. No item needs to be removed from the list reserved for the small scale industrial sector as it exists.

5. The reply given to Question No. 1 above is relevant here.

6. The Industrial Policy Resolutions announced from time to time are in conformity with the aspirations of the Indian people and for the country as a whole and the industrially backward areas in particular, in the field of industrialisation for a balanced regional development, uniform national policy is a pre-requisite, otherwise for apparent reasons, the regional imbalance will continue to increase.

7. There should be adequate consultations between the Centre and the States before the Industrial Policy is revised/formulated. This can, however, be ensured if the arrangements for such consultations are institutionalised. National level forums both at Government and administrative level should be constituted where all State Governments are represented.

8. The M.R.T.P. Act should not be made applicable to the backward and hilly regions as in the case of State of Jammu & Kashmir. This will attract

larger houses to the hilly regions where they have thus far been shy of making investments. Setting-up of larger units and nucleus plants in such regions, would substantially accelerate the pace of industrial development in these areas.

Trade and Commerce

8.1 A central authority may be constituted for the above purpose.

Agriculture

9.1 It is our view that *status-quo* be maintained in this regard.

9.2 We do not agree with this, as central and centrally sponsored schemes are primarily designed to prime up the development efforts of the otherwise weaker States.

9.3 We agree with both the suggestions given by National Commission on Agriculture in 1976. Those are already being implemented.

9.4 (a) As far as the State of Himachal Pradesh is concerned, fixation of minimum or fair prices of agricultural items is advantageous to us.

(b) No comments.

(c) Union Government's initiatives in this respect have been advantageous to the State.

(d) In terms of forestry policy and administration it is out view that such initiative has been, by and large, advantageous to this State. A greater awareness is needed at the Central level about the fragility of the Himalayan mountain environment and the need to pump in national funds so as to provide a green cover to this entire area, even by clamping a total moratorium on all fellings.

9.5 There are no problems.

Food and Civil Supplies

10.1 Himachal Pradesh would like to have greater allocation of rice.

10.2 A periodic review would indeed be useful. Once in 5 years a National Committee with representatives from the Centre-States and concerned interests could be appointed to review the situation and make appropriate recommendations.

Education

11.1 The criticism is not justified. In fact we require greater standardisation in the matter of predegree and university education considering the need for mobility of students from one region to another, standard examination system which will create parity in the matter of degrees and diplomas issued by various authorities, a broadly unified national calendar for admissions and withdrawals of students and an upgradation of syllabi and curricula in the field of scientific and technological education.

11.2 It is working satisfactorily.

11.3 We have no suggestion to offer.

11.4 We discern no difficulty in this regard.

11.5 No such instance have come to the notice of the Government of Himachal Pradesh.

Inter Governmental Coordination

12.1 It is our view that such an Institution would not be useful in our country, as irritants and problems between the Centre and the States are resolved amicably by a two way consultation process.

Himachal Pradesh

MEMORANDUM

Chapter 1

THE POLICY FRAMEWORK

1.1 India has a hallowed tradition of democratic functioning, especially at the grass roots level. The founding fathers of the Constitution, who were guided by the vision of Gandhi and Nehru, strengthened these hoary traditions. In the result, democracy has become strongly rooted in this country and has stood firm even when democratic regimes elsewhere have failed.

1.2 There have always been elements in the population, however, which are desirous of greater autonomy for the States, and attempt to fan the members of regionalism, provincialism and linguism. The nation has faced many challenges and pragmatic solutions have been found from time to time. In recent years, opposition political parties have come to power in a few States and the controversy on Centre-State relations has naturally acquired a new sharpness.

1.3 The appointment of the Commission on Centre-State Relations is a tribute to the sagacity of our dynamic Prime Minister, Smt. Indira Gandhi, who is a sincere democrat in the true Nehruvian spirit, and who believes in the method of open, unhibited debate on national issues.

1.4 The H. P. Government has approached the key issue of Centre-State relations from two angles. From the national perspective, it believes that a strong Centre is a must, if the country is to survive, evolve and grow. From the standpoint of a small State, mainly dependent on Central assistance, a strong Centre appears to be highly desirable if balanced development is to be achieved.

1.5 The Prime Minister has rightly stated that a strong centre does not necessarily imply weak States. We can try for strength at both levels, the strength of each being nourished and enhanced by the other's.

1.6 India is a large country, inhabited by myriad races, languages and religions, spread over a huge landmass with widely varying agro-climatic conditions. There are two points which become relevant from the constitutional angle. Such a large country cannot be administered in depth or detail from a central point. At the same time, only a strong Centre can keep the centrifugal tendencies in check. We have, therefore, rightly opted for a form of government which has federal features as also unitary elements.

1.7 Historically, the boundaries of the present States have undergone several changes in ancient, medieval and modern times. The map of India has been virtually redrawn twice since independence, once at the time of integration of princely States and again for realignment of boundaries on linguistic basis. The constitution empowers Parliament to legislate regarding the formation of new States and alteration of areas, boundaries or names of existing States. It is good that it is so. Had it been otherwise, it would have been impossible to create a rational, reasonable and pragmatic map of the country as we have done. But it also shows that India is not and cannot be termed as federation of sovereign States.

1.8 Functionally, it is obvious that the autonomy implicit in the division of powers as between the Centre and the States is not so much a conferment of sovereign rights as an administrative convenience. India could have been run from a single point or five zonal centres or twenty state capitals. We have opted for a system in which local initiative is neatly blended with central control.

1.9 In a large country, there is always a danger that disintegration and fissiparous tendencies would rear their ugly heads. Wars, external aggressions and armed rebellions are the normal hazards of any polity. Sometimes, the constitutional machinery in a State fails and the administration is required to be temporarily assumed by the President. Financial emergencies can also arise. One alternative would have been to make no provision for such contingencies and to depend on chance to pull the country through. But the framers of the Constitution wisely decided to create an inbuilt machinery for proclamation of emergency under Article 352, assumption of powers by the President under Article 356 and proclamation of financial emergency under Article 360. Any objective and unbiased observer of the political scene would have no hesitation in concluding that the use of these powers by the Centre has to a large extent, been responsible for preserving the unity and integrity of the country.

1.10 At a lesser level, the same argument applies to the struggle against natural calamities which occur at frequent intervals. It is difficult to foresee where drought, flood, avalanche, earthquake, fire or typhoon will hit next, and with what intensity. It is thus desirable that the Centre have enough resources to be above to rush to the aid of any affected region with speed.

1.11 In the field of socio-economic development also, the Centre has necessarily to assume a coordinating responsibility. Having accepted a planned and mixed economy, where both public and private sectors have a role, it is important that macro-objectives are centrally determined.

1.12 Even in the freer economics of the western democracies, the modern trends in transport, communication, automation etc., have led to a more dynamic and positive role for the federal governments.

1.13 A significant consideration which has to be borne in mind all over the world but more so in the less developed countries is the need for balanced development. People who fall back in the race for a better economic and social status are apt to become willing recruits for revolutionary and violent struggles. As the better endowed States may not be prepared voluntarily to carry along their less fortunate brotheren, it is again the Centre which has to even out the kinks.

1.14 In this context, the Himachal Pradesh Government cannot but applaud the positive role played by the Central Government, constitutional bodies like the Finance Commission and coordinating forums like the National Development Council and the Planning Commission, in giving the smaller, hilly and less developed States their just share of the national cake. Despite having a very high level of per capita tax burden, Himachal Pradesh has so far been deficit in resources and it is the Central grants, loans and subventions which have enabled it to raise the living standards of its people.

1.15 When we analyse the argument adduced by the protagenists of greater powers to the States at the expense of the Centre, their weakness is easily realized. This is not to deny the need for a dynamic resoulation of the conflicts which tend to surface in Centre-State relations from time to time. Conditions change and our institutions have also to evolve constantly so as to maintain the overall equilibrium. This does not, however, imply that each such change would necessitate a constitutional amendment. It needs to be appreciated that constitutional conventions are as important as the written provisions, and it is the development of healthy conventions that should be our constant endeavour.

1.16 In conclusion, we would like to state that the founding fathers of the Constitution deliberately created India as a federation with a unitary strand. The experience of the last 37 years has demonstrated the efficacy and strength of the structure they gave us and we can tamper with the fine-tuned balance in Centre-State relations only at our peril. India needs a strong Centre in order to contain the distintegrative forces, to face emergencies with confidence and achieve a uniform level of development. Gradually, as the weaker States are strengthened and brought nearer the national average, the strength of the States will grow not at the cost of the Centre but through it and because of it. We shall then have a strong Centre and a set of strong States, mutually supporting and reinforcing one another. It is towards the achievement of this goal that all of us have to collectively move.

CHAPTER 2

THE CONSTITUTIONAL ISSUES

2.1 Various points have come up in different forums like the Anandpur Sahib Resolution of the Akalis, the Southern Chief Ministers' Conclave at Bangalore, the West Bengal Government's Memorandum to the Eight Finance Commission, the opposition Conclave at Srinagar and so on.

2.2 At the outset , we would like to state with all the emphasis at our command that India is a single nation and any attempt to propound a thesis of separatism for any group of people should be resisted

firmly, vigorously and with the use of armed force, if necessary. The misuse of religious places for propagation of any political philosophy should be banned effectively.

2.3 All the provisions of the Constitution which provide authority for Central interference at the time of general or financial emergency or in the event of failure of constitutional machinery in a State should be retained.

2.4 The division of legislative powers between the Centre and the States, with Central legislation having a greater force, should not be tampered with.

2.5 There are only two exceptions to this. States like Himachal Pradesh have a tremendous potential for hydel generation. It is felt that if a small State like H.P. has ever to achieve financial viability, it can only be done through exploitation of this vast resource. We would, therefore, press for powers to be given to State Governments to impose taxes on generation of electric power within their own boundaries.

2.6 Secondly, we felt that the acquisition and requisitioning of property which had been brought into the concurrent list by the 1956 amendment should be again included in the State list.

2.7 The powers of the President to grant or withhold assent to certain types of State Bills should not be abridged. However, he may be required to decide one way or the other within one year of the submission of a Bill.

2.8 Governors have a dual role, as heads of State and as links with the Centre. It does not seem to be feasible to place any limitations on the manner of exercise of their judgement in certain situations. The crises in a dynamic political situation are so varied that it will not be proper to tie up the hands of the Governors.

2.9 In conclusion, it may be stated that, by and large, the Constitution has served the country well and we should not alter it, save in exceptional circumstances.

CHAPTER 3

FINANCIAL DEVOLUTIONS

3.1 On the question of financial relations between the Centre and the States, the State Government has already stated its views in great detail to the Finance Commission. No occasion has arisen so far to call for any change in those views.

3.2 In general, we believe that the Centre and the States should have sufficient funds, so as to discharge effectively their respective responsibilities. The allocation of taxes has already been made in the Constitution on the basis of the relative efficiency of Central and State agencies in dealing with individual taxes. There are reasons to believe that some of the items allocated to the Centre have greater elasticity. But it can also not be denied that the States have not fully exploited all the taxes allowed to them.

3.3 The long term objective in this field should be the achievement of financial viability by all the States, so as to obviate the necessity for Central subventions to chronically deficit States. This can be done by expanding the resource base and exploitation of the potential available in each such State. In the intervening period, the Centre should deal in a manner which is positively discriminatory in favour of the less developed States.

3.4 The present distinction between plan and non-plan expenditure sometimes leads to creation of new assets and schemes, without making adequate provision for consolidation of past achievements and proper maintenance of old assets. This entire issue warrants a fresh look at the national level, so that departments like revenue, police, judiciary, prisons, secretariat, legislature, etc. which are the backbone of the administrative system are not starved of funds. One possibility is the constitution of a Non-Plan Wing in the Planning Commission which constantly monitors the non-plan requirements of funds, loan needs and so on along with plan requirements, and keep a proper balance between consolidation and fresh development. Emerging needs on the non-plan front could be met as and when these arise, instead of awaiting a quinquennial review.

CHAPTER 4

PLANNING AND DEVELOPMENT

4.1 In India, we opted for the process of planned development in the early fifties. The experience of the planning era has led to the evolution of effective mechanisms for plan formulation, implementation, monitoring and evaluation.

4.2 At the highest level, the National Development Council represents the collective will of the Central and State Governments. Consultation at this forum are the culmination of a series of discussions held with the States and cannot, by their very nature, be too detailed or elaborate. Nor need the NDC be set up on a statutory basis.

4.3 Much has been made of the fact that the Planning Commission does not have a constitutional status. It is not clear what special advantage the Commission can be expected to derive from an amendment of the Statute. The real strength of the Commission emanates from the diversity of the sources from which it derives its experts-economists, statisticians, subject matter specialists, administrators, politicians and technocrats.

4.4 There can be no dispute about the broad proposition that national priorities and developmental strategies have to be hammered out at the Central level, while the sectoral priorities and implementational tactics are better finalised at the State level. There can be varying shades of opinion as to where exactly the dividing line is. Some people do feel that Centrally sponsored schemes are often cast in too rigid a mould and do not always take into account the vastly different conditions obtaining in various parts of the country. It might also be wished that more State government experts are associated in the discussions of working groups, which need not be

held in such a hurry. Much can be said in favour of a continuous dialogue between Central and State representatives throughout the year, so that there is a constant exchange of ideas and information.

4.5 Himachal Pradesh has not faced any difficulty in obtaining a clear appreciation of its needs as a hilly State. For example, contrary to the accepted national norms, H.P. Plan has always accorded a very high priority to roads and bridges, a sector identified as strategic for hilly areas such as ours.

4.6 The State Government is conscious of the special dispensation which the Central Government has made in respect of plan financing of special category States like H.P. The mechanisms of the tribal sub-plan also work in our favour. The State does not, however, share in the Central funds earmarked for hill areas.

4.7 The decentralisation of the planning process is a laudable objective, which the Central Government has been pursuing with vigour. In principle, the State Government is in favour of such decentralisation. H.P. is, however, a small State and it needs to be considered whether too much decentralisation at too fast a pace might not be counter-productive, unless adequate data base and planning machinery has been created.

Chapter 5

ADMINISTRATIVE RELATIONS

5.1 There are some important points on administrative relations, to which attention needs to be drawn in this presentation.

5.2 The All India Services have played a vital role in preserving the quality, objectivity and national perspective of the higher echelons of the bureaucracy. The existing services should be retailed and more such services need to be created, in the interests of national unity.

5.3 The media of radio and television are powerful communicators of developmental messages. Only under governmental control can they be preserved from the onslaught of commercialisation and retained as vehicles of national viewpoints.

5.4 It is clear from past experience that the Centre should have the unrestricted power to deploy Central police and paramilitary forces in the States, so as to preserve the integrity of the country and maintain law and order.

5.5 The powers of the Central Government to give executive directions under Articles 256, 257, 339(2) and 365 of the Constitution should remain unchanged.

5.6 In the power sector, most of the executive powers under the Indian Electricity Act already stand delegated to the State Governments. As such, it may be more expedient to have separate Electricity Acts for different States, based on model legislation devised in consultation with the Centre.

5.7 In the implementation of projects for generation of power, it would be better if most of the projects are allowed to be set up in the State sector. The Central bodies should perform mainly technical and advisory roles, and may take up inter-State projects only when the State Electricity Boards are found incapable of doing so.

925 ISCS/98—14A

925 ISCS/98—14B

Government of Jammu & Kashmir

Replies to the Questionnaire

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REPLIES TO QUESTIONNAIRE

Introductory

After the accession of the State of Jammu and Kashmir to the Union of India, the relationship between the State and the Union has been governed by the provisions of Article 370 of the Constitution of India. For the limited purpose of response to the questionnaire of the Commission on Centre State relations' it is not necessary to set out in detail the extent and nature of the constitutional relationship between the state and the union. However, to appreciate the replies of the State Government in true and correct perspective, reference may be invited to the observations made by the Hon' ble Supreme Court of India in a recent case titled Khazan Chand versus State of Jammu and Kashmir A.I.R. 1984 S.C. 762 at 767 wherein it has been held :—

"The Constitution of India, however, does not apply in its entirety to the State of Jammu and Kashmir because that State holds a special position in the Constitutional set up of our country. Article 370 of the Constitution of India makes a special provisions with respect to the State of Jammu and Kashmir. Under sub-clause (c) of clause (I) of Article 370, the provisions of Articles I and 370 apply in relation to that State subject to such exceptions and modifications as the President may specify by an order issued with the concurrence of the Government of that State. Thus, by reason of the application of Article I to the State of Jammu and Kashmir by sub-clause (c) of clause (I) of Article 370, the State of Jammu and Kashmir is one of the States which form the Union of India and by virtue of sub-clause (d) of clause (I) of that Article so far as the provisions of the Constitution, other than those of Article I and 370, are concerned, the president of India has the power, with the concurrence of the Government of the State of Jammu and Kashmir to issue an order specifying which of them shall apply to that State and whether such provisions shall apply in their entirety or subject to such exceptions and modifications as may be specified in that order. Article 370 also envisages the convening of a Constituent Assembly for that State and the framing of a separate Constitution for it. In exercise of the power conferred by clause (I) of Article 370, the president of India, with the concurrence of the Government of the State of Jammu and Kashmir has made the Constitution (application to Jammu and Kashmir) Order, 1954 (C. O. 48). This order deals with the entire constitutional position of the State of Jammu and Kashmir within the framework of the Constitution of India, except only the internal constitution of the State Government to be framed by the Constituent assembly of that State. The Constituent Assembly of the State of Jammu and Kashmir framed its own Constitution repealing and replacing its earliar Constitution. This new Constitution, called the Constitution of Jammu and Kashmir", was adopted and enacted by the Constituent Assembly of that State on November 17, 1956.

After the adoption of Constitution of India, the President of India promulgated "The Constitution (Application to Jammu and Kashmir) Order, 1950 on 26 th January, 1950 in accordance with the provisions of Article 370 of the Constitution and thus the basis for a Constitutional relationship between the Union and the State was defined."

On August 9, 1953, the duly elected popular Government of National Conference headed by Sher-i-Kashmir Janab Sheikh Mohd. Abdullah was illegally dismissed. A series of unfortunate events followed thereafter which are now a part of the History. Amongst other things the aforesaid Constitution (Application to Jammu and Kashmir) Order, 1950 was superseded by the Constitution (Application to Jammu and Kashmir) Order, 1954 which in turn was amended from time to time. A situation of grave political uncertainty coupled with acute administrative inefficiency, corruption and economic stagnation with scant regard for rule of law and democratic norms engulfied the State which caused anxiety and concern in the minds of the Central Leadership Particularly Smt. Indira Gandhi, the then Prime Minister of India, In order to remedy this situation of political stalemate an invitation was extended by the late Prime Minister Smt. Indira Gandhi to Sher-i-Kashmir Janab Sheikh Mohd. Abdullah for holding parleys in order to find ways and means for remedying the situation and strengthening the secular, democratic genesis in the State. Accordingly the representatives of the late Prime Minister Smt. Indira Gandhi and the Sheri Kashmir Janab Sheikh Mohd. Abdullah met several times which culminated in the accord of 1975 which *inter alia* provides :—

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters mentioned in the State Constitution and like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, need amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of president's assent to such legislation would be sympthetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future under the proviso to clause 2 of that Article. The State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.

5. As an arrangement reciprocal to what has been provided under Article 368 a suitable modification of that Article as applied to the State should be made by Presidential Order to the effect that no law made by the Legislature of the State of Jammu and Kashmir relating to any of the under-mentioned matters, shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are :—

(a) the appointment, powers, functions, duties, privileges and immunities of the Governor; and

(b) the following matters relating to Elections, namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult sufferage and composition of the Legislative Council, being matters specified in sections 138, 139, 140 and 150 of the Constitution of the State of Jammu and Kashmir.

Before proceeding to deal with the Questionnaire we would also like to refer to the Constitution (Application to Jammu and Kashmir) Amendment Order 1986, dated 30-7-1986, for short "the 1986 Order," which *inter alia* provides :—

"2. In paragraph 2 of the Constitution (Application to Jammu and Kashmir) Order, 1954, in sub-paragraph (6) relating to Part XI;

(i) for clause (b), the following clause shall be substituted, namely :—

"(bb) In article 249, in clause (1) for the words "any matter enumerated in the State List specified in the resolution", the words "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List" shall be substituted.

(ii) clause (d) shall be omitted."

The aforesaid 1985 Order is unconstitutional since it has been passed in violation of the provisions of Art. 370(1)(b)(ii) which read thus :—

"**370** (1) notwithstanding anything in this Constitution;

(a) ....

(b) the power of Parliament to make laws for the said State shall be limited to :—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation .—For the purposes of this article the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March 1948."

The definition of the Government contained in the aforesaid explanation to sub-clause (ii) of Art. 370 (1)(b) clearly contemplates the existence of a council of ministers on whose advice alone the Governor of the State could have communicated the 'concurrence of the Government of the State' for application of the aforesaid 1986 Order.

It is significant that on March 7, 1986 the Council of Ministers had been dismissed, the State Legislative Assembly had been put under suspended animation and the Governor was functioning under section 92 of the State Constitution and thus did not fulfil the necessary requirements of the Government of the State as defined in the explanation (ii) of Art. 370 (1) (b) of the Constitution of India and, therefore, the very concurrence of the Government of the State on which the aforesaid 1986 Order is founded being unconstitutional the aforesaid 1986 Order is wholly *ultravires* the Constitution.

Without prejudice to the Constitutional guarantees enjoyed by the State under Article 370 of the Constitution of India and the rights following from the aforesaid accord of 1975, we proceed to deal with the Questionnaire as under :—

ANSWERS

1.1 The Constitution of India as framed can be called a broadly Federal Constitution.

1.2 Article 251 of the Constitution of India applies to the State of J & K in the following modified form :—

251. Nothing in article 250 shall restrict the power of the legislature of a State to make any law which it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under the said articles power to make, the law made by Parliament, whether passed before or after the law made by the legislature of the State, shall prevail, and the law made by the legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative. It will thus be seen that since Article 249 does not apply to the J & K the Central Legislation can override the State legislation only during the period when and if a proclamation of emergency is in operation.

Article 256 also applies to the State of J & K in the following modified form :—

256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which

apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

Articles 348, 349 are contained in part of the Constitution in the provisions of this part apply to the State of Jammu and Kashmir only in so far as they relate to :—

(i) The official language of the Union.

(ii) The official language for communication between one State to another, or between a State and the Union; and

(iii) The language of proceedings in the Supreme Court.

Article 356 applies to the State of Jammu and Kashmir in the following modified form :—

356. (1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the goverrnment of the State cannot be carried on in accordance with the provisions of this Constitution and provisions or provisions of the Constitution of Jammu and Kashmir, the President may by proclamation :—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament;

(c) Make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution, relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subseuent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation.is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of the two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) "A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)" :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of (six months) from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years

Provided further that if the dissolution of the House of People takes place during any such period of (six months) and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by House of the People.

"(5) Notwithstanding anything in constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be Questioned in any court on any ground.'

Article 365 does not apply to "the State of Jammu and Kashmir."

We firmly believe that there should be least possible interference with the running of State Administration through regulations or otherwise of the Central Government in as much as such interference is inconsistent with the Principle of accountability which governs the relationship between the State Government and its electorate.

In regard to the allotment of more tax resources to the states we wish to point out that it is only the taxes of income excluding the Corporation tax which alone has been made divisible between the Centre and the States. Under the present scheme of law even such tax on income which is payable by Companies is not divisible between the Centre and the State under Article 270(1) because such a

tax would fall within the purview of Article 270(4) (a). The entire constitutional scheme regarding collection of taxes by the Union and the States and distributtion of available finances between the Union and States is highly unfair, one side and puts the States in very difficult situation where they find it impossible to meet their growing responsibilities of planning and Development. Apart from making the States hopelessly dependent on the Centre for their share of finances raised through taxes. The Union has other sources of financial assistance at its disposal such as the :—

(a) Nationalised banking section

(b) Life and General Corporations

(c) I.D.B.

(d) Unit Trust of India

(e) Provident Fund Contributions

(f) Foreign aid

(g) Reserve Bank of India.

The hopeless dependence of the states on the centre for the financial allocations stultifies the process of Development and economic growth of the States. We do therefore, urge that the states must be allocated a higher share of financial resources which should be made mandatory by an appropriate amendment to the Constitution.

With regard to the abolition of appeals to the Supreme Court excepting Constitutional matters we agree that considering the nature of judicial system and the problem of enormous arrears it would be a desirable thing to leave the Supreme Court with the task of adjudicating upon the Constitutional matters alone.

1.3 The optimum Constitutional provisions from the stand point of the Question would be the arrangement of the distribution of legislative powers as envisaged by the Constitution (Application to Jammu and Kashmir) Order, 1950. United States of America, and the Swiss Confederation are instances of Federal Governments.

It may be pertinent to extract section 5 of the Constitution of Jammu and Kashmir which reads thus :—

5. Extent of executive and legislative power of the State.—The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

1.5 The opinion expressed as indicated in the Question under reply are also largely true but certain changes are necessary in light of the experience of the working during the past 36 years particularly in relation to :

1. The position and role of Governor.

2. The financial relationship between the Centre and the States.

3. The role of the Planning Commission the extent of its powers and the manner of their exercise.

4. The role of the Finance Commission.

5. The appointment of Chief Election Commissioner.

6. The appointment of the Chief Justice and Judges of the Supreme Court of India.

1.6 There can indeed be no disagreement on the question that the protection of Independence and ensuring the Unity and Intergrity of the country is of paramount importance. The distribution of legislative powers between the Union and the States as envisaged in part of the Constitution together with the legislative fields of the Parliament and the State Legislatures distributed in the lists of VII Schedule of the Constitution as applicable to the State of Jammu and Kashmir Constitution more than ample safeguards for protection of Independence and ensuring of the Unity and Integrity of the country.

1.7 Kindly refer to the reply to Q. 1.2 contained herein above.

1.8 Article 3 of the Constitution does not apply to the State of Jammu and Kashmir.

2.1 to 2.5 Kindly refer to the replies to Q. 1.2 and 1.6 of Part I contained herein above.

3.1 to 3.3 Under the Constitution of Jammu and Kashmir section 26 contemplates that the head of the State shall be designated as the Governor in whom shall vest the executive power of the State to be exercised by him either directly or through officers subordinate to him. Section 27 provides for the manner of his appointment and section 28 relates to the term of his office. Section 29 specifies qualification for appointment as Governor and Section 30 prescribes the conditions of office; Section 31 prescribes the oath of office, Section 33 provides for the discharge of functions by Governor in contingencies not provided in part V of State Constitution and Section 34 empowers Governor to grant pardons and reprieves etc. Section 35 provides that all functions of the Governor except those Order Sections 36, 38 and 92 shall be exercised by him only on the advice of Council of Ministers. Section 36 relates to the appointment of Ministers. Section 38 relates to the appointment of Deputy Ministers and Section 92 is the provision which deals with a situation of breakdown of Constitutional machinery.

In the context of aforesaid constitutional provisions we believe that the Governor can be a cementing force between the Centre and State but the State has gone through two traumatic experiences are in August, 1953 when the duly elected Government headed by Janab Sheikh Mohd. Abdullah was dismissed and another in July, 1984 when the duly elected Government headed by Dr. Farooq Abdullah was dismissed without testing the rival claims of majority on the floor of the Assembly. Instances from other States are also available to show how the Governors have played a partisan role in the event of rivalry.

We only hope and trust that the Governor would exercise powers under Article 306 of the Constitution of India which correspond to Section 92 of the State Constitution in the same spirit in which article 356 was framed and intended to remain a dead letter in the famous words of the Dr. Ambedkar in

the Constituent Assembly. Dr. Ambedkar, said; "I may say that I do not altogether deny that there is a possibility of this Article being abused or applied for political purposes. But their objections applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact, I share the sentiments expressed yesterday that the proper things we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precaution before actually suspending the administration of the provinces." It is thus clear that Article 356 or section 92 of the State Constitution exist as necessary evils in the Constitution and any action taken under these provisions cannot be used to deny the democratic aspirations of the people of a State and deprive them of a popular Government.

3.4 to 3.5 Articles 200 and 201 do not apply to the State.

3.6 Kindly refer to the reply to Q. 3.1 to 3.3.

3.7 We urge that a provision similar to Article 124 (4) be incorporated in Section 27 of the State Constitution with the modification that from the words by each House of Parliament "in clause (4) the words by each House of Legislature" be substituted and for the expression "Parliament in clause 5 the expression State Legislature" be substituted. Providing security of tenure to Governors would be desirable.

3.8 It should be made obligatory on the Governor to test rival claims of majority or the claim that the ruling party has lost majoriy only on the floor of the House.

3.10 The Administrative Reforms Commission has made a very valid recommendation and the need for promulgation of guidelines to regulate the exercise of discretion by the Governors is necessary, desirable and urgent as in the same manner and for similar reasons for which the constitution (fifty Second Amendment) Act 1985 was passed.

4.1 to 4.5 Kindly refer to our replies to Q. 1.2 and 3.1. to 3.3. We may also invite reference to the provisions of section 92 of the State Constitution which are reproduced as under :—

Breakdown of Constitutional Machinery

92. Provisions in case of failure of constitutional machinery in the State—

(1) If at any time the Governor is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Governor may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or authority in the State;

(b) make such incidental and consequential as appear to the Governor to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to anybody or authority in the State :

Provided that nothing in this section shall authorise the Governor to assume to himself any of the powres vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent proclamation.

(3) Any such proclamation whether varied under sub-section (2) or not, shall except where it is a Proclamation revoking a previous proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Governor by a Proclamation under this section assumes to himself any of the powers of the Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Acts of or laws made by the legislature shall be construed as including a reference to such law.

(5) No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

(6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation be laid before each House of the Legislature as soon as it is convened.

We suggest that the scope of Article 356 or section 92 of the State Constitution should be restricted to :—

(i) a situation where all possible methods of forming a Government have failed and the Assembly has been dissolved: here too the maximum period of a proclamation should be three months within which fresh elections must be held.

(ii) a situation of complete breakdown of law and order in a State : the inter-State Council must be consulted before the Centre intervenes.

Stop the practice of leaving legislatures in 'suspended animation'.

The Constitution should be amended to make it obligatory for elections to be held latest within three months of dissolution of State Assemblies or Parliament in the event of such a dissolution.

4.6 to 4.7 We are of the opinion that it would be highly desirable to set up an inter-State Council under Article 263 of the Constitution for making recommendation for remedying the grievances *inter alia* projected by the question under reply. There is a great deal of justification in the criticism on the role of the agencies mentioned in Q. 4.7.

4.8 The demand of permitting greater control to the States over the All India Services is justified.

4.9 On a true and correct construction of Article 355 *suo moto* Central intervention would be justified only in the event of external aggression.

In so far as internal disturbance is concerned Centre must act in consulation with the State Government.

4.10 There is no justification to make the Broadcasting exclusive domian of the Union. It is the right of the people of the States to avail of the benefit of the views of the State Governments as well.

4.11 & 4.12 We maintain that the setting up of an Inter-State Council would far better serve the purposes of reducing frictions and eliminating the mutual grievances between the Union and the States and the States *inter se*. We agree with the recommendations of the Administrative Reforms commission made in its report of june, 1969 and the Bangalore Resolution on Inter-State Council.

It is recommended that :—

(1) The council should consist of the Prime Minister and all the Chief Ministers;

(2) It should discuss matters of national concern.

(3) It should be used as a mechanism in the appointment of key personnel to various offices ane institutions which play a crucial role in Union-State relations such as Governors, the Election Commission, the Planning Commission or the Finance Commission. This particular function, it was recommended, should be performed by a Committee to be appointed by the Inter-State Council consisting of some of its members and other independent personalities to be co-opeted by the Council on the basis of a consensus ;

(4) The Inter-State Council must have an independent Secretariat of its own.

The guiding principle for the freedom Movement of the State against the nutocratic Rule which can collectively be called as the programme for Naya-Kashmir Independence came to be enshrined in Part IV of the State Constitution Section 3 envisages the State to establish a socialist order of society for promotion of welfare of the people :—

Section 15 envisages that the State shall endeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.

Section 16 envisages that the State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Section 17 envisages that the State shall in order to rehabilitate guide and promote the renowned crafts and cottage industries of the State, initiate and execute well considered programme for refining and modernising techniques and modes of production, including the employment of cheap power so that unnecessary drugery and toil of the workers are eliminated and the artistic value of the products enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.

Section 18 envisages that the State shall take steps to separate the judiciary from the executive in the public services, and shall seek to secure a judicial system which is humane, cheap, certain objective and impartial whereby justice shall be done and shall be seen to be done and shall further strive to ensure efficiency, impartiality and incorruptibility of its various organs of justice, administration and public utility.

Section 19 envisages that State shall, within the limits of its enconomic capacity and development, make effective provision for securing—

(a) That all permanent residents, men and women equally, have the right to work, that is, the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law :

(b) that the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations, unsuited to their sex, age or strength ;

(c) that all workers, agricultural, industrial or otherwise, have reasonable just and humane conditions or work with full enjoyment of leisure and social and cultural opportunities;

(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of underserved want by providing social insurance, medical aid, hospitals, sanotoria and health resorts at State expense.

Section 20 envisages that the State shall endeavour :—

(a) to secure to every permanent resident the right to free education up to the University standard;

(b) to provide, within a period of ten years from the commencement of this Constitution. complusory education for all children until they complete the age of fourteen years; and

(c) to ensure to all wokers and employees adequate facilities for adult education and part-time technical, professional and vocational courses.

Section 21 envisages that the State shall strive to secure :—

(a) to all children the right to happy childhood with adequate medical care and attention; and

(b) to all children and youth equal opportunities in education and employment, protection against exploitation and against moral or material abandonment.

Section 22 envisages that the State shall endeavour to secure to all women—

(a) the right to equal pay for equal work;

(b) the right to maternity benefit as well as adequate medical care in all employments;

(c) the right to reasonable maintenance, extending to cases of married women who have been divorced or abandoned;

(d) the right to full equality in all social, educational, political and legal matters;

(e) special protection against discourtesy defamation, hooliganism and other forms of misconduct.

Section 23 envisages that the State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material and cultural interests and protection against social injustice.

Section 24 envisages that the State shall make every effort to safeguard and promote the health of the prople by advancing public hygiene and by prevention of disease through santitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

Section 25 envisages that the State shall combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of a Secular State.

It may be recalled that under the instrument of accession the Dominion Legislature was empowered to make laws only in relation to Defence, External Affairs, Communication, Ancillary matters relating to Election to Dominion Legislature as set out in the Schedule to the Intrument of accession. Thereafter in Delhi agreement of 1952 while the necessity of some financial arrangement between the Union and the State was felt but it was left open for a detailed and objective examination.

We believe that out of the alternatives suggested in Part V Q. 5.2 the following combination of factors should be adopted :—

(a) Complete separation of the fiscal relation of the Union and the States, abolition of the scheme of transfer of resources and instead, transferring of more taxing heads to List II, Seventh Schedule.

(b) More Central taxes such as Corporation tax, Customs Duty, Surcharge on Income Tax, etc. be brought into the shareable pool.

(c) Financial resources, other than tax-revenues of the Union, be also distributed between the Centre and the States.

It is also pertinent to refer to the role played by Planning Commission an extra Constitutional authority which in the exercise of its functions is not governed by any legislative parameter or guidelines. Since it possesses enormous financial powers the influence therefore it wields on the administartion of States is all pervasive. It requires the State Government to seek approval and consent for every little item of expenditure and aid and there by it not only controls the formulation but also the execution of plans by the States. Thus apart from highly unfair and one sided distribution of financial resources in favour of the Centre, the procedure for allocation of finances to the States is also highly arbitrary and at times displays remarkable insenstivity to the developmental needs. It is as a result of this financial arrangement between the Union that the dream of Naya-Kashmir set out in Part IV of the State Constitution has remained largely unrealized.

In relation to Economical Social Planning and Industries we believe that entry 52 of List I of the Seventh Schedule has not been worked by the Centre in the true spirit of the Constitution and Industry which basically is a subject for the States have been transformed into a subject of the Union. Under the garb of Public interest nearly the entire Industries have been brought under the control of the Union. For a better and faster Development of the States and towards the fulfilment of their obligations it is necessary to remit greater control to the States.

In the above background we proceed to deal with the questionnaire question-wise as under :—

5.1 So far as the transfer of funds from Centre to the State are concerned, the devolution partly of central taxes and partly by grants-in-aid has worked reasonably well. The 8th Finance Commission has particularly done a commendable job by keeping a side 5% of central Excise revenue for deficit States like ours.

5.2 In a federal democratic set up, the concepts of "giver" and "receiver" are probably misconceived, while fiscal relationship of giver and taker does still hold good, the avenues of revenue which have been assigned to the Centre by the Constitution are for more and elastic of than assigned to the States. It had to be so because of vertical inequities in the regions produced by many factors. The central taxes, major portion of which is collected in a relatively few States and distributed amongst all the States in accordance with the recommendation of the Finance Commission's report is not a

benovalent fund to the poorer State in the Country. It has to be remembered that a poorer State is also a consuming State. The production centre of the Country which are concentrated in a few States only because of their advantageous location survive on the market funding consuming States, and hence are National producting centres. The Consuming States indirectly help in the creation of such production centre. A casual glance at the C.D. ratio of richer States is for more than the National average while as such ratio of backward States like ours is far below. In other words it means that saving of one region provide institutional finance for the development of other regions and production centre created out of such finances should therefore be understood as National Production Centre. So it is no give and take. The poorer States get what is collected from them indirectly.

5.2(a, b) We do not favour the complete separation of fiscal relations of the Union and the States at least till the time vertical economic inequities are removed by balanced and uniform development of all States. We also do not support the transfer of " a few more elastic taxation heads to List II".

5.2(c) We also don't support the idea to transfer all the taxing powers to the Union List and the respective shares of the Union and the State to be specified in the Constitution itself. The States have only a limited power to tax and baring Sales tax, every other tax in the State list is an inelastic one. Certain taxes like sales tax are based on the principles of destination and many distortions will be produced in the shole economy because of cascanding etc. Therefore not much will be gained but on the other hand, it will be a blow to the federal structure of the Country.

5.2 (d,e) Yes, All taxes which are collected in the States should form the divisible pool. There is no justification to keep them out of it. By accepting these out of the central pool, a tendency has developed that surcharges and special duty which are not sharable are increased and the basic duties which are sharable are kept constant.

5.3 If giving more financial powers to States mean that share of elastic sources of revenue should have nexus with the collection, we certainly agree with the view. It has to be remembered that quite a good proportion of tax collection in a State is passed on to consumers outside that State. So the Centre has the obligation to see and cater for the need of the poorer State to remove imbalances and inequities.

5.4 Primarily, the Centre would attain the objective set further in the preceding question by raising more resources through taxation, through subventions from richer States to Central pool and better control over expenditure. Deficit financing should be resorted to only as a last resort and has got to be kept within manageable limits.

5.5 It is a fact that the present mechanism of devolution has not been very helpful in bridging the gap in resources between poorer and the richer States. This is mainly because almost a uniform criteria is followed in allocating share of taxes etc. Backwardness of an area can't just be determined as the basis of per capital income alone. Geographical conditions, cost of development, area, facilities of communication infrastructure facilities are hardly given any weightage. The 8th Finance Commission has itself admitted that cost of creating or maintaining a capital asset in a State like our is 30% more. We would therefore suggest that in determining the devolution to our State, the following factors should also be taken into consideration :—

		Weightage
(a)	per capita income	10
(b)	Area	15
(c)	Geographical conditions	30
(d)	Cost of Development	15
(e)	Facilities of communications	10
(f)	Other infrastructure facilities	0
(g)	Population	10

The Planning Commission has been doing reasonably a good job in the given policy framework. In the case of a poorer States like our, pattern of financing has to change. Our State, though classified as special category State is treated differently. Pattern of financing in the case of special category States, as is well known is in the ratio of 90% grant and 10% loan, but in our case it is 70% loan and 30% grant. Repayments of principal and interest thereon are ever on the increase and are main forces widening our resources gap. This pattern of financing has made our plan stagnent because planning commission is requird to provide for our non plan resources gap also, which is provided entirely at the cost of our plan. This pattern of financing is almost a sugar coated pill for us.

We have made very strernous efforts to raise our revenue. During the fifth and sixth five year plan our average growth rate at base year's tax base of these two plans has been of the order of about 15% and 11% respectively. This effort is an ongoing process and is taken note of by the Planning Commission. But tax efforts of a State like our should not be evaluated on the basis of percentage growth alone. The factors under which tax system in a poor-consuming State like ours operates should be taken into consideration. We are constantly lurking under the fear of diversion of trade because of undercuting of tax is also progressly decreasing because of the way Central Sales Tax and purchase tax levied by the other States have developed.

Efficiency and economy in management of a tax system should be evaluated on the basis of cost of collection alone.

5.6 It is not that the Finance Commission and Planning Commission are not adequate for the purpose but the orientation towards poorer States like ours has to change, if uniform development of the Country is the objectve.

5.7 We dont support the idea of transfer of central taxation powers to States. The present system as very prudently though of by our constitution makes needs to be maintained. There should also be no increase in the we khand policy in respect of its taxation powers under pressure from richer States and thereby contributing to inequities. The development of Central Sales Tax is a typical example in this regard.

The Central Sales Tax was introduced to avoid double taxation and rate of tax was consciously kept as low as 1%. The tax was assisgned to the States which collected it, and the rate being very low, nobody took any notice of it. The manufacturing States soon thought of this tax as a revenue earning devise and pressurized the centre to raise the rates of this tax. Unfortunately, the Centre obliged them and current rates are 4% and 10% depending upon whether the sale is made to registered or unregistered dealer. The yield on account of Central Sales Tax has grown from Rs. 63.10 crores in 1964-65 to Rs. 465.10 in 1976-77. This tax is collected from the manufacturing States from out of State population particularly those living in consuming States like ours. The objective of this tax as was originally conceived has completely eroded. In fact the objective now is just the reverse.

This tax having because a revenue earning devise for manufacturing States has provided an impetus to further increase the vertical inequities between the States. Besides the revenue which manufacturing States derive from out of State consumers, this tax has also reduced our potential to enlarge our tax base both horizently or vertically.

Now the correct the anomoly and in the interests of bridging the gap, 50% of the yield on account of Central Sales Tax should go to the central pool for eventual distribution among poor States like ours, in the alternative the rate of Central Sales Tax should be redueed to 2% and specified in the Constitution itself.

The 8th Finance Commission has kept aside 5% excise revenue for distribution amongst deficit States. Our State is the beneficiary of that provision. Though laudable, it has given us only a marginal gain. Our resources gap for the purposes of grants-in-aid under Article 275 of the Constitution has apparantly been worked out after taking into account the devolution out of that 5% of central excise revenue also. Had such a measure not been adopted by the Finance Commission, the money would have come to us under Article 275. The marginal gain is due to the fact that while grant under Article 275 is fixed, share of tax generally increases because of the bouncy of tax. We would therefore suggest that allocation from this 5% excise revenue should come to us as an additionality with no nexus with our resources gap. This we could spend on developmental projects.

5.8 We have already said that we don't favour any change in the "taxing tasks" of the centre and the States, as laid down in our Constitution. We only want mechanism of devolution to change so as to reduce inequities.

5.9 In this respect also, we prefer the status quo. One can perceive many advantages of a temporary Finance Commission as provided for in the Constitution over a permanent one (if created). The most important of which is relatively less interference. Even the approach given in the question under reference does not define the role of Finance and Planning Commissions in mutually exclusive terms. In such a situation overlapping and interference in each other dominions is but natural.

5.10 When planning the expenditure, the devolution under the Finance Commissions award is always kept in view. But such devolution have not narrowed down the disparities in public expenditure among the State. That is why, we have suggested above, that basic philosophy underlying the devolution to poor States like ours must change.

5.11 It is not correct to say that the system has inbuilt properties for financial indisipline and improvidence in term of exaggerated revenue deficit forecases. It is more of a question of mutual mistrust between the Union and the States. Outdated information system also plays a role in the situation. Changes for better are already discreable with the computerisation of information at various levels.

5.12 We agree with this view, It has in fact already been put in operation by the Eighth Finance Commission. Grant-in-aid should in fact be an additionally over and above the resource gap' as may be determined by the Finance Commission and should be used as a lever to remove disparities between Richer and Poorer States.

5.13 In the light of our response to question (5.12), we are inclined to agree with (ii) and (iii) propositions.

5.14 No revenue, tax or non-tax should be added to the divisible pool, that shall only further widen the gap between the richer and poorer States. There is however a necessity to create a special fund wherein a minimum of 50% revenue earned from Special Bearer Bonds and others (both tax and non-tax heads) not shared till now be pooled and distributed to poor States like ours.

5.15 Yes.

5.16 We don't agree with the view that in terms of percentage, the transfer of revenue receipts from Centre is showing a declining trend. According to a study; Central Government Expenditure published by National Institute of Public Policy and Finance, New Delhi, it is in fact showing an upward trend. It is however a fact that fixed imblance of poor states like ours is on the increase and one of the main reason for that is the pattern of financing by the Centre.

5.17 In own case, it has happened because of pattern of financing by the Centre. As has already been explained that our State has been classified as a special category State, yet the pattern of financing (90% grant and 10% loan) is not applicable to us. During the Seventh Plan period, our State is to repay Rs. 380.50 crores as principal and interest thereon to the Centre. This amount is very close to the quantum of our resource gap (Rs. 438 crores) worked out by the Planning Commission for the 7th Plan period. The gap will be wipped out if pattern of finance (90% grant and 10% loan) is made applicable to us also.

5.18 We don't agree with this view. Reserve Bank of India is in fact doing a good job in this regard.

5.19 If it is so, there is no justification for the centre to charge more than what it is actually required

to pay to a foreign lender. Foreign credit to the State shall be available at the rate at which the finance is made available by the lender.

5.20 We have said earlier that Reserve Bank of India is doing a good job in the direction. There is no need to incur extra expenditure in creating a loan council.

5.21 We don't have any such arrangement with the Reserve Bank of India. We have, however, a Ways and Means arrangement with J & K Bank Ltd. to the extent of 10 crores with the approval of Reserve Bank of India and Government of India and were managing the facility, prudently and efficiently.

5.22 So far as our State is concerned, this view is not correct. It has been our constant endeavour to tap all the available sources of revenue. We have gone to the extent of taxing even services and contracts under our sales tax law much before Forty-seventh Amendment to the Constitution came into being.

5.23 One is inclined to agree on the basis of reports of various Commissions and statements made by the Senior Minister of the Government of India. We are however, satisfied with the way the Union Government is tackling the situation for the last two years. We only hope that these efforts are made on continued basis.

5.24 The collection of duties and taxes enumerated in Articles 268 and 269 do not form part of Consolidated Fund of India but is assigned to State. It is, therefore, necessary that the Union should ascertain the views of the State Government before moving a Bill to levy or vary the rate structure or abolish any of the duties and taxes specified in the above referred Articles of the Constitution.

5.25 Yes, we also feel that this provision of the Constitution has not been tapped to its potential. The fact that net proceeds of the duties under this Article have been assigned to the State is often cited as a cause for the Centre's indifference. Much of the bitterness would go, if serious efforts are made to exploit this Article.

5.26 We fully endorse the view point of the States as enumerated in the question. The fact that this grant has almost remained static, we are in net terms getting less than what we got in late fifties. This should be increased and must have nexux with the increase in railway fare.

5.27 These Union Territories may not be getting the benefit of buoyancy in Central taxes but we cannot brush aside the fact that Central Government spends significant sums in these territories. In fact we have a feeling that these territories are the spoilt children of the Union. Therefore we do not favour any change in this regard.

5.28 The present arrangemement has worked reasonably well. One complaint which has often been heard is the delay in giving relief to suffering people which needs to be avoided. The Centre would do well in believing the States in their estimates of damages caused by natural calamities. Inspections by the Central teams should not be necessary.

5.29 The need of the hour is to Consolidate the existing Institutions other than creating new ones. All the functions enumerate in part 2 and 3 of the question are being looked after at present by different institutions like RBI Planning Commission, NTEPFP and other agencies of Government of India agencies. These institutions need to be strengthened to come upto expectations. We would also think of having a permanent Secteratiat of National Development Council in Delhi having representations from all the States to act as liason Bereau of the State with the Centre in all its problems.

5.30 We agree to the extent that the funds should be spent prudently and the benefits got back largely to the people. We however, do not subscribe to the view that issues like "who collects the funds and how collected funds should be distributed" are not relevant. Our Constitution makes in their wisdom very rightly delineated functions of the Union and States in this behalf. And if they did not specify the mode of distribution in Constitution itself, it is because they were conscious that State will have peculier needs at different times and hence prescribed a Finance Commission to evaluate such needs once in five years.

5.31 (a) We agree that periodical assessment is necessary not only in case of Union but States also. In fact Finance Commission has been doing this reasonably well. The Finance Commission has been laying down even the guidelines for expenditure.

(b) It is not true that expenditure of populist nature is over emphasized. Populism has come to mean many things to many people. In a free democracy, it is impossible to separate politics from economic Planning. After all do not we have a Planning Minister from out of Politicians who is elected by the people and represents an area. The investments made in constituencies of important central leaders during the last twenty years will ractify our view that politics can not be seherited from planning expenditure and it is not right to accouse the States of over spending in "populist" measures.

(c) This is already being done by both Finance Commission and Planning Commission. Our views in this regard as already explained is that no new institution be opened but the existing institutions need to be consolidated.

5.32 The C A G of India is in charge of the audit and accounts not only of the Union but also of the States. The article 150 of the Constitution perpetuates the centralized and combined system that existed prior to the Constitution. There is no provision in the Constitution, corresponding to sec. 167 of the Government of India Act, 1935. under which a provincial legislature had the power to create the office of an Auditor General for that province. There is now no scope, under the Constitution for the appointment of a State Auditor General. The advantages of the centralised system are stated to be uniformity as well as economy.

The greatest disadvantage of a centralized system is a procedural delay involved in each operation. The Accounts be it appropriation account or Finance Accounts of a year are made available to the State

generally three or four years after the close of the year to which it pertains. It then became difficult to take corrective action and questions raised remain under protracted correspondence. The Commission should there consider to decentralize the powers of the CAG.

5.33 The fact that the desirability of 'evaluation audit' is well established, it therefore needs to, be introduced. The 'voucher audit' quite often get bogged down under rules or regulations development of which have not kept pace with the changing times.

5.34 Yes.

5.35 Reporting is generally comprehensive and accurate but are considerably delayed.

5.36. Yes.

5.37 This Committee does act as an watch dog.

5.38 We don't agree with the view that expenditure Commission is needed. The existing institutions need to be consolidated and procedures simplified and streamlined.

5.39 We strongly agree with the view given as the backdrop to the question. The Central team could undertake physical inspections periodically to ensure the proper utilisation of funds.

6.1 The vital role of the Central in undertaking Planning in a national perspective to meet national needs, subscribing to national priorities and co-ordinating the sectoral as well as territorial plains, is recognised by the State Government, procedurally, the Planning Commission prepares the Five Year Plan document which is considered in the meeting of the National Development Council (N.D.C.). After the endorsement by the N.D.C., the Five Year Plans is adopted for implementation. Whereas the procedure is now for the preparation and approval of the Five Year Plans is now established over the last so many years, the shortcoming, pointed out by A. R. C. study team as well other studies conducted by experts have validity. The basic difficulty appears to be that :—

(a) the consultation with the State Governments with a view to involving the task of not only determination of goals but also the implementation of programmes of national priorities whose implementation lies in the State Sector, is inadequate;

(b) the plan documents prepared by the Planning Commission are not received by the State Governments in sufficient time to enable a proper scrutiny to be done with a view to presenting the State's view point in the N.D.C.; and

(c) there being a very large number of Centrally Sponsored Schemes with which the Central Ministries attempt to incorporate programmes of national priority in the State plans.

The above mentioned short-comings can be removed through providing for a more detailed consultation with the States that is presently available at the stage of formulation of the plan, by making available the draft plan document to the States in better time; and by reducing the large number of Centrally Sponsored Schemes. Some of the Centrally Sponsored Schemes could be transferred to States with supporting funds so that these can become a part of the State Plans and the responsibility for implementing such schemes would then become the responsibility of the States.

6.2 Although the present planning process has been evolved and established on the basis of experience gained over the last so many years, the shortcomings of the planning process have been mentioned above in response to Question No. 6·1. Whether the NDC is given a statutory status or not, the shortcomings mentioned in the above paragraph would continue to operate till action is taken to deal with the shortcomings. The NDC should certainly have the opportunity of expressing opinion on matters of national importance; and, for this purpose, the NDC could meet more frequently on issues of critical national importance than is the case now. However, the main shortcomings in the present planning procedure being inadequate consultation with and involvement of the States, the removal of these shortcomings through corrective action assumes the highest importance.

6.3 As mentioned in response to Question 6·1, there are shortcomings in the procedures of the Planning commission that prevents a closer consultation with and involvement of the States. Suggestion for overcomings the shortcomings have also been suggested in response to Question No. 6.1.

6·4 The State Government would support the suggestion at Question 6·4 (ii) above that the Planning Commission should be a high grade advisory body of economists, technologists and management experts. This view is supported because it is only such a body that can prepare a Five Year Plan for the whole country taking into account all the complexities—both techincal and administrative that the preparation of such a plan involves. It is only with the help of a plan drawn up by such a body of experts that the NDC can consider the proposed national effort and indicate the goals and direction that the national planning effort should have.

6.5 As regards the question of making the Planning Commission an autonomous body under the NDC for over-seeing planning investment and decision making at the national level, there are advantages as well as disadvantages in the proposition; the advantage would be that as an autonomous body working under the NDC—and to that extent working as a secretariat for the NDC.—the Planning Commission would acquire more independence and objectivity. On the other hand, the disadvantage is that, keeping in view the federal structure of the country and the changes that may take place in the complexion of the State Governments from time to time, the coherence and direction of Planning Commission may suffer. In addition, the liaison of the Planning Commission with the Central Ministers which are changed with the implementation programme of national importance and are provided substantial funds from the Five Year Plan for this purpose, may also suffer. On the balance, the structure of Planning Commission as presently constituted could continue although

it is important that the short-comings mentioned in the statement in response to Question 6·1 are removed as soon as possible.

6.6 There is need to consider and incorporate national priorities in the State Plans and the States themselves are conscious of this. Procedurally, the incorporation of national priorities in the State plans is sought to be achieved through the consultations that are made before the Five Year Plans are drawn up. In addition, the Planning Commission through the mechanisms of transferring Central assistance to the State, through the procedures for approving Centrally Sponsored Schemes and generally through exercising their role of over-seeing the drawing up as well as implementation of the State plans ensures that the national priorities are incorporated in the State Plans. However, it is also true that through the introduction of a very large number of Centrally Sponsored Schemes and through examining in the great a detail the State's finances and plan, the initiative of the State tends to be eroded and this creates an impression that the autonomy of the States is also being eroded as mentioned in response to Question No. 6·1. Corrective action to over-come the present short-comings of the Planning process would restore the initiative of the States and also remove the complaint that the autonomy of the States is being eroded.

6.7, 6.8 & 6.9 The present system of channellising the Central assistance by way of loans and grants through the Planning Commission to the States attempts to ensure that certain funds are earmarked for development and are not to be diverted by the States for non-developmental purposes. To provide for special handicaps of particularly backward States, there is a system for providing 90% grants and 10% loans for the Special Category States. Nevertheless, it has been noted that the present system operates against the economically weaker States whose resources are small as also against special areas like tribal and hilly areas which face special problems of deprivation and lack of resources and skills. It has also been noted that the object of balanced regional development and removal of poverty has not been achieved to the extent that was desired. In view of this, the arrangements to make special provision for the economically weaker States and for areas that have special problems of development need to be strengthened. The programmes for development of special areas have to be so made that they dovetail with the States plan as well as the Central national plan.

Specific to the J & K State, although it is a special Category State, the present pattern of providing Central assistance is of 70% loan and 30% grant with the liability of loan repayment that this involves. It is necessary to provide Central assistance to J & K State through the pattern of 90% grant and 10% loan as is the case with other Special Category States.

6.10 As laready mentioned in response to Question Nos. 6.1 and 6.6, there are at present a very large number of Centrally Sponsored Scheme which need to be reduced in number. Some of the programmes presently sought to be implemented through the Centrally Sponsored Schemes need to be transferred to the States together with the funds so that they can be incorporated as part of the State plan and implemented as such. If this were to be done, the State plans would incorporate national priorities. And provided that more satisfactory consultations have been made prior to the formulation of the Plan, the State's involvement and initiative would be ensured and the need for more detailed scrutiny of the large number of Centrally Sponsored Schemes would be removed. This would also solve the present problem of the States getting into a dependent relationship with the Central Ministers to get their schemes approved.

6.11 Although the monitoring and evaluation machinery in the Planning Commission as well as in the States over the years, it is still perhaps one of the weakest elements in the planning process both in the States and at the Centre. This is because due importance was not given in the past to the critical part that monitoring and evaluation plays in the processes of plan formulation and implementation. It is necessary, therefore, to give a far greater priority to the strengthening of the monitoring and evaluation machinery in the States as well as at the Centre. Also, keeping in view the large amount of data that has to be collected and collated it is necessary to introduce better management information systems (M.I.S.) and the use of computers in this field.

Where certain projects have been taken up with large investment of funds and have run into special problems of cost and time-over runs, there is need to undertake specially close monitoring of such identified projects. A quarterly or biyearly review of the progress of the critical areas of the plan and particularly large projects by the Planning Commission would also help in strengthening the existing system of monitoring and evaluation.

6.12 Decentralised Planning will certainly promote the involvement of the people and this introduce a spirit of cooperative federalism in the Planning system. District plans as well as plans at the Block level need to be prepared and implemented keeping in view the Development needs at these levels. Whereas it will be for the States to develop the District Plans, as has been successfully attempted in J & K, the Centre could assist through provision of necessary infrastructure, training of the staff and provide financial incentives to the States that undertake to introduce the system of decentralised planning. A criticism is made that decentralised planning being too close to the ground comes under local pressure and thus distorts plan priorities. Although there is validity in this criticism, there is no alternative to introducing the decentralised planning in the States as a means of ensuring people's participation. The problem of local pressure can be resolved through a process of training as well as increasing the sense of responsibility of local level leadership which can only come about if such local level leadership is given the chance to participate in and have experience of decentralised planning.

6.13 The intention behind the setting up of planning Boards was that the State Planning Departments would have the benefit of the advice of experts in various fields. The experience of the State has been that the Planning Boards have not served the intended purpose and very often discussions in the Planning Board have tended to become an academic exercise. In

view of the past experience, it is not possible to recommend that, with the setting up of Plannin Boards, the National Plan shouic necessarily become more indicative. Quite apart from the fact that the monitoring the evaluation system are presently week, it is also true that the planning machinery of the State itself lacks in professionalism and expertise. It is, therefore, important that priority should be given to introducing greater professionalism and expertise in the Planning Department of the States. It is only after the planning monitoring and evaluation machinery of the States has been strengthened and the Planning Boards have gained more experience and are able to serve the purpose for which they were conceived and established that the question of making the National Plan more indicative and less imperative can be considered.

7.1 It is a fact that the First Schedule to the Industries Development and Regulations Act has been expanded so greatly that there is virtually no industrial activity which does not come within its purview. The element of 'vital public interest' and 'National importance' considerations for including the vast majority of items contained in this Schedule is difficult to discern. The underlying considerations for bringing different industrial activities under the licensing fold at different points of time very greatly and so also the grounds for grant of approval or rejection. Consequently, obtaining an industrial license has become a matter of chance. Even for the manufacture of items which are not included in the First Schedule of the Act, the extent of Central regulation in terms of allocation of scarce raw material, grant of import licence etc. are such that 'industries' has indeed become a Union subject. A number of specific instances can be given in support of the argument that industrial licences were denied to J & K on the grounds that sufficient capacity existed in the country, when subsequently additional licences for the manufacture of the same item of manufacture were granted for location in other parts of the country. However, these are not being listed as the detail of licence to J&K was not a part of a deliberate policy but a result of the growing complexity of the entire licensing labyrinth.

7.2 (i) The national public interest sought to be served should be defined. While under changed circumstances the norms for defining the national interest may change, the list of industries regulated should also undergo a change rather than just having more and more industries added into the First Schedule. The reasons for the regulation of a certain industry may differ from the reasons for regulating some other industry. It is worth examination as to whether the same instrument viz. licensing, is the appropriate instrument for regulating all industrial developmental activities. The Industries Development and Regulation Act should regulate only what can be defined as the core industrial sector. This would include such industries which contribute either to the national security or, in turn, provide raw materials or plant and equipment required for other industrial activities.

(ii) under the above definition, the following entries in the First Schedule would be eliminated :

IA	—	(3), (4), (5), (7)
IB	—	(2)
5	—	(2), (3), (4), (6), (7), (9), (11,
6	—	eniire entry
7	—	(5), (6), (7)
8	—	entire entry under B and C.
10	—	11, 12, 13, 14, 15, 16, 17—entire entry
19	—	entire entry other than (1), (2) and (10)
		20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 38.

This is not to say that the industries under the heading of the entries mentioned above do not require any regulation or laws governing them. However, different industries need regulation for different reasons and can be dealt with differently.

7.3 If the industries listed in response to questions 7.2 (ii) are delated from the First Schedule a lot of delay that presently takes place in industrial licensing would be eliminated. Since the IDR Act came into force, the objective situation in the country has changed greatly and the national financial institutions such as IDBI, IFCI etc. can act as more effective instruments for channelling industrial investment into desirable areas than the IDR Act.

For industries not covered by the First Schedule, as proposed to be amended, guidelines can be issued from time to time indicating where foreign collaboration/import of capital goods and raw materials can be permitted. Powers to permit import and foreign collaborations, within the guidelines laid down, should be decentralised by setting up offices of the relevant authorities at least in every State and Union Territory. Only such cases as do not fall within the guidelines should require to be considered by the Union Government at Delhi.

7.4 (a) It is not a question of organisation as much as inadequate availability of raw material, availability of working capital and of adequate purchasing power of the vast majority of the population that hinders the growth of the small sector.

(b) There is an inherent contradiction between "efficiency" (technology) and "equity" (employment generation). There is, therefore, a need for evolving a methodology in terms of norms for balancing these two factors in the evaluation involved determining the "appropriate technology" for an industry at a given point of time. Incentives given for the establishment of industries should take this criteria into consideration.

7.5 As far as J&K is concerned, the functions of the national industrial financial institutions has been positive and satisfactory.

7.6 It would not be necessary to take States into confidence for deciding on the location of public sector investments if the norms for such decisions were clearly laid down and adhered to. Different rationals are given for location decisions taken in respect of different Central investments. It is this that gives rise to criticism. Jammu and Kashmir has been particularly unfortunate in respect of Central Public Sector investments. Only two relatively small

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public sector units are located in the State viz. a half a million watch per annum manufacturing unit of the HMT and a one lac telephone instruments per annum manufacturing unit of the ITI.

7.7 Since the public sector is also considered as an instrument for promoting balanced regional growth, such States as cannot have heavy industry located within their boundaries should be compensated by investment in other fields which could be more appropriately located there. In the case of J&K, potential areas for central investment are in the electronic and light engineering fields.

7.8 While Central fiscal and financial incentives for the promotion of industries in the industrially backward districts/areas has, no doubt, contributed to industries being attracted to such areas, there is need for greater discrimination in making available such incentives For instance, industry would obviously prefer to be located in an industrially backward district of an industrially advanced State such as Maharashtra, Gujarat, Karnataka etc. rather than in a similar district of an industrially backward State such as Jammu and Kashmir, Himachal Pradesh or the north-eastern States. This is because with the incentives remaining the same, an industrially advanced State offers better infrastructural facilities. These facilities include industrial work culture, availability of trained manpower and management personnel, telecommunications net-work, roads, power, market outlets etc. In the existing circumstances of industrial licensing, a very important factor for the greater success of certain industrially advanced states is information.

9.2 While the recommendations of National Commission on agriculture is laudable and the long term perspective has to be developed where central and centrally assisted schemes should form ultimately part of the State sector, the State of J&K because of its financial constraints would like the centrally sponsored and centrally assisted schemes to continue on the central sector with a view to providing the financial and technical support at a national level. The special category States like J&K would like to have schemes of national importance to be taken up in a big way with central assistance till such times as the results of such schemes reach desired level.

9.3 The recommendation of the National Commission on Agriculture about the association of the State Govt. to the formulation of the Central and Centrally sponsored scheme is highly laudable. It has been found that at times the schemes do not take into account the local problems and in the agriculture sector in particular, the schemes have to be location-specific, therefore, it should be ensured that such schemes are cleared at the appropriate forum before being implemented. These should take into account the special requirement of the States. It has been also found that some schemes do not have general application and, therefore, States which do not avail the benefits of such schemes, they could take up the schemes which have relevance to their conditions.

9.4 While the policies formulation by the Central Government regarding the fixation of minimum of fair prices for Agricultural products are being implemented on the recommendations of the High Power Committees, the State Governments are being consulted and it is seldom that the recommendations of the State are agreed. The view points of the State Governments should be considered in right perspective.

9.5 While the role of the National Institutions like "Indian Council of Agricultural Research", NABARD etc. in the Agriculture development of the country is laudable, the policies and the detailed frame-work are not evolved in consultation with the State Govt. It would be desirable that the States of various Zones are being associated in rotation for a fixed tenure on these institutions with a view to reflect their view point on the policy formulations and also ensure to have feed back to take the corrective measures wherever required.

10.1 The present arrangement is, by and large, satisfactory. Improvement can, however, be suggested in the matter of proper co-ordination regarding the procurement, pricing etc.

10.2 The arrangements for administering the Essential Commodities Act and other regulatory Central Acts 'affecting States' areas of responsibilities should normally be reviewed periodically because the situations go on developing which need remedial steps which can be decided upon in periodical meetings.

11.1 There is not much of interference from the Government of India in the field of Education. It is, however felt that whatever little improvement is needed could be achieved to a large extent by inclusion of an expert from the State Government on the apex bodies of NCERT/NIEPA etc.

The country has more or less adopted in All India Pattern of Syllabi in all subjects upto Class 12th. While in Science Subjects in All India Pattern is supported for undergraduate courses but in the humanities field there should be a percentage of flexibility in as much as the States should be left to add upto 30% keeping in view the local history, Geographical conditions, environment and the like.

11.2 As has been stated in reply to Question No. 11.1, there is need to include a representative of the States in apex bodies of UGC, NCERT, NIEPA etc. There is already a body in which Ministers of Education of all the State Governments are represented. There is no doubt that the inclusion of the Minister in such bodies will be effective but for co-ordination and discussion the inclusion of experts in the field representing various State Governments can be more useful.

As at present the UGC have restricted College Education to students at undergraduate level by laying a minimum of 40% marks for BA General Arts stream admission; for B.A. Science General stream the minimum percentage is 50% raising this by 10% more for admission to B.A. Honours. On the other hand the pass percentage at Class 12th is between 33 & 34 percents. A question arises as to what option is there for the students who pass a 12th standard with less than 40% marks. The answer

could perhaps be that such students should go in for further education through distant education/ open university system. Here also there is a flaw so far as particularly such students who go in for distant education for LLB are concerned. Such students though possessing LLB Degrees are not allowed to practise law.

It is this kind of problem, which can be discussed in the apex bodies of the UGC etc. in case the experts from the States are given representation there in.

11.3 It has already been suggested that inclusion of experts in the policy framing bodies of various organisations connected with the development of education should be considered so that the difficulties and short coming, if any vis-a-vis the States are pin-pointed at the time of policy framing to ensure speedy implementation of the policy laid down.

There is already a national Apex Body at the level of Ministry of Human Resources Development. There could be another body which should include atleast one expert from each State dealing with the policy, programmes and implementation. The process of decisions, consultation and presentation should be the main work assigned to this body.

11.4 There are no two opinions that the Constitutional guarantees as envisaged in Art. 29 & 30 should continue to remain. The suggestion however is that all such institutions should compulsorily follow the syllabi prescribed by the Government of India/State Governments. In case moral/ religious education is proposed to be imparted, the same should be within the four corners of the Constitutions. The Text Books, if any, prescribed for such moral/religious education need be screened by experts of the Education Department before the same are actually put in practice.

11.5 There is no specific conflict but there is need for closer co-ordination and consultation between the Central and the State Government in regard to formulation of programme for Educational Development.

GOVERNMENT OF KARNATAKA

(a) Replies to the Questionnaire

(b) Memorandum

(c) White Paper on the Office of the Governor

Karnataka

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Our Constitution can be called FEDERAL as that was the intention of the Constitution makers. No doubt in State of West Bengal Vs. Union of India AIR 1963 SC 1241, the majority has stated "the Constitution of India is not truly Federal in character". In this case Subba Rao J. dissenting from the majority has observed: "The Indian Constitution accepts the federal concept and distributes the sovereign powers between the co-ordinate constitutional entities namely, the Union and the States."

In Atiabari Tea Co. Ltd., Vs. The State of Assam AIR 1961 SC 232 it was said : "It is a federal Constitution which we are interpreting, and so the impact of Art. 301 must be judged accordingly." Again in Automobile Transport (Rajasthan) Vs. State of Rajasthan AIR 1962 SC 1406 it was stated : "The evolution of a federal structure or a quasi-federal structure necessarily involved, in the context of the conditions then prevailing, a distribution of powers and a basic part of our Constitution relates to that distribution with the three legislative lists in the Seventh Schedule".

The observations in the aforesaid earlier cases have not been noticed in AIR 1963 SC 1241.

The historical basis referred to in AIR 1963 SC 1241 only relates to the position which was in British India and does not relate to the sovereign Indian States, though subject to the suzerainty of British Crown. In internal matters the Indian States were treated as foreign states vis a vis British India. Thus the reasoning in the 1963 decision does not appear to be sound.

This question has been discussed by Beg C. J. in State of Rajasthan Vs. Union of India AIR 1977 SC 1361 wherein he has observed : "In a sense, therefore, the Indian Union is federal. But the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated; politically and economically co-ordinated, and socially, intellectually and spritually uplifted." But Chandrachud J. (as he then was) has at page 1396 (para 108) observed: "I find it difficult to accept that the State as a polity is not entitled to raise a dispute of this nature. In a federation whether classical or quasi-classical, the States are virtually interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of these powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. The State, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government. The bond of constitutional obligation between the Government of India and the States sustains that locus."

Bhagwati J. on behalf of himself and of A. C. Gupta J., has also at page 1405 (para 136-A) observed; "unconstitutional exercise of powers by the President under Art. 356 Cl. (i) may injuriously affect rights of several persons. It may infringe not only the individual rights of the members of the Legislative Assembly but also the Constitutional right of the State to insist that the federal basis of the political structure set up by the Constitution shall not be violated by an unconstitutional assault under Art. 356 Cl. (1)".

In Karnataka State Vs. Union of India AIR 1978 SC 68 at page 151 (Para 217) Untwalia J. on behalf of himself, Shinghal and Jaswant Singh J. J. has said :

"Strictly speaking, our constitution is not of a federal character where separate independent and sovereign States could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. It is because of that reason that sometimes it has been characterise as quasi-federal in nature."

In the same case Kailasam J. has after referring to the decision in AIR 1961 SC 232 and the decision in AIR 1962 SC 1406 observed at page 162: "The decision is clear authority for the proposition that the essential structure of Indian Government is of federal or quasi federal character, the units also having certain powers as the Union itself." The learned Judge after referring to the observation in the majority judgement in AIR 1963 SC 1241 has also observed : "But with very great respect the observation that 'the Constitution of India is not truly Federal in character....that only those powers which are concerned with the regulation of local problems are vested in the States' is not in accordance with the decisions of the court in Atiabari Tea Co., Ltd., Vs. The State of Assam (AIR 1961 SC 232) and the Automobile Transport (Rajasthan) Ltd. Vs. the State of Rajasthan (AIR 1961 SC 1406) which is a decision of a Bench of seven Judges of this Court".

At (Para 254) pages 163 and 164 after referring to the observations in Special Reference No. 1 of 1964 (AIR 1965 SC 745), the learned Judge has observed:

"Our Constitution accepted a federal scheme though limited in extent having regard to the regional interests, resources, language and other diversities existing in the vast sub-contient. These facts have been taken into account by the Constitution-makers and a limited federalism was made a part of the Constitution by Article 1 itself providing that India

shall be a Union of States. Effect is given to this intention by separation of the Lists and by providing legislative and executive power to the Union and the States in separate chapters of the Constitution. This principle has been accepted by the Supreme Court in the decision in Atiabari Tea Co., Ltd., Vs. The State of Assam (AIR 1961 SC 232) and the Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan (AIR 1962 SC 1406) cited earlier. The observations made in the West Bengal case (AIR 1963 SC 1241) (supra) which have been referred to already are not in conformity with the otherwise consistent view of the Supreme Court that the Constitution is supreme and the Union as well as the States will have to trace their powers from the provisions of the Constitution and that the Union is not supreme and the States are not acting as delegates of the Union"

At page 164 (para 255) the learned Judge has referred to the decision in Kesavananda Bharati Vs. The State of Kerala (AIR 1973 SC 1461) and has observed : "In Kesavananda's case it was held by the majority that Art. 368 does not enable the Parliament to alter the basic structure on the frame work of the Constitution. Chief Justice Sikki in discussing as to what is the basic structure of the Constitution held that it consisted of (1) Supremacy of the Constitution, (2) Republican and democratic form of Government, (3) Secular character of the Constitution, (4) Separation of powers between legislatures, executive and judiciary, and (5) Federal character of the Constitution" Dr. Ambedkar has also stated that the Constitution is a Federal Constitution-vide CAD Vol. VII-Page 33.

The Constitution of India is, therefore, federal in character which may be quasi-classical.

1.2 In order to ensure autonomy for the States that legislative powers have to be redistributed. As recommended by the Rajamannar Committee more tax resources have to be allotted to the States by expanding List II. The rasiduary legislative power may be included in List II and Entry 97 of List I deleted. Article 248 of the Constitution may be modified to confer the residuary power on the State Legislature. Consequential amendments have to be made in the other Articles. The supervisory powers of the Government of India over the States in the several Articles have to be deleted. It is however necessary to retain appeals to the Supreme Court from the State High Courts on important questions of Law in order to ensure uniformity of law throughout India on such questions.

1.3 We agree with the statement. Provisions of the Constitution which make the Executive and also the Legislature of the State practically subordinate to the executive of the centre, have to be deleted and these State organs allowed to function within their spheres freely, without either getting directions from the Central Executive on seeking approval of legislation by the State from the Central Executive in the form of previous sanction of the President or subsequent assent of the President. In the matter of assent to Bills the President may be made to act on the advice of a Committee of Parliament and not the central executive.

1.4 The United Arab Emirates may be a type of Federation.

1.5 We do not agree with the views expressed in this question. Without specific provisions in the Constitution definitely laying down the independent powers and functions of the State Executive as also the powers of the State Legislature they cannot enjoy any freedom of the powers vested in them.

1.6 The protection of the independence and ensurance of the unity and integrity of the country is no doubt of paramount importance. The establishment of the Federation and vesting in the Federation the subjects relating to Defence, Foreign Affairs, Communications, and the establishment of an independent judiciary, by the different provisions of the Constitution ensure this.

1.7 In the Rajamannar Committee Report the need to modify Articles 251, 256, 257, 348, 349, 355, 357, 365 etc., has been discussed. Articles as they stand at present are not reasonable and have therefore to be modified.

1.8 Article 3 required reconsideration. The proviso to the Article has to be modified making it obligatory to obtain the consent of the Legislature of the State concerned before any Bill affecting that State is introduced in Parliament as in the case of Jammu and Kashmir. Merely sending the draft Bill for the views of a State and proceeding into parliamentary amendment after some time and even if suggestions are made, ignoring them, is inconsistent with the intention of the Constitution-makers as also of the federal character of the Constitution.

PART II

LEGISLATIVE RELATIONS

2.1 The view that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States, is not correct. As already stated more sources of taxing power have to be given to the States.

As regards Acts passed by Parliament under Article 249 of the Constitution, the Essential Supplies (Temporary Powers) Amendment Act, 1950, the Supply and Prices of Goods Act, 1950 and the Evancee Interest (Separation) Act, 1951, have been passed.

2.2 The strength of the Centre and the unity and integrity of the country are ensured by the subjects already included in the Union List (List I). As suggested by the Rajamannar Committee the State may be given more tax resources by expanding List II.

The following other changes may be made in the Constitution.

(1) In Article 31A, the first proviso to clause (1) may be omitted.

There is no reason why the State Legislature should not have the same Legislature Power as Parliament under this Article.

(2) In Article 248 in Clause (1), for the word "Parliament", the words "State Legislature" may be substituted.

(3) Article 249 may be omitted.

(4) Article 252 may be omitted and resolution so far passed under that article may be treated as withdrawn and status quo ante should be restored.

(5) Article 254 may be modified as indicated in comments on Q. 2.5.

2.3 It is necessary to have a specific provision in the Constitution, making consultation with the States obligatory on the lines of the present proviso to Article 3 of the Constitution, whenever any legislation is undertaken in respect of a matter in the concurrent list.

2.4 Article 249 should be deleted.

2.5 In order to ensure the freedom of the Legislative organ of a State, it should not be made subject to the control of either the Executive organ of the State or the Executive organ of the Centre, in the exercise of the legislative powers. Under the Government Rules of Business, even Under Secretaries and Deputy Secretaries to Government can function on behalf of the President and the Will of the State Legislature can be thwarted or controlled by these officers on behalf of the President. But for the control vested in the Executive by provisions in the Constitution, such as those requiring previous sanction or/and subsequent assent by the Executive, whether called the Governor or the President, for legislative measures, the legislative organ would be independent. Just as the judicial organ is independent of Executive and Legislative organs vide Smt. Indira Nehru Gandhi's case AIR 1975 SC 2299, the Legislative organ should be ensured sufficient independence and not made subordinate to the Executive organs of the State and the Centre. In AIR 1975 SC 2299, Beg J. (as he then was) has observed :

"Neither of the three Constitutionally separate organs of State can, according to the basic scheme of our Constitution to day leap on tride the boundaries of its constitutionally assigned sphere or ambit of authority into that of the other".

(2) Since we have a Parliamentary system of Government and since no legislation can be passed without the necessary majority, when once a law in the exclusive field of the State Legislature is passed, it should by virtue of that passage, become the law of the State.

(3) As regards laws which fall within the concurrent field of Legislation which may be repugnant to a Central Law or an existing law in the concurrent field, the only authority which could approve or disapprove the repugnant provision should be Parliament which alone has the power to make the law in the concurrent field in the Centre, and not the Executive of the Centre. As Parliament cannot scrutinise every State Law referred to it for approval, provision may be made for delegating this power to a Joint Committee of both Houses of Parliament, which may meet from time to time and take decisions. In order to ensure that the State Legislature is not made subordinate even to a Committee of Parliament, seeking its approval a time limit may be fixed within which the decision of the Parliamentary Committee should be taken and if no decision is communicated to the State Legislature within the specified time limit, the law should be deemed to have been approved by Parliament.

(4) The following amendments of the provisions of the Constitution have to be made—

(i) In article 201 the existing provision may be numbered as Clause (1) and the following clause shall be inserted at the end, namely:—

"(2) In the exercise of his power under this article and article 213 President shall act on the advice of a Joint Committee of both Houses of the Parliament authorised by a resolution passed by both Houses of Parliament".

(ii) In Article 213 after Clause (1), the following clause may be inserted, namely :—

"(1A) An ordinance falling under the proviso to clause (1) shall be sent to the President and may be disapproved by the President within four weeks, and if it is not so disapproved it shall be deemed to have been approved by the President".

(iii) In Clause (2) of Article 254,

(a) In the proviso, after the word 'Provided' the word "further' may be inserted;

(b) after the clause and before the proviso as amended in sub-clause (a), the following proviso may be inserted namely :—

"Provided that if the approval of the President is not received within a period of one year from the date of its receipt the law shall be deemed to have been approved by the President".

(iv) After Article 254, the following Article may be inserted, namely :—

"254A. *Consultation with State Legislature and Parliament* :—

(1) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in either House of Parliament unless the Bill has been referred by the President to the Legislatures of the States for expressing their views thereon within such period as may be specified in the reference and the period so specified has expired.

(2) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in the House or either House of a State Legislature unless the Bill has been referred by the Speaker of the Legislative Assembly of such State to the Speaker of the House of the people for expressing the views of Parliament thereon within such period as may be specified in the reference and the period so specified has expired".

(v) The proviso to Article 31A (1) and the proviso to Article 304 may be omitted. There is no reason why the State Legislature should not have the same legislative power as Parliament.

PART III

ROLE OF THE GOVERNOR

3.1 (a) The role of the Governor as envisaged by the Constitution as stated by the founders of the Constitution, and as laid down by the Supreme Court in several decisions, has been indicated in Part I of the White Paper on the Office of the Governor presented by the Chief Minister to the House of the Karnataka State Legislature.

(b) Our comments/views in regard to the role of the Governor since the advent of the Constitution has been indicated at the end of Part I and in Part II and the conclusions of the aforesaid White Paper.

The Governor strictly has no role in the context of the Centre-State Relations. Both the Founders of the Constitution as stated in the Debates of the Constituent Assembly and the decisions of the Supreme Court do not envisage any such role for the Governor. Instead of elections of the Governor by the State Legislature, involving a lot of expenditure the Constitution-makers considered nomination of an eminent person by the Centre with the consent of the Chief Minister of the State, would be a better procedure and adopted it, without making a specific provision for the consent of the Chief Minister but with the distinct statement in the Constituent Assembly that it would be with such consent. The Supreme Court has also held in Dr. Raghukul Tilak's case AIR 1979 SC 709 that the Governor's Office is an independent constitutional office which is not subject to the control of the Government of India.

3.2 Healthy Union and State relations have to be fostered by close association of the Executive organs of the State and Centre represented by the Chief Minister of the State and the Prime Minister. The Governor should be a purely ornamental functionary as observed by Dr. Ambedkar vide Constituent Assembly Debates, Volume III, page 468. As observed by the Supreme Court the Governor is but a "shorthand expression" for the State Government vide Maru Ram's case AIR 1980 SC 2147 at page 2169. So far as constitutional functions are concerned other than the few cases in which he is required to act in his discretion as he is required to act as per advice of the Council of Ministers, and as he is not a subordinate authority of the Government of India, he has no role and would not have any role in the Centre-State Relations.

3.3. (a) Before making report to the President suggesting action under Article 356(1), the Governor should follow the principles of natural justice. He should first send a notice to the Council of Ministers specifying the matters which according to him has the effect of the Government of the State not being carried on in accordance with the Constitution, when a duly established Council of Ministers is functioning and is carrying on the Government. The Government of India acting as the President will also have to follow the principles of natural justice in similar circumstances. But when a party in power has lost a vote of confidence in the Legislative Assembly by the passing of a no-confidence motion against the Ministry, or a motion of confidence is defeated and there is no person who is supported by a majority of members of the Legislative Assembly, the report can be made without following principles of natural justice, as that would be a clear case of the Government of the State not being able to be carried on in accordance with the Constitution and as there would then be no Council of Ministers collectively responsible to the Legislative Assembly of the State to which a notice can possibly be given.

At present, the principles of natural justice is not being followed in exercising the powers under Article 356(1), presumably because there is no express provision for following that procedure. But the law laid down by the Supreme Court in several recent decisions makes it clear that this principle will have to be followed to supersede the State Government and the State Legislature, as envisaged by Article 356(1) of the Constitution. The condition precedent for the exercise of the power is that the President (which means the Council of Ministers in the Centre) is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution. In the light of the decision of the Supreme Court in A.K. Roy's case AIR 1982 SC 710, with reference to deletion of clause (5) of Article 356 by the 44th Amendment of the Constitution the President's satisfaction under clause (1) of Article 356 is justifiable. In Mohinder Singh Gill's case AIR 1978 SC 851, the obligation of satisfying the principles of natural justice for the exercise of a power under Article 324 of the Constitution was held to exist. Following that decision in S.L. Kapur's case AIR 1981 SC 136, the supersession of the New Delhi Municipal Committee by the Lt. Governor of the Union Territory of Delhi under Section 238(1) of the Punjab Municipal Act, 1911, as applicable to New Delhi, without giving an opportunity to the Committee to show cause against the proposed supersession was held invalid (the Hon'ble Learned Judge Chairman of the Commission on Centre-State Relations was also a concurring Learned Judge of this Bench of the Supreme Court). It is therefore necessary to make an express provision in Article 356(1) that before a report is made by the Governor to the President he should give an opportunity to the Council of Ministers to show cause why action under the said Article may not be taken. Further, the President when he acts *suo motu* and Article 356(1), or does not agree with the cause shown by the Council of Ministers to the notice given by the Governor, a show cause notice should be given to the Council of Ministers. The right of the people of the State to be governed by their representatives should not be taken away except when there is no person who commands a majority of members of the Legislative Assembly. It is also necessary to ensure that the democratic government in a State is not superseded except when it is impossible to carry on the Government as envisaged by the Constitution. A simple lapse or erroneous action of a Ministry should not result in the democratic government being dismissed, and the Legislature made ineffective or dissolved.

(b) The functions duties of the Governor in the appointment which also includes the dismissal of Chief Minister under Article 164 have been performed primarily either at the behest of the power at the Centre or to ensure as far as possible that the interests of the party in power at the Centre which has its Branch in the State is safeguarded. Instances of abuse of the power vested in Governor under Article 164 have been indicated in Part II of the White Paper. In order to ensure that the democratically elected representatives of the people are not deprived of their Constitutional right, it is very necessary to modify Article 164 making it obligatory for the Governor to appoint a person who commands a majority among the elected members of the Legislative Assembly and it should also be made clear that the Governor cannot dismiss him when he has the majority. It is also necessary to modify Article 163(1) making it clear that the Governor should act in accordance with the advice of the Council of Ministers, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion, even in matters where he exercises his discretion it should be made clear that the discretion should be exercised to ensure promotion of the purpose for which the discretionary power has been conferred and in public interest and not arbitrarily. In Maru Ram's case AIR 1980 SC 2147, at pages 2170, 2171 and 2173, the Supreme Court has observed :

"All public power, including *constitutional power, shall never be exercisable arbitrarily or malafide.*

* * *

The rule of law, under our constitutional order, transforms all public power into responsible, responsive, regulated exercise informed by high purposes and geared to people's welfare".

In Shamsher Singh's case the Supreme Court has stated

"In all matters where the Governor acts in his discretion he will act in harmony with the Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers".

(c) An Article may be included in Chapter II of Part VI empowering the Chief Minister to sommon and prorogue the House/Houses of the State Legislature.

3.4 (a) According to the Supreme Court the Governor is made a component part of the Legislature of a State under Article 168 because every Bill passed by the State Legislature has to be reserved for the assent of the Governor under Article 200 vide M/s. Hoechst Pharmaceuticals Ltd. case AIR 1983 SC 1019 at page 1048 (Para 88). As the provisions of the Government of India Act, 1935, was followed in the Constitution of India, Articles 200 and 201 have been included in the Constitution. These provisions are basically inconsistent with the supremacy of the Legislature consisting of the representatives of the people in whom the sovereignty of the State vests.

Although as observed by the Supreme Court in Ram Jawaya Kapur's Case AIR 1955 SC 549 quoted with approval in U.N. Rao's case AIR 1971 SC 1002, in the Indian Constitution we have the same system of Parliamentary Executive as in England and the Council of Ministers consisting, as it does, of the members of the Legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part", requiring the assent of the Executive to the laws passed by the Legislature, makes the Legislature subordinate to the Executive. Referring a Bill to the President makes the State Legislature subordinate to the Central Executive, as already stated in answers to questions in Part II of the Questionnaire.

(b) As regards the question whether the power of reservation by the Governor and consideration of State Bills by the President, has been generally exercised in conformity with the intent, spirit and purpose of Articles 200 and 201, it may be stated that except during the earlier years after the commencement of the Constitution when both Parliament and the State Legislatures had an absolute majority consisting of members of the Indian National Congress when State Bills could secure the assent of the President easily, the power is not being exercised in conformity with the object of the provision. In respect of Bills reserved for the consideration of the President, to overcome repugnancy with a Central law in the concurrent field, suggestions are made for amendments in provisions of the Bill falling exclusively in the State field of legislation.

(c) There does not appear to be any case in which the Governor has withheld assent to a Bill.

(d) There have been cases where the Governor has reserved Bills for the consideration of the President contrary to the advice from the Council of Ministers, in spite of the law laid down by the Supreme Court in a series of decisions that he is bound to act in accordance with the advice of the Council of Ministers.

3.5. We do not agree with the conclusion of the Indian Law Institute. There has been undue delay in many cases inspite of repeated reminders.

3.6 The Governor is not "a close link" between the Centre and the State. Since he holds office during the pleasure of the Central Executive, he has been functioning either as a subordinate of the Centre, or a person not answerable to any one, being a holder of Constitutional office as held by the Supreme Court in Dr. Raghukul's case AIR 1979 SC 709. In Part II of the White Paper concrete instances of Governors not acting impartially and fairly in accordance with the Constitution have been stated.

3.7 We do not agree. In the light of the decision of the Supreme Court in Dr. Raghukul Tilak's case AIR 1979 SC 709, it is necessary to make a specific provision that the Governor can be appointed only with the consent of the Chief Minister.

In an article in the Journal of the Indian Law Institute (1981) Volume 23 pages 128-136 the judgement of the Supreme Court in Raghukul Tilak's case has been stated to the unsound and unconvincing. The author of the articles has at pages 135-136 observed :

"The appointment of Governor, dismissal extension either in the same State or other and the transfer from one State to another shows that the Governor owes his entire existence to the Government of India. Is not it sufficient to make the Governor a subordinate of the Government of India, if not, what else? It may be admitted that the Governor may not be under the control of the Government of India in his day to day functi ons but since he holds his office at the pleasure of the President he cannot for long disregard the views of the Centre while discharging his functions. The Governor like a civil servant is required to send his fortnight report about the State administration to the Government of India, which does show that he is servant of the Central Government. The power of dismissal by the President makes the position of the Governor subservient to the Government of India. The way the provision relating to the President Rule has been abused to serve the interests of the party in power at the Centre demonstrates that the Governor is an agent of the Centre and acts at its behest. (See Siwach Politics of President Rule in India (1979)). The Centre may not legally control the Governor in a formal way, yet the fact remains that he is controlled in various informal and subtle ways. He may not be in a position to ignore the various "oral advices" or "oral directions" because otherwise his service as Governor itself may be put in jeopardy. He is nothing but a dignified Civil servant deputed as an agent by the Centre in order to keep a constant vigil and watch on the State Government and to ensure that the Government machinery thereon to be carried on in accordance with the provisions of the Constitution".

The first and foremost provision to be made is to ensure appointment of fair minded men of high calibre and integrity as Governors. If this is done they will surely act efficiently and impartially in the discharge of the limited discretionary functions to be discharged by the Governor. It is not necessary to have a resolution to that effect is passed by the Legislature.

3.8 We do not agree. The power of summoning the Houses of Legislature should vest in the Chief Minister as already stated. The Governor should ascertain whether a person commands a majority in the Legislative Assembly as at present from the Party leaders and the members of the Party as at present.

3.9 A provision like Article 67 of the Basic Law of the Constitution of the Federal Republic of Germany may not work in India, when a Party cracks due to defections, A constitutional amendment disqualifying a member who defects from a party will ensure stability of Governments. When there is stability, there will rarely be occasions for friction. Men of high calibre and integrity will have to be made Governors and such men will act impartially and will not give room for friction.

3.10 Even when the law laid down by the Supreme Court is ignored by Governors, and they act as agents of the Central Government no useful purpose will be served by any guidelines. Specific Constitutional provisions should be made laying down the powers and functions of the Governor. In order to ensure that the Constitutional provisions binding on a Governor is not violated and they can be enforced, the immunity conferred on him by Article 361(1) of the Constitution should be deleted.

In the light of the suggestions made above, the following amendments to the Constitution, other than the amendments suggested in Part II, may be made :

(i) In Article 154, at the end, the following Explanation may be inserted, namely :—

"*Explanation* :—Where any power or function is conferred or vested in the Governor whether ex-officio or otherwise by any law, such power or function shall be exercisable or performed by the Governor in accordance with the Constitution as the executive power of the State".

(ii) For Article 155, the following Article may be substituted, namely :—

"**155. Appointment of Governor** : The President shall, with the consent of the Chief Minister of a State, appoint the Governor of that State, by warrant under his hand and seal".

(iii) For Article 156, the following Article may be substituted, namely :—

"**156. Term of Office of Governor** : (1) The Governor shall hold office for a term of five years from the date on which he enters upon his office;

Provided that :—

(a) the Governor may, by writing under his hand addressed to the President resign his office ;

(b) the Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office".

(iv) For Article 157, the following Article may be substitutsd, namely :—

"**157. Qualification for appointment as Governor** : No person shall be eligible for appointment as Governor unless he—

(a) is a citizen of India ;

(b) has completed the age of fifty years; and

(c) is an eminent jurist, educationist, scientist or an eminent person in other walks of life, other than a politician or a retired servant of the Executive Government".

(v) In Article 163,—

(a) for clause (1), the following clause may be substituted,—

"(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor

who shall, in the exercise of his functions, act in accordance with such advice, except in so far he is by or under this Constitution required to exercise his functions or any of them in his discretion.

Provided that any function exercisable by the Governor in his discretion shall be exercised in an intelligible and intelligent manner integrated with the manifest purpose of the function and in harmony with the Council of Ministers."

(b) for Clause (2), the following clause may be substituted, namely,—

"(2) If any question arises whether any matter is or is not a matter as respect which the Governor is by or under this Constitution required to act in his discretion, the question shall be referred to the High Court, and the Governor shall act according to the opinion of the High Court."

(vi) For clause (1) of Article 164, before the proviso, the following clause may be substituted, namely,—

"(1) A person elected as their leader by a majority of members of the Legislative Assembly of the State shall be appointed by the Governor as the Chief Minister and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers other than the Chief Minister shall hold office as long as the Chief Minister has confidence in them, and the Chief Minister shall hold office as long as he continues as leader of a majority of the members of the legislative Assembly of the State."

(vii) In Article 165, (1) for the word "Governor", the words "Council of Ministers" may be substituted :

(viii) In Article 166,

(a) in clause (2) for the words "rules to be made by the Governor", the words "rules to be made by the Council of Ministers" may be substituted;

(b) in clause (3), for the words "the Governor shall make rules", the words "The Council of Ministers shall make rules", may be substituted.

(ix) In Article 168, in clause (1) the words "the Governor, and" may be omitted.

(x) In Article 171, for the word "Governor" in the two places where it occurs, the words "Council of Ministers" may be substituted.

(xi) For Article 174, the following Article may be substituted, namely,—

"**174. Sessions of the State Legislature, prorogation and dissolution :** (1) (a) The Chief Minister shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in session and the date appointed for its first sitting in the next session.

(b) The Chief Minister may from time to time prorogue the House or either House.

(2) The Governor may with the consent of the Chief Minister dissolve the Legislative Assembly. Provided that before an order of dissolution is made a reasonable opportunity shall be given by the Governor to the Legislative Assembly to show cause why such an order should not be made, and the cause shown properly considered.

(xii) In clause (1) of Article 202, for the words "the Governor", the words "the Chief Minister or the Minister for Finance" may be substituted.

(xiii) In Article 207, for the words "the Governor", the words "the Chief Minister or the Minister for Finance", may be substituted.

(xiv) In proviso to Article 309, for the words "the Governor of a State or such person as he may direct" the words "the Council of Ministers of a State", may be substituted.

(xv) In clause (1) of Article 356 in the existing proviso, after the word "provided", the word "also" may be inserted, and before the proviso as amended, the following proviso may be inserted, namely,—

"Provided that before a report is sent by the Governor to the President, reasonable opportunity shall be given by the Governor to the Council of Ministers to show cause why such a report should not be sent.

Provided further before a proclamation is made, a reasonable opportunity shall be given by the President to the Council of Ministers to show cause why such a proclamation should not be made and the cause shown properly considered, and

Where the proposed proclamation declared that the powers of that Legislature of the State shall be exercisable by or under the authority of Parliament or dissolves the Legislative Assembly of the State, a reasonable opportunity shall be given by the President to the Legislaive Assembly of the State to show cause why such a proclamation should not be made and the cause shown properly considered".

PART IV

ADMINISTRATIVE RELATIONS

4.1 We believe that Articles 256 and 257 constitute very desirable provisions and ought to be retained, particularly as the extent of the executive power of the Union has been defined in Article 73. We argue, in our reply to the next question, however, that Article 365 ought to be deleted.

There has been no instance of any direction to the Government of Karnataka under Article 256 and 257.

4.2 Article 365 is certainly a consequential enabling clause, but it is not purely that. If it is invoked, then Article 356 is also liable to be attracted. However, if a direction given under Article 256 or 257 by the Union Government is not given effect to by a State Government, then Article 356 is certainly directly attracted (though the invoking of this Article must be done with the greatest circumspection). In this sense, Article 365 is redundant.

The real issue is whether the Union Government may not, in some future situation, invoke Article 365 on a essentially flimsy grounds, and use it to take further action under Article 356. Thus, if there are bonafide differences between the Union and a State Government on whether a direction given under Article 256 or 257 is legitimately within the executive power of the Union, or if there are differences about whether a specific direction of the Union Government has been effectively implemented or not by a State Government, such differences ought not to constitute flimsy pretexts for taking action under Article 356. Such action is more likely if the enabling provision under Article 365 is invoked in transition. In order to ensure that such pretexts for taking action under Article 356 are not constitutionally supported, we recommend the deletion of Article 365. We recognise, however, that no such misuse of Article 365 has yet occurred; unfortunately, with Centre-State political relations in flux, this is inadequate assurance that such misuse will not occur in future.

4.3 We fully support the view of the Administrative Reforms Commission.

4.4 There is a wide spread consensus between jurists, political scientists and constitutional experts that the "extraordinary remedial power" contained in Article 356 has not been exercised properly, indeed has been frankly abused. The Article has been invoked over 70 *times against every* State in the country except Maharashtra. The precondition for invoking the Article is the existence of a situation "in which the Government of the State cannot be carried on in accordance with the provisions of this constitution". It is the vagueness of this expression that has enabled abuse of the Article to occur. It is, therefore, necessary to define the prerequisites of such a situation. We believe that such prerequisites should not generally extend beyond (a) complete failure to induct a Government which can command a *majority in the* legislature; and (b) a *total* collapse of law and order.

The importance of ensuring that Article 356 is invoked only in extreme situations had been emphasised in the Constituent Assembly debates.

Further elaboration of our views is found in the Memorandum of the State Government—pages 15 to 21. Before acting on the provision in Article 356 (1), an opportunity should be given to the Council of Ministers to show-cause why action under the said Articles may not be taken.

While looking at the implications of Article 356, the State Government also feels that Article 163(1) and Article 164 are to be modified so that the democratic Government in a State is not superseded except when it is impossible to carry on the Government as envisaged by the Constitution. The nature of the modification is indicated in the State Government's Memorandum—pages 18 and 19.

4.5 A prolonged period of President's rule under Article 356 is undersirable. Nevertheless, we recognise that in certain exceptional circumstances a continuation of such a situation may be warranted. We suggest, therefore, that the following pragmatic approach be implemented :

(a) A Proclamation will have effect for a maximum period of six months (the present positon).

Dr. B. R. Ambedkar, for instance, had stated that "the proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precations before actually suspending the administration of the province". Dr. Ambedkar then spelt out specific safeguards against abuse of Article 356 in the following terms : "I hope the first thing he (the President) will do would be to issue a mere warning to a province that has erred, that things were not happening in a way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies failed, that he would resort to this Article".

In practice, the invoking of the Article has been more cavalier, and for reasons not contemplated by by the Constitutent Assembly. The Article has typically been invoked on what must be regarded as partisan grounds, or at the behest of the Centre to tide over inner-party problems. In the process an easy path is provided to the Centre to make inroads into the State's political autonomy. We urge strongly, therefore, that Article 356 should be suitably amended and adequate safeguards incorporated to ensure that the intentions expressed in the Constituent Assembly for incorporation of Article 356 are subserved.

(b) This can normally be extended for a further period of utmost six months.

4.6 The existing arrangements are working satisfactorily in Karnataka.

4.7 The agencies listed in the Question have been set up with specific policy intentions. Many of them have been set up with a view to exercise institutional

controls over the private sector, on the ideological premise that unregulated market forces tend to distort economic activity. The crucial issue, therefore, is on the advisability of such intervention by Govenment, and issues of Centre-State relations are frankly of secondary import. Where problems of a Centre-State nature do arise, however, they are best resolved through the instituton of consultative mechanism like the Inter-State Council. The criticism that such consultative mechanisms have not been adequately used has considerable truth.

4.8 We believe that All-India Services have, by and large, fulfilled the expectations upon which they were created. One of the objectives of having such Services was to support National integration and this has been achieved by following the procedure of allotting 50% of the officers every year to States outside their home states.

It is to be pointed out that one of the main features of the All India Services Act was the exercise of Joint control over the Services by the Central and State Governments. In particular the joint control of the Central and the State Government for the regulation of recruitment policies and conditions of service of the All India Services is to be kept in view. However, in actual practice the joint control is found to be not properly observed. This requires a careful examination. Our full views in this matter are given in the State Government's Memorandum—pages 24 to 28.

4.9 Police is a state subject. It is not even in the concurrent list. Yet the Central Government has built up a huge and ever increasing central police force. In the last two decades, the expenditure on central police force has gone up by sixteen times, from Rs. 32 crores to Rs. 510.30 crores, between 1965-66 and 1984-85. Apart from being outside the provisions of the Constitution, the development of the Central police has compounded the problem of effective law and order maintenance is in the States. Instead of developing an effective police force of their own for immediate deployment, the States have been made dependent on the central government for supply of para-military forces and Central Intelligence Services and grants for policing, from time to time.

Even if in spheres like finance and industrial licensing, the states are able to get more powers, the centre's hold on the states law and order machinery is so tight that it could negative even the limited autonomy the states enjoy. As recent events (Andhra, for example) have shown, central forces were deployed purely for political reasons. As R.F. Rustamji has put it, the central forces have been grossly overstrained and have been less than effective.

It is imperative that the existing constitutional position with regard to the police must be maintained. The states must build up their own police force to deal with the law and order problems effectively. There should be no further expansion of the central police force, it should be absorbed in the states or phased out.

4.10 We agree fully that broadcasting and television facilities should be shared between the Union and States on a fair and reasonable basis as both have got equal need for access to these mass communication media for putting across their views to the people. We also believe, however, that the media should not be used for narrowly defined politically partisan purposes, and this danger exists if 'broadcasting' is included in the Concurrent List, with each State Government permitted to set up its own broadcasting system. (There may also result a considerable duplication of functions and a consequent waste of resources). Instead , we suggest that 'Broadcasting could remain within the Union List *Provided* that it is organisationally controlled by an independent' statutory body, very much in the manner of the British Broadcasting Corporation.

The State Government suggests the establishment of a National Broadcast Trust as recommended by the Verghese Committee and such a Trust should administer broadcasting the television facilities. The Ministry of Information and Broadcasting should only take care of information and broadcasting should be removed from its purview.

Further elaboration of this suggestion is found in the State Government's Memorandum—pages 20 to 23.

4.11 The Zonal Councils have served a generally useful purpose, particularly in the years immediately following the coming into force of the State reorganisation Act, 1956. In more recent years, however, their role has been relatively low-keyed.

4.12 We support strongly the establishment of an inter-State Council, as an active forum for securing better working relationships between the Union Government and the State Governments, as well as between State Governments. Its composition could be along the lines suggested by the Administrative reforms Commission and its scope could embrace all issues of Union-State and inter-State relations, it should be a permanent forum for active discussion with its own independent Secretariat. Further, attention is invited to pages 19-20 of the State Government's Memorandum on this subject.

PART V

FINANCIAL RELATIONS

5.1 The scheme of devolution envisaged in the Constitution has not worked well nor has it come up to the expectations of the States. The estimation of the revenue gap between the resources and the fiscal needs of the States to discharge their growing responsibilities and the definitions of 'revenue gap' 'resources', 'fiscal needs' and 'growing responsibilities for the transfer of devolution of resources, partly by sharing the Central taxes and duties and partly by grants-in-aid from the Union, has not provided the desired benefits to the States. The revenue gap should be taken as a total revenue gap of the State and not merely as a gap on the non-Plan revenue account. Similarly, fiscal needs should be identified based on the various programmes taken up by the States which are included in the Plan and the funds required for maintenance of assets created in the previous plans.

The Finance Commission has been subjected to severe constraints. The laying down of the terms of reference in the Notification issued by the President puts shackles on the Commission. In fact, under Article 280(4), the Finance Commision 'shall determine their procedure'. We, therefore, urge that the Finance Commission must be freed from these shackles.

The Finance Commissions as they have functioned in the past have failed to apply the test of fiscal efficiency to the States. Under the present system, fiscal efficiency on the part of any State has become a self hurting process. Therefore, the Finance Commissions have to attempt approximate assessment of the fiscal potential of each State on the basis of certain relevant parameters and evaluate the performance of the States against the potential so determined. A fiscal efficiency criteria should be adopted by the Finance Commission.

The Finance Commission should have greater powers of scrutiny of the expenditures of the Union Government. It is felt that the Planning Commission Provides flexible mechanism for heads of State Governments to have a direct and comprehensive dialogue with the Centre on resources, programmes and policies, which it is important not only to preserve but enlarge. Therefore, the present system of quinquennial Finance Commission and continuing Planning Commission, but with certain changes in their character and functions are recommended.

Our suggestions in this regard are discussed in the State Government's Memorandum pages 34 to 42 and pages 36 to 51.

5.2 The overall position stated by the Administrative Reforms Commission's Study Team on Centre-State Relations still holds. We strongly urge the implementation of the alternatives (b), (d) and (e) indicated in the question. These options will help in augmenting resources of States. At present, three taxes available to the States. which have hitherto been elastic in their revenue yields, are sales tax, State excise and motor vehicles tax. There are limitations on increasing rates of sales tax on most commodities on account of the simultaneous imposition of excise duty on these commodities. In addition, essential commodities also cannot be heavily taxed. There are also grave dangers in seeking higher revenues from State excise as this will act as in inducement to the consumption of illicit liquor and lead to periodic deaths on account of the dangerous quality of such liquor. The soaring costs of motor vehicles (especially of four-wheelers) is depressing demand for such vehicles with a consequent stagnation in the receipts from motor vehicle tax. These examples indicate that such taxes, hitherto believed to be elastic, are proving much less so. There is thus a need for augmenting State resources in the following manner :

(a) transfer of additional taxes (Whose revenue yields are elastic to the State List under the Seventh Schedule;

(b) Central taxes such as corporation tax, customs duty, surcharge on income tax, to be transferred to the divisible pool;

(c) financial resources other than tax revenues of the Union Government to be also distributed between the Centre and the States.

The other two alternatives, (a) and (c) in the question, do not appear desirable. A complete separation of the fiscal relations of the Union and the States, if incorporated in the Constitution, may lead to inflexibility in periodic changes, and revenue yields from different taxes do vary over time. Similarly, transferring all taxes to the Union List can only perpetuate and aggravate the existing unsatisfactory situation. We would therefore not support these two alternatives.

In short, the Divisible Pool must be enlarged by bringing into it all tax revenues except those from customs revenues, which may be for the Union Government. Out of such an enlarged Divisible Pool, 75 percent of the total proceeds should be distributed among the States. This, in effect, the Union and the States in the ratio of 50:50. Such a distribution should be considered as more equitable from the view points of both the Union and the States.

5.3 We disagree strongly with the proposition. Indeed, equity in the distribution of financial resources between States with a view to correcting regional imbalance is best ensured through an independent, statutory agency such as the Finance Commission. If the discretion for transferring resources is instead given to the Union Government, there is the distinct possibility of such resources transfer being based on less than objective considerations which may not subserve equity criteria. The experience of resources transferred by Central Ministries in the past does validate this point.

5.4 Deficit financing to cover the gap is emphatically not in the national interest. It is inflationary and thereby benefits neither the Union or State Governments, nor the individual. It also has deleterious effects on the welfare of the poor and of fixed income groups in the country. In view of this, the only viable alternative open to the Union Government to cover its gap in revenue account (if, in fact, such a gap exists) lies through better control over expenditure and plugging leakages in tax collections.

5.5 We would like to question the very premise of the suggestion that the central function of the Finance Commission and Planning Commission is to bridge the gap in resources between the poorer and richer States. This is certainly one, but one among many, objectives that these Commissions should be concerned with, but to elevate it to being the primary objective is to put a premium on inadequate effort on the part of States in mobilising their own resources; it also encourages higher non-productive expenditure by certain States than would otherwise be incurred.

We suggest, therefore, that excessive reliance on a gap filling approach to the Central devolution of resources is undesirable. Instead, 60 percent of the resources should devolve on a criteria of backwardness built on a composite index as suggested by the Karnataka Government in its Memorandum submitted to the Eighth Finance Commission and the balance of 40 percent of resources should devolve on criteria of the resource mobilisation effort of

State Governments. The Finance Commission should take a total view of all central resource transfers.

5.6 We do not see any particular need to create a Special Federal Fund, as is provided for in the Yugoslav Constitution, if the scope of the Finance Commission is widened as suggested in our reply to question 5.1.

5.7 Taxation powers to levy excise duties and additional excise duties on a number of commodities, which provide substantial revenues, could conveniently be transferred to the States.

5.8 A fragmentary approach to taxation can clearly produce unanticipated effects on the economy, and a well modulated fiscal system must indeed endeavour to be conscious of the incidence structure of each tax and of its possible harmful impact on economic activity. It is doubtful, however whether such a fragmentary approach results primarily from a division of taxation powers between the Centre and the States (such a division being inevitable in a federal economy). Indeed, among the taxes listed in the Question, all but the last (sales tax) are levied by the Government of India and yet it is by no means clear that a well orchestrated approach to taxation has been evolved by the Union Government.

Where different kinds of taxes reinforce one another (as in the case of sales tax and excise duty), consultative mechanisms for assessing and undoing their possible collective harmful impact are desirable.

5.9. No. Elaboration of our views is found in our answer to question 5.1 .

5.10. The statutory and discretionary transfers on the advice of the Finance Commissions have not contributed to the narrowing down of the disparities in Public expenditure among the States, nor has it promoted efficiency and economy in expenditure.

Also, please see our answer to question 5.1.

5.11 The present mechanism of transfer of resources has an inbuilt propansity towards financial indiscipline and improvidence, and it is vital that the transfer of Central resources discourages this by estimating, in a comprehensive manner, the Plan and non-Plan requirements of each State, and taking both the revenue and capital accounts into consideration for giving grants under Article 275. Indeed, the grants under Article 275 should occupy a residuary position in order that the transfers under the sharing of tax revenues take a major and predominent position in the entire transfer mechanism. If this system is adopted, those States which have managed State resources prudently will continue to have an incentive to do so.

5.12. We agree that the bulk of resources transfers should be done through tax sharing and that the role of Grants-in-Aid under Article 275, in the scheme of total revenue transfers, should be supplementary. This will encourage economy in expenditure and also induce greater efforts in resource mobilisation by States Governments.

5.13. The principles enunciated by the Seventh Finance Commission for Grants-in-Aid under Article 275 are broadly acceptable except that the weightage given to the first principle (that grant-in-aid may be given to States to enable them to cover their fiscal gaps, if any, that are left after the devolution of taxes and duties) ought to be considerably diluted, as it discourages tax efforts and economy in expenditure.

5.14. The logic of claiming that non-tax revenues of the Union Government should be shared with the States cannot be uniformly applied for different revenues. Certainly, the revenues from Special Bearer Bonds are in the nature of savings from private individuals and can therefore be shared with States, in much the same way as National Small Savings are. It is more doubtful, however whether the additional revenues from raising administered prices should be shareable, particularly when many Central enterprises are making losses (as in the case, presently, of steel and coal). Where Central enterprises make profits, however, and where these profits are treated as revenues of the Government of India (other than divident payments), the principle that such revenues should be divisible has merit. We would also strongly support the view of the Eighth Finance Commission that rises in administered prices of certain commodities should not be resorted to as a substitute for raising excise duty rates, as the latter revenues are shareable where is the former are not.

5.15. The present methods are not satisfactory, partly because the existing institutional arrangements for appropriating such savings give State Governments an inadequate voice and partly because the Union Government makes a practice of intervening directly to appropriate savings for its own projects with only incidental regard for the impact this would have on the availability of savings for State Government, Checks and balances are, therefore, overdue. Those can emerge if State Governments are represented on the boards of nationalised banks and all other central financing institutions, and if the allocation of savings (negotiated loans and other market borrowings) for funding the Plans of the Union and State Governments is discussed and approved by the National Development Council and the National Credit Council as proposed by us in the state Government's Memorandum pages 48 to 51.

5.16 This appears to be factually correct, and among the reasons for the decline in the growth of Central resource transfers are the increasing fiscal concessions given by the Union Government in respect of divisible taxes, as well as the increasing deficits run by the Union Government. Fiscal imbalance in State Governments is consequently aggravated.

5.17. The increasing indebtedness of States is becoming increasingly critical and the dimensions, of the problem as well as our view on how the States difficulties could eased, are indicated in our reply to Question 6.7. At present, debt servicing commitments of the Karnataka Government to the Union Government amount to almost 90% of the gross loans received from the Union Government, indicating the increasing irrelevance of the Union Government in appreciably contributing to the loan finance requirements of the State Government. We feel that the entire question of the State indebtedness and also that of the Union's debt should be examined by a High Power Body. We therefore suggest the setting up of a National Commission on Debt and such a Commission should determine *de novo* the indebtedness of the

States and also see whether the Union debt is also properly managed or not. The National Debt Commission shall not be a continuing body. Its task will be that of a "one shot" operation. This suggestion is further elaborated in the State Government's Me-andom—pmorages 43 to 46.

5.18. We agree that the States' capacity to borrow has been restricted because market borrowings are fixed every year by the Union Ministry of Finance, on the recommendation of the Reserve Bank of India. The States' capacity to borrow from national institutions is also limited, for reasons indicated in our reply to Question 5.15. Having regard to the basic principles of sound financing, there should be a reasonable and satisfactory level of borrowing permissible for States within the overall ceiling for borrowings by the Public Sector. The limits fixed for these borrowings should be linked to the overall expenditure programmes of each State Governments and the developmental activities which such borrowings would finance.

5.19. The Union Government should charge from the State Governments a rate of interest which it pays to the foreign lender together with any administrative costs. This is particularly significant in the case of soft loans given by the International Development Association (an affiliate of the World Bank) to the Union Government, where no interest is charged (a 3/4% service charge is levied). The Government of India is not a money lender and should not profiteer at the expense of the State Governments.

5.20. We suggest the setting up of a National Credit Council under the aegis of the National Development Council. The Secretariat service for the National Credit Council can be provided by the Reserve Bank of India with such assistance from the Planning Commission's technical staff as may be mutually agreed upon. The composition and functions of the National Credit Council are discussed in the State Government's Memorandum pages 49 to 51.

5.21. Although the Reserve Bank of India (RBI) has doubled the Ways and Means Limits of the States with effect from July 1982, these limits bear little relationship with the magnitude of overall transactions effected by State Governments. Our State Government's transactions exceed Rs. 3000 crores annually, whereas the Ways and Means Limits amount to just Rs. 40 crores. Norms adopted for fixing Ways and Means Limits, therefore, require a thorough review and these should be directly related to the State Government's aggregate transactions with the RBI. If this is properly taken care of, the overdraft problem of the States could be partly eased. There are, however, more fundamental structural reasons why such overdrafts occur, and reflect a fiscal imbalance in the budgets of State Governments. Contingencies like droughts and floods necessitate substantial non-plan expenditure, the maintenance of Government's assets and upgradation of standards of administration need over-increasing outlays if the services provided by Government are not to deteriorate, periodic Dearness Allowance instalments payments need to be made to employees, and yet in their quest for ensuring that the investment effort of State Governments is not sacrificed, the Annual Plan Outlays are projected. These create structural imbalances which result in States drawing on overdrafts from the Reserve Bank of India. More liberal ways and means limits are not a long-term solution for giving relief to States. Instead, a more candid appraisal of the pattern of States' expenditure is needed, and Central resource transfers (and the terms on which such transfers are made) need to be more sensitive to the pattern of States' expenditure.

5.22. This can certainly not be said of the taxation effort in Karnataka, which is among the best in the country. Indeed, as we argued in reply to Question 5.2, the prospects available to the State Government for generating substantial revenues through further tax increases are not optimistic. In addition, there are well-recognised institutional constraints in stepping up non-tax revenues, particularly from power and irrigation. Indeed, the additional taxation of the farming sector bristles with problems of acceptability throughout the country, and a national consensus will be essential if a general taxation of agricultural income is to be introduced.

5.23. We agree. That the returns of public sector investment have been disappointingly low is a matter of well documented fact : that there is substantial leakage in Central taxation in evidenced by the undoubted existence of the "parallel economy".

5.24. We agree that this will constitute a healthy convention, as it will instil confidence in State made after ascertaining their implications for State finances. This can be one of the useful functions of the Inter-State Council.

5.25. We agree with the view.

5.26. We fully endorse the view expressed. Given the substantial increase in railway passenger traffic, the grant in lieu of the passenger fares tax which is now given is an insignificant proportion of the passenger fares tax which would have accrued had the Act under which the tax was being given not been repealed in 1961.

5.27. The present arrangements do not appear to be unstisfactory.

5.28. Our views on the working of the arrangements in regard to the provision of Central assistance to the States for dealing with natural calamities are as follows :

(a) the level of margin money in the State budget ought to be kept at the present level·

(b) Central assistance for relief expenditure should be given outside the Plan

(c) the assistance towards drought relief ought to be given in the loan : grant ratio of 25 : 75; and

(d) Central assitance for floods, cyclones and earthquakes ought to be given as 100% grant.

In order that relief assistance given to State is put to its most effective use, it must be extended in good time in order to alleviate distress. Further, where

physical assets are sought to be created, minimal quality specifications should be ensured, and their subsequent maintenance be provided for.

5.29. While the constitution of such agencies may well serve a useful purpose, we feel that a multiplicity of such institutions may well prove unwieldy from the viewpoint of efficient decision-making.

However, we feel that there is a need for setting up of a National Credit Council under the aegis of the National Development Council. Its composition and functions are discussed in the State Government's Memorandum—pages 49 to 51. This apart, we could urge that the National Development Council and the Planning Commission themselves will have to be restructured to meet the new challenges of the total development process and the future functioning of the democracy. Our suggestions for re-structuring the National Development Council and the National Planning Commission are given in the State Government's Memorandum—pages 46 to 48.

5.30 Prudence in expenditure is clearly vital, particularly when resources are as scarce as they are in our country. However, in a federal system, the allocation of taxation powers and availability of resources for funding programmes at every level of the federation are euqally important. Besides, it is presumably not being argued that the Union Government has been prudent in its expenditure while the State Governments have not; in Karnataka we tend to believe quite the opposite.

5.31 We agree that the pattern and productivity of expenditure incurred by Union and State Governments ought to be periodically examined and assessed.

A National Expenditure Commission would serve this purpose very well. We, therefore, strongly urge the setting up of a National Expenditure Commission. However, such a Commission should be an ad-hoc one and not a standing Commission. This point is further elaborated in the State Government's Memorandum at pages 41 and 43.

As for the review of the Union expenditure annually, the Finance Commission should be able to carry out such a scrutiny. The Union Government instead of determining the terms of reference of the Commission should separately submit a Memorandum to the Finance Commission just as the States are asked to do. The Finance Commission should go into the Union Expenditures more thoroughly on the lines similar to those applied to the States.

5.32. In Karnataka we observe no operational problems. However, a periodic scrutiny of the form in which accounts are kept is generally desirable.

5.33. There is an urgent need to introduce evaluation audit in all major expenditure departments of Government (including Public Works, Irrigation, Industries, Health and Education), and we suggest that the present system of vouched audit be continued only where maintenance functions are largely performed. However, the general quality of audit will also need to be strengthened, and this will necessitate a strengthening of the audit wing in the office of the Accountant General.

5.34. We believe that the law is sufficiently flexible to permit the Comptroller and Auditor General to keep an effective watch on the expenditure of State Govts.

5.35. The reports of the Comptroller and Auditor General which are presented in the State Legislature are comprehensive, reasonable and accurate to enable the Legislature to take firm views in the matter.

5.36. The expenditure control available through the present mechanism of the Public Accounts Committee and the Public Undertakings Committee, with the help of Comptroller and Auditor-General, is satisfactory and sufficient. The effectiveness of the Public Accounts Committee and the Public Undertakings Committee will be greatly strengthened if reports of the C & AG are given to them well in time for their consideration. These bodies are able, if properly assisted and advised in their activities, to act as proper checks on the expenditure functions of the Government at the Centre and the States.

5.37. There is a need for defining more clearly the role of the Estimates Committees of the State Legislature. It would be highly beneficial if they look into wider aspects of policies and programmes and advise the Government on these matters, instead of replicating the role of the Public Accounts Committee of scrutinising Government expenditure.

5.38. The Comptroller and Auditor General of India as a Consititutional authority examines the propriety of the expenditure of the Union and State Governments. The objective of setting up an Expenditure Commission is wider : to look into the need and priorities of such expenditure and to give broad indications of whether certain kinds of expenditure are ultimately desirable.

5.39. Where State Governments are responsible for implementing a scheme, they should be authorised to decide the validity of expenditure under the scheme without the intervention of the Central administrative Ministry. The latter can set out broad administrative, physical and financial guidelines and monitor the working and implementation of such schemes.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The entries in the Union, State and Concurrent Lists in the Seventh Schedule of the Constitution represent a balance of functions and responsibilities between the Union Government and the State Governments. The planning Process would necessarily have to reflect this, and "Economic and Social Planning" is consequently an entry in the Concurrent List of the Seventh Schedule. However, in practice the degree of consultation necessary between the Centre and the States in order to make Planning a joint endeavour has not been forthcoming. The National Development Council has not emerged as an active forum for discussion and debate on the complexities of National Planning, and its deliberations have hitherto largely been reduced to a formal list of speeches made by its members.

In order to reactivate National Planning as a joint endeavour of the Centre and the State we suggest that the National Development Council should become the focal point of the national debate on planning.

We therefore suggest a thorough restructuring of the National Development Council so that it can be more effective. Similarly, we suggest restructuring of the Planning Commission. The restructured Planning Commission should serve as the Secretariat of the National Development Council. Our suggestions for restructuring and the functioning of the restructured National Development Council and the Planning Commission are given in the State Government's Memorandum—pages 46 to 48.

6.2. We agree with the proposal suggested.

6.3 We believe that consultation between the Planning Commission and the State Government in Planning process is very inadequate.

There is need for restructuring the Planning Commission and also set out new procedures for its functioning. Our detailed suggestions in this regard are given in the State Government's Memorandum —pages 47 to 49.

6.4 We believe it would be impractical to adopt the third view listed above making the Planning Commission independent of both the Union and State Governments, for there is then the danger of such a Commission acquiring a sovereignty of its own, unanswerable to either the Union or State Governments. We recognise that the Planning Commission must necessarily continue to remain an arm of the Union Government but must discharge its functions within a federal spirit, conscious of such a responsibility in the preparation of a National Plan. This requires, as already mentioned, the restructuring of the Planning Commission with professional experts and also the representation of Chief Ministers on the Zonal basis. The Prime Minister and the Planning Minister at the Central and also the Finance Minister of the Centre should be the Members. The Planning Commission should have no executive responsibilities in respect of either the Centre or the State Plans. The Central Government and to achieve this purpose its administrative budget should be shared equally by the Centre and the States as a whole.

Further suggestions about the staff of the Commission etc. and an elaboration of our above views are given in the State Government's Memorandum pages 47 to 49.

6.5. Please see our answer to question 6.4.

6.6. We fully endorse the view that national priorities must necessarily be incorporated in State Plans. However, such national priorities emerge as a consensus between the Union and State Governments and it is surely unnecessary for the Planning Commission to scrutinise the details of State Plans in order to ensure scrutiny at present extends to minute details of the specifications of all schemes proposed by the State Government. We would take the broad view that the Planning Commission should examine specific allocations by the State Government only for a few key sectors such as major and medium irrigation, large and medium industry, power and transport, while leaving allocations for other sectors to be determined by the State Government. Such modalities should guide the Annual Plan discussions.

6.7 We believe that the most critical issue in Central resource transfers in the funding of State Plans is the increasing irrelevance of the Government of India in appreciably supplementing State Governments resources for Plan finance, largely on account of the very high debt-servicing commitments which State Governments face. The general pattern of Central financial contributed to an acute debt-servicing problem, as is indicated below :

Debt-Servicing on Central Loans

Category	Unit	Karnataka		All States	
		Fifth Plan (1974-1978)	4 Years of Sixth plan 1980-84	Fifth Plan (1974-78)	4 years of Sixth Plan (1980-84)
Central Loans Received	Rs. Crores	284·0	556·3	5,173·4	12,571·9
Repayment of Principal	Rs. Crores	148·3	309·5	3,468·6	9,718·9
Payment of Interest	Rs. Crores	91·1	189·9	1,791·2	3,870·1
Total Amount paid	Rs. Crores	239·4	499·4	5,259·8	13,589.0
Principal Repaid as proportion of Central Loans received	%	52·2	55·6	67·0	101·7
Total Amount paid as proportion of Central Loans Received	%	84·7	89·8	101·7	108·1

It is apparent that during the first four years of the Sixth Plan the total quantum of Central loans received amounted to Rs. 556.3 crores. During this period the State Government repaid to the Government of India a principal amount of Rs. 309.5 crores and an interest of Rs. 189.9 crores, implying a total debt servicing commitment during this period of Rs. 499.4 crores. Thus, the debt-servicing commitment amounted to almost 90% of the gross loans received from the Union Government. It is also clear that the debt servicing problem is becoming increasingly acute over time and that, for all States put together, such a commitment is in fact more severe, as all States paid back as debt-servicing charges 8% more than they received from the Government of India.

In order to reduce the gravity of debt servicing obligations of the State, it is vital that State Government expenditure be divided into financially unremunerative, though possibly socially remunerative

expenditure on the other. (The former category would include all expenditure on revenue account as well as capital outlay on education, medical and health services, agricultural and industrial infrastructure, roads, and bridges, and irrigation works.) We recommend that the loan component should be in proportion to the financially remunerative expenditure incurred by the State Government. These will be broadly achieved if the loan : grant ratio of Central assistance is altered to 30 : 70.

Also please see our answer to question 5.17.

6.8. We take the view that the requirements of the economically weaker states is being taken care of under the Special Category States categorisation for purposes of determining Central Plan assistance, and that in the absence of a sizable expansion of the aggregate Central Plan assistance to all States, any modification of the existing formula for distribution will have to be determined in consultation with other States.

6.9. The extent to which equity considerations and objectives of balanced regional development and removal of poverty have been subserved by the pattern of Central Plan assistance are clearly difficult to assess in general, indeed the equitableness of the criteria used cannot be evaluated unless norms for equity are first defined. The modified Gadgil Formula has certainly not worked to Karnataka's benefit, as Karnataka has a population density less than the national average and has had a per capita income above the national average (as assessed by the Central Statistical Organisation). Nevertheless, even the most advantageous reordering (from Karnataka's point of view) of the Gadgil Formula is unlikely to lead to very substantial additional central resource transfers in favour of Karnataka, in comparison to the total State Plan size. As such we would like to argue that this issue is much less important than that of the increasing indebtedness of the State Government to the Union Government, as discussed in the reply to Question 6.7.

6.10. We agree with the view expressed. As the Sixth Plan has progressed, the total resources transferred under centrally sponsored and central sector schemes has continued to increase. Thus, as is indicated below, during 1978-79 the total resources transferred by the Union Government to Karnataka on such schemes was Rs. 40 crores, whereas during 1983-84, it is provisionally estimated to be Rs. 120 crores. Indeed, at the commencement of the Sixth Plan it was agreed by the Planning Commission that the total resource transfer under such schemes to Karnataka during the Sixth Plan period would amount to Rs. 61.32 crores. However, the total resources transferred in practice during the Sixth Plan is expected to be Rs. 409.44 crores.

Central Plan Resources Transferred to Karnataka

	Amount (Rs. crores)			Proportion (%)		
	1973-74	1978-79	1983-84	1973-1974	1978-1979	1983-1984
Under Gadgil Formula	35·5	87·5	98·6	40·2	27·5	13·1
For Externally Aided Projects	..	..	22·4	..	..	3·0
Additional Plan Assistance	..	..	..	..	..	..
Total Central Resources for State Plans	35.5	87·5	121.0	40·2	27·5	16·1
(TOTAL STATE PLAN)	(69·9)	(277·)	(630·5)	(79·2)	(87·4)	(84·0)
For Centrally Sponsored & Central Sector Schemes	18·4	40·0	120.0	20·8	12·6	16·0
Total Plan Resource Transfer from the Centre	53·9	127.5	241·0	61·0	40·1	32·1
TOTAL STATE PLAN & CENTRALLY SPONSORED/ CENTRAL SECTOR SCHEMES	88·3	317·9	750·5	100.0	100·0	100·0

At the commencement of the Fourth Plan the National Development Council resolved to limit the Central assistance under such schemes to one-sixth of the quantum of aggregate Central assistance for State Plans, and also felt that these schemes should conform to certain desirable guidelines like constituting inter-State schemes or being significant from a national point of view. At present the Central resource transfer under such schemes equals the Central resource transfer for funding the State Plan. We strongly urge that the intentions expressed by the National Development Council at the commencement of the Fourth Plan be implemented.

6.11 It is doubtful whether the monitoring and evaluation functions are performed with the degree of vigour necessary, in either the Government of India or the State Governments. In Karnataka, however, monitoring of the implementation of Plan programmes has been considerably tightened during the last two years through the institution of a system known as the monthly Multi-level Reviews, which operates at the State; district and taluka levels. However, if monitoring and evaluation are to be organically linked to the working of Government departments, Government departments need to be more strongly aware of the utility of these functions; it is also vital that appropriately qualified professional staff be induced for the purpose.

6.12 We strongly believe that decentralised planning is integral to "cooperative federalism" in our planning system. Indeed, such decentralised planning will have to extend much below the State level. In this spirit, Karnataka will shortly be introducing a Zilla Parishad structure of local government and it is essential that Zilla Parishads are given planning manoeuvreability and do not, for instance find that the Seventh Plan is cast in a mould which takes away flexibility in planning. For the planning process to

be accordingly decentralised, it is necessary for Annual Plan discussions (including the sanctioning of Annual Plans by the Planning Commission) to be responsive to the need for such decentralised planning.

Further elaboration of this point is given in the State Government's Memorandum pages 51 to 54 dealing with Decentralised planning.

6.13 In Karnataka the Planning machinery has been greatly strengthened during the last decade and a number of professionally qualified specialists have been inducted into the Planning Department to assist in Plan formulation, evaluation and monitoring, as well as in conducting special studies which are helpful to the planning process. The Planning Department is headed by a professional economist as its Secretary. The resultant benefits to the planning process at the State level have been considerable. For the expertise so inducted to be more widely beneficial to the State Government, it is now necessary that such specialists participate more directly in the core of decision-making within Government.

Whether the National Plan should become progressively more indicative and less imperative as on issue more contingent on ideology than on the efficacy of the State Planning process. As long as ours remains a mixed economy, the National Plan would clearly have to combine imperative and indicative aspects in relation to different sectors of the economy as well as in relation to the experience of developmental activity as managed by the Union Government, the State Governments and the Private Sector, In any case, much of the National Planning activity today is indicative, with Private Sector investment constituting roughly half the National Plan.

PART VII

MISCELLANEOUS

Industries

7.1 We agree with the view expressed as the addition of a substantial number of industries to the Union List in the Seventh Schedule has considerably diluted the efficacy of policy initiatives of the State Government to induce industrial development within the State. Indeed, the power of licensing has been used by the Union Government in ways which are felt to be increasingly arbitrary, and licences are granted less on techno-economic viability considerations and more on grounds of specific political preferences on the location of industries. Whereas, we believe there should be a wider dispersal of industries throughout the country, such industries will surely build in losses from the outset if they are located on criteria other than techno-economic and financial viability considerations. The following instances indicate that the power of licensing has been used in a manner divorced from sound investment principles and have also been detrimental to Karnataka's interest

(a) The Tata Engineering and Locomotive Company had proposed to set up their third unit for the manufacture of chassis, and had selected Dharwad in Karnataka as their best location, While obtaining permission for this, the Government of India suggested to TELCO that their unit should instead be located in Uttar Pradesh and TELCO were asked to submit their application for a licence accordingly

(b) Glaxos and the Karnataka State Industrial Investment and Development Corporation intended to set up a unit of Texdrose Monohydrate and Allied Products (based on maize) in Bellary District. A letter of intent has been issued. However, the Union Government has been attempting to induce Glaxos to put up the unit elsewhere in the country.

(c) The Tractors India Limited have applied for locating a unit for the manufacture of earth moving equipment in Karnataka. The Company is being asked by the Union Government to put up the plant elsewhere.

(d) A number of entrepreneurs have applied for establishing mini-cement plants in Karnataka. These have been rejected by the Union Government on the ground that Karnataka is already a surplus State so far as cement is concerned. (it should be noted that the cement industry is not a foot-loose industry and has necessarily to be close to areas where limestone deposits are available. Further, the present policy of distribution of levy cement is such that although Karnataka is surplus in the manufacture of cement, it obtains less than a quarter of its requirements from the Government of India.

7.2 (i) We strongly urge that the term "National Public Interest" be more clearly defined in order to circumscribe its scope. We believe broadly that invoking considerations of public interest in the context of national control over an industry is justifiable mainly from the view point of the total capacity which ought to be set up for that particular industry within the country with reference to the demand (including demand for exports) for the product from that industry. Such an interpretation of the term "public interest" in Item 52 of List I of the Seventh Schedule would not take away from the Union Government its existing wide powers to establish defence industries (under item 7 of List I), or to regulate monopolistic tendencies in industrial structure by placing constraints on the future expansion of large business houses Further, the balance between the public and private sectors can continue in the manner envisaged in the Industrial Policy Resolution. What is now being sought is not a dilution of the scope of the public sector but rather of its more efficient apportionment between the Union Government and the State Governments.

(ii) We believe that all items pertaining to household consumption goods can be deleted from the First Schedule to the Industries (Development and Regulation) Act, 1951. These include commodities like matchsticks, soaps, paints, varnishes, weighing machines, sewing machines, lanterns, furniture and cutlery. If necessary, the production of these commodities could be reserved for the small-scale sector.

7.3 We urge strongly that State Governments should be empowered henceforth to issue industrial licences to all industries with a maximum capital investment not exceeding Rs. 20 crores. Such decentralisation of powers to State Governments would continue to be

subject to the Industrial Policy Resolution (which prescribes the areas reserve for the public sector) as well as the assessments made by the Union Government of the desirability of new investments in different industrial sectors (as indicated by the Union Government, for instance, in its annual "Guidelines to industrial Policy").

State Governments should also concomitantly be authorised to sanction imports of capital, raw-materials and technology (though foreign collaboration) required for the establishment of these industries, through a block allotment of a specified quantum of foreign exchange for this purpose. Again, the Union Government would, of course, retain overall policy flexibility through the formulation of detailed guidelines regarding National Import Policy as well as procedures and norms for making such imports.

7.4 We believe that Karnataka has organised itself sufficiently to support the small scale industrial sector in its many aspects of making available raw materials, providing marketing support and ensuring finance availability through the State Finance Corporation and commercial banks. The main constrant in extending further support emanates primarily from the controls exercised by the Union Government. For instance, pig iron, steel, coke, coal, wax and cement are among the main raw materials for small scale industries and these are completely controlled by the Government of India. Further, several infrastructural and handling facilities which industries need are also exclusively controlled by the Union Government and its agencies.

7.5 In certain instances the Union Government has issued directions, formally or otherwise, asking them to delay or deny financial assistance to specified industrial units. We believe that checks and balances ought to be introduced against such directions from the Union Government and for this purpose State Government representatives should be appointed to the Boards of these financing institutions. We suggest the setting up of a National Credit Council, the structure and functioning of which has been discussed in detail in the State Government's Memorandum pages 46 to 48.

7.6 We agree that States are insufficiently consulted in matters of the location of Central investments in the public sector. Indeed, we would go further and argue that even where decisions for locating specific Central investments in Karnataka, have justified on techno-economic grounds Union Government directions have sought to locate such investments outside the State. For instance, the Indian Telephone Industries had proposed the establishments of an Electronic Telephone Exchanges manufacturing unit near Bangalore, in view of the excellent infrastructure for electronics already available there and in order to preclude the displacement of the existing labour force in Bangalore. However, the Union Government decided that the industry should instead be set up in Gonda in Uttar Pradesh where no infrastructural facilities are available.. Similarly, a Final Site Selection Committee had recommended the establishment of an oil refinery at Mangalore and this has been under the consideration of the Union Government for some considerable time. Despite this; we are led to believe that the Union Government has instead decided to set up its next refinery at Karnal in Haryana. Similarly, techno-economic considerations had led to the selection of Hospet as the site for the Integrated Steel Plant to be set up by the Government of India and a foundation stone for this purpose was laid by the then Prime Minister in 1971. However, the Union Government has subsequently decided that Paradeep in Orissa and Vishakapatnam in Andhra Pradesh should be selected as sites for future steel plants, on considerations which we strongly believe to be other than purely techno-economic.

7.7 We agree that there appears to be little rationality in the investment policies of the Union public sector, particularly in heavy industries. We also believe that Karnataka has generally been neglected, despite its strong industrial infrastructure and excellent resource base. We would argue that the main criterion for deciding on the location of central investment should be techno-economic.

7.8 We believe, from the industrial experience of the last 3 decades, that the basis for declaring areas as backward for industrial development should not be the district. Instead we believe that Union Government incentives are likely to be more effective if they are based on smaller areas (like Taluks), with their potential for industrialisation being assessed by the State Government.

Trade and Commerce

8.1 We welcome the constiution of such an authority under Article 307: We recognise that a variety of impediments and restrictions exist on intra-State and inter-State trade, the precise implications of which are sometimes difficult to perceive. It is clear, for instance, that the absence of uniformity in the sales tax leviable on commodities causes avoidable diversion of trade and also leads to a general damper on certain kinds of trade. Octrai taxes similarly hamper the easy movement of goods. The scope of the proposed authority would therefore need to cover issues of Centre-State and inter-State relations in trade and commerce as well as issues arising between Governments collectively on the one hand and private representatives of trade and commerce as well as the individual consumer, on the other.

Agriculture

9.1 We agree with the observations of the Study Team of the Administrative Reforms Commission on Centre-State Relations. The position has, in fact, worsened since 1967 and the control exercised by the Union Ministry of Agriculture in determining agricultural policy at the State level has greatly multiplied, such control is in large measure also exercised through Central resource transfers to States on Centrally Sponsored Schemes.

9.2 We agree with the observations of the National Commission on Agriculture, as viable strategies for agricultural development are acutely sensitive to local conditions and are therefore more appropriately devised at the State level. The responsibility of the Government of India should more appropriately lie in developing the research base for agriculture and in reinforcing arrangements for agricultural inputs supply and marketing.

9.3 Effective cooperation, as envisaged by the National Commission on Agriculture, does not exist at present. There is no prior consultation on association with the State Government during the formulation of Centrally Sponsored Schemes. Generally, such schemes, when devised, are presented to the State Government during the middle of the financial year and the State Government is at that juncture very hard pressed to make the 50% matching contribution necessary for implementing such schemes. It also negates the very purpose of the Annual Plan. Indeed, the only opportunity the State Government gets for discussing such schemes with the Government of India is during the Annual Plan discussions and it does appear desirable that new Centrally Sponsored Schemes for the following year be formulated well before those discussions.

9.4 The Union Government's initiative in fixing the support prices for selected agricultural commodities and of the issues price under the public distribution system (PDS) ensures that little policy manoeuvrability remains with the State Government. This is so because the issue price under the PDS is essentially a mark-up over the support price (which is also the procurement price), the mark-up representing transport and storage costs, as well as administrative costs. Consequently, the only way left to the State Government to raise the procurement price without a commensurate increase in the issue price under the PDS, is by incurring expenditure on subsidies. There are clearly limits to the exercise of such an option. It is, therefore, very essential that the costing of inputs in the production of agricultural crops be sensitively done by the Agricultural Prices Commission and that before support prices are announced there is active consultation with the State Governments.

9.5 The rapid implementation of several agricultural developmental programmes is being continually impeded on account of excessive centralisation both in the ICAR and in NABARD. As much of the research conducted by ICAR adaptive research, its utility and implications for agricultural productivity necessarily depend on flexible coordination with State Government research and extension agencies. Such coordination is at present largely absent, and ICAR institutions located within Karnataka often make recommendations at variance with those made by State Governments agencies, thus sometimes causing embarrassment to field extension staff and confusion to farmers. Similarly, as NABARD his essentially a refinancing agency for cooperative short term and long term agricultural financing institutions within the State (and to a lesser extent for commercial and regional rural banks) the primary assessment of bankability and creditworthiness of an investment is being done by these financial institutions within the State. Any additional technical or financial preconditions imposed by NABARD (some of which require commitments from the State Government) result typically in delaying the financing of schemes and a deceleration in transferring credit to agriculture.

Food and Civil Supplies

10.1 There is considerable scope for improving Centre-State relations in the procurement, pricing, movement and distribution of foodgrains and other essential commodities. Thus, although the entire food procurement of the State Government is handed over to the Central Pool, its quantum appears largely unconnected with the allotment of food-grains to the State Government for the Public Distribution System (PDS). It is desirable that the allotment of foodgrains should be related as much to the procurement effort as to the foodgrains requirement in each State. Similarly, the Union Government unilaterally fixes the issue price of each commodity under the PDS as well as permissible wholesale, retail and other administrative charges, without consulting the State Government. Similarly, storage capacity is built by Central Government agencies like the Central Warehousing Corporation without ascertaining actual-storage requirements from the State Governments.

In all such cases, much greater consultation with State Governments is imperative. As the food situation each year is highly sensitive to the pattern of the monsoon, such consultation should extend to the formulation of an annual food policy merging through a consensus between the Centre and States, such a consensus occurring at an appropriately high-level consultative forum.

10.2 Such periodic reviews appear very necessary.

Education

11.1 There does not appear to be much justification in the criticism that there is too much Central interference in the initiative and authority of the States. The critical constraint in achieving greater progress is rather one of financial resources. Indeed, the need for a national perspective in matters of ensuring uniform and high standards in higher education cannot be lightly brushed aside and the Union Government has a definite role in this.

11.2 Although the University Grants Commission is conceived of as the main agency for determining and coordinating standards for higher education and research, its effectiveness in influencing standards of University Education has hitherto been frankly limited. It has been functioning more as a grant giving body (though even in this its resources are inadequate and its sanctions are received late during the Plan period). It is vital, however, that national policy norms for higher education emerge and strongly influence Universities in all States if differential standards of higher education are not to be further accentuated. Whether the UGC is the most appropriate organisation for fostering such standards or whether, instead, a body with wider specialisations needs to be constituted, would need examination.

Conditions imposed by the UGC for releasing financial assistance to Universities are also often unrelated to the broad intent behind these conditions. Thus, for instance, two new Universities were constituted in Karnataka in 1980, at Mangalore and Gulbarga. These Universities have fulfilled all the conditions imposed by the UGC in matters of minimum assets, staff and facilities for teaching research, and student amenities. However, the Universities Act has not yet been amended in accordance with the suggestions of the UGC (such amendment being a longer drawn out process than the UGC'gives credit for). As a consequence, the 2 new Universities are yet to be declared fit for financial assistance from the UGC,

11.3 The existing forums for consultation and discussion, particularly the Central Advisory Board for Education and the All India Council of Technical Education, should be vastly strengthened and, if necessary, made into statutory bodies. This is particularly necessary in Technical Education, where institutions have proliferated in the country in a relatively disorderly manner, and where the All India Council of Technical Education, being only an Advisory Body, does not have powers comparable to the Indian Medical Council.

11.4 While the rights to Minorities under Articles 29 and 30 need to be enforced, there appears to be insufficient clarity on the precise criteria to be adopted in determining what is a minority educational institution. It is generally accepted that a minority educational institution should be for the benefit largely of that minority community (with some benefits also going to those in other communities). However, as such minority educational institutions possess the right to regulate admissions, many institutions are now run so as to benefit largely those outside the minority community. The impetus for setting up such institutions, therefore, can sometimes be one of commercial exploitation under the cover of minority protection. Such a contingency was perhaps unrecognised when the Constitution was framed, and a suitable amendment to preclude such a contingency seems desirable, through a clearer definition of what constitutes a minority educational institution.

11.5 No specific instances of conflicts or issues exist as far as Karnataka is concerned.

Inter-Governmental Co-ordination

12.1 We feel that the Inter-State Council as suggested earlier by us, should be activated and it should become a forum for discussing problems of Centre-State issues and also the problems among the States. The Inter-State Council, the restructured National Development Council and its Standing Committees should be able to study these problems and sort them out. This point is elaborated in the State Government's Memorandum pages 19 and 20 dealing with Inter-State Council, pages 46 to 48 dealing with the restructuring of the National Development Council, pages 47 to 48 dealing with restructuring of the Planning Commission and pages 49 to 51 dealing with the National Credit Council.

Note of the Government of Karnataka on the proposed Inter-State Council

1. **Formation** : The present proviso for forming an Inter-State Council under article 263 is not satisfactory. It envisages the formation of such a Council as and when the need arises. On the contrary, Karnataka Government proposes the formation of an Inter-State Council as a standing body which shall be continuously at work holding its Sessions at a specific periodicity like once in 3 months.

2. **Composition** : The Inter-State Council should have:--

(a) the Prime Minister as Chairman;

(b) it should have 8 Chief Ministers, 2 to be represented from each of the 4 zones like North, South, East, West. The Chief Ministers will be selected by rotation each year;

(c) Chief Ministers of such States which are involved in the matters that are to be discussed at the meeting of the Inter-State Council shall be invitee members in case they are not already on the Council as members under the rotation principle; and

(d) Ministers of the Central Government dealing with the subjects which are discussed in the Inter-State Council shall also be invitee members.

For the inclusion of the Chief Ministers, alphabetical order shall be followed within each zone.

3. **Functions** : (1) The Inter-State Council can serve as a forum for discussions between the Union and the States on all matters of policies and programmes which involve inter-dependence between the Union and the States.

(2) To discuss the effects of the Union policies on the States.

(3) To provide for consultation in the matter of excise duties which are to be levied by the Union.

(4) To provide coordination of taxation policies between the Union and the States and among the States.

(5) To discuss issues relating to regional imbalances.

(6) To deal with matters of mutual economic cooperation among the States.

(7) To discuss matters of Central investment in the different States or regions.

(8) To assist in the sorting out of problems that may arise in the process of harnessing the natural resources and their development for the benefit of the country as a whole.

(9) To work out the general approach to the problems of Immigration, imposing disproportionate burden on the concerned States and to evolve appropriate measures of assistance from the Centre to such States.

(10) To assist in the solving of national problems which may appear to have a regional base for their origin.

(11) Other subjects which may be proposed by the Prime Minister or the Chief Ministers.

4. **Procedure** : The Inter-State Council shall meet at the different State Capitals on a rotation principle followed in an alphabetical order. While recommendations of the Inter-State Council will broadly be of an advisory nature. The spirit should be one of accepting and implementing the recommendations of the Inter-State Council.

5. **Secretariat :** There should be a permanent and a separate Secretariat for the Inter-State Council. An officer of the rank of the Chief Secretary of State/ Secretary of the Union Government should serve as a full-time Secretary of the Inter-State Council. He should have the assistance of both subject specialists and expert administrators. On the permanent staff there may be about 4 or 5 such officers. Depending upon the nature of the subject to be discussed by the Council, the Secretariat can draft the services of other experts or consultants from outside for a specific assignment and for a specific period. In short, the Secretariat of the Inter-State Council should be competent to prepare exhaustive notes on the agenda after receiving the suggestions regarding the agenda items from the members. It should also serve as a memory of the past decisions and deliberations. The cost of the Secretariat can be shared between the Union and the States in the ratio of 1:2.

Karnataka

MEMORANDUM

General Considerations

The question of federal relations in India needs to be perceived in the largest context of the future of democracy and the Institutional Framework required to ensure its survival in the face of a host of challenges and threats. It is because of this larger concern that the issue of centralization versus decentralization (of which Union-State relations are only one part) has acquired a new resonance. It has to be seen within the larger perspective of a matrix of interlocking issues (i) of the deteriorating economic conditions and marginalisation of millions of human beings; (ii) the political context of a sharp deterioration of democratic institutions; (iii) in terms of the nature and role of the State in India and (iv) in the social context where direct confrontation between the owing classes and castes and those at the lower rungs of society is turning more and more desperate and violent and also where centralisation of power and resources and decision-making is not ceasing at the national frontiers but is making the country 'conform to external calls, criteria, and conditionalities'. It is clear, by now, that both the increasingly anti-people and repressive character of the Indian State and its growing vulnerability *vis-a-vis* the external world, that both the growing marginalisation of the poor at home and the marginalisation of India in the international setting, its internal disunity and its lack of external viability, can be related to the decline of functioning institutions, and the consequent centralisation, arbitrariness, and pathological dependence on dominant individuals.

The Central point in grasping with our political reality is a lack of fit, indeed a major hiatus, between our institutional set-up and the democratic ideology it is supposed to serve. There is a wide and widening-gap between the wielders of power and the people in whose name it is wielded, between the centres of decision-making and groups, communities and regions affected by the decisions.

A Central dilemma informs the nature of democracy in India. The growing expectations generated by the dynamism of democratic politics has led to quickening of mass perceptions without a commensurate increase in elite capabilities. Intense periods of political mobilization of rural areas, the youth and diverse streams of social activists have led to a wide dispersal of awareness and incipient assertion of will against age-old structures. Yet, at the top there is apoplexy, isolation and lack of will and elan. In a word, the superstructure of the polity has been found lagging far behind its base.

Such a lag is mass perceptions and elite capabilities has contributed to widening distance between the rulers and the people and an accentuation of various gaps in the system. While the vast majority of the population is to be found in the rural areas and small and medium size, towns, almost all the decisions that affect them are taken in a few metropolitan centres. It is not surprising therefore that while successive governments at the Centre have announced welfare policies (*e.g.*, in health, education and housing) aimed at reaching the rural masses in the forms they needed and could afford, in reality the distribution of resources and talents has continued to be in the reverse direction.

Nor is it surprising that agricultural prices and other policies that lead to either sudden glut or sudden scarcity of commodities are all influenced far more by urban middle class opinion then by the interests of the producing classes. A little inflation is far more dreaded than massive unemployment and under-employment, agitations of central government employees for D.A. increases are far more successful than demands for fixation of rural wages, pressures for maintaining metropolitan lifestyles are far more effective than arguments for increased investment in rural public works and development projects for raising employment and incomes of the rural poor.

The widening gap between classes and regions and our continuing state of under development have, no doubt, been matters of much concern to our leaders and intellectuals. It has in the past led to two main sets of prescriptions. For quite some time after the discovery of widening disparities in living conditions of our people in the fifties, the main thrust of prescriptions has been redistributive through land reforms, ceilings on incomes and wealth, and fiscal measures without disturbing the general framework of the strategy of economic development.

Towards the end of the sixties a different strand of thinking emerged which, while it did not underplay the importance of redistributive measures, found the development strategy itself faulty, or at any rate necessary to shift. It emphasized the need to move towards an alternative framework of economic policy which, among other things, focussed directly on the creation of employment and incomes of the rural poor. Both the early renouncement after the 'garibi hatao' election of 1971 and the election of March 1977 emphasized the need for an alternative model of economic development (though both kept the redistributive goal alive).

Unfortunately, both the redistributive and the alternative development perspectives, though undoubtedly political in their overall objective are highly a political and technocratic in their policy prescriptions. They both rely largely on policy pronouncements and their legislative and administrative

implementation without however, simultaneously changing the constellation of interest and the distribution of power in society. There is need therefore for a third and more basic approach to the achievement of a just social order which, without detracting from the other two objectives (redistributive policies and an alternative economic strategy aimed directly at improving the condition of the poor), makes them part of a more comprehensive approach to the development process.

In moving towards such an approach, it is essential to grasp that the course of economic development is vitally determined by the structure of political power, that both the general misdirections of development strategy and its inequitous consequences owe a great deal to the immense concentration of authority in a small elite at the apex of the system. This has always been so. It is inherent in our constitutional framework (despite laudable 'directive principles'). Its politically undemocratic and socially exploitative character were held in check in the first long phase of nation-building when an enlightened patternalism at the top (under Nehru) was combined with a significant assertion of authority at lower levels thanks to the considerable stature and popular base of State and local level leaders and the highly open and plural character of the Congress Party.

With the passing of the 'tall men' of Indian politics who occupied positions of authority at so many levels both inside and outside government, and with the gradual closure of the political process within the Congress and the undermining of State and local level and other autonomous institutions, the centralizing tendencies inherent in the Constitution which was based on the Westminster Model came to the force. With this there took place a strong convergence of vested interests that supported such a structure of power the bureaucracy, big business, the professional middle class, police and intelligence agencies, and political upstarts mouthing progressive slogans and in their name constructing an undemocratic, exploitative and repressive structure of State power.

We have a half-hearted democratic framework, a centrally monitored federal set-up, an all India officialdom that over powers representative bodies at all levels and centralizes relations between them, and a highly centralised party hierarchy. Such centralisation of structure of power necessarily produces reactions to it in its own image. The growing tendency of directing popular agitations oppositional politics and groups demands to the government in New Delhi is a direct consequence of the undermining of a plural and multi-tier structure of power.

The local and intermediate level buffers that were earlier available for absorbing tensions of all kinds have been undermined following the rise of centralised politics with the result that just as layalties and accountability are required to be directed to the Centre, resentments and confrontations also get centrally directed. With this the day-to-day load on the Centre has greatly increased, longer term perspectives and policy planning have been at discount and despite the striking infusions of fresh currents with every major election of late—1967, 1971, 1977, 1980—the polity has continued to be basically a stagnant pool.

The heart of the matter is that the entire post 1969 experiment at structuring political power on the basis of a strong central authority, a shift of initiative from a federated and decentralised party system to a unified bureaucratic apparatus, and a political style based on personal charisma with a view to provide identity and legitimacy to the experiment has failed. The last five years have finally established beyond any doubt a proposition that was apparent throughout the seventies and to which attention was drawn by a few but which was not taken too seriously by others. It is that a centralised state modelled on Western style parliamentary democracy in which effective power rests with the executive and within the executive with the Prime Minister (or President) is just not suitable to a highly diverse, socially plural (as against just political pluralism of the West) and culturally multi-centered society like ours which is continental in both size and complexity.

From this proposition follows another critical one namely that the only alternative to a decentralised and genuinely democratic political system in a country like India is the gradual dissipation, erosion and ultimate disintegration of the state as well as the nation. There are already many signs of this—the power of the regional satraps has increased, parochial tendencies of region and caste are very much on the upsurge, at lower levels contractors and wheeler-dealers in money and muscle power are in command. All in all, the authority of the Centre is getting eroded, including that of the office of the Prime Minister.

Such is the overall setting of the basic problematique of Indian politics, namely, the inequitous character of social change in a polity that claims to be democratic. It is against this setting that the issue of State autonomy within an overall framework of political and administrative decentralization needs to be considered. The issue of authonomy at Lower levels of the polity has often been posed in too mechanical a manner, as if it was simply a matter of jurisdictional divisions between different territorial units. This has given rise to uncalled for anxiety even among well meaning people, as if a great share of power and resources by the State will weaken the Centre and devolution of power still further below will encourage 'centrifugal tendencies', or that if some of the large States are split, the result will be disintegration of the country.

Perhaps, the proponents of decentralization have presented their case in a manner that gives rise to such anxiety through a good part of it follows from a leadership steeped in Western values that has not quite understood the compulsions of operating a democratic polity in a socially plural and regionally unbalanced society. What is lost sight of in the latter's understandable concern with preserving 'unity at all costs' is that a unity based on perpetuation of inequity and disparities is phoney and will give way before long.

The real case for autonomy rests not on the claims of territorial rights of juridical entities or political parties but on the comprehension, based on experience

that in a country like India a centralised polity is incapable of dealing with an unjust social order that it is inimical to the democratic political process, and that it is inherently unstable.

The real beneficiaries of centralised polity are those who have little regard for democratic norms (or believe that democracy and adult franchise are unsuited to a poor country) the managerial class, the technocrats, the English language press, large parts of the intelligentia who get both their sense of potency from grandiose symbols of authority and national power. Left to themselves, these votaries of a centralised State would do away with politics as such.

The case for centralisation has been based on a series of arguments most of which happen to be specious. The most clever of these arguments, one that carries weight with many people (especially the intellectuals), is that the Central Government is more enlightened than the State Governments and the State Governments more so than local elected bodies which tend to be dominated by local vested interests and the upper castes. This is a clever argument because it smoothly papers over the vested interests and upper caste character of the elites at the higher levels, it advances a progressive argument for perpetuating the status quo, and it subtly condemns the vast rural hinterland in which eight per cent of our people live to a Hobson's choice; surrender of political rights to higher level elites, or surrender of economic benefits to the local elite. One is reminded of one's colonial past; you can either have self-government or good government, but not both. In the new setting the assumption is that only the Centre can provide good government.

Evidence for this point of view is cited from stories about atrocities on harijans and the extremes to which 'casteism' goes when there is tussle for power in rural areas. The much larger incidence the banality of violence in the cities, the large majority of the victims of which are the poor and the destitute, the systematic segregation of the harijan and lower caste bastis, the dastardly behaviour towards women and the indecencies hurled against the children of the urban poor, the genecidal acts against religious minorities, and the growing number of professional 'goondas' who are hired by the powerful and the well-to-do to terrorize and where necessary bump off rivals and enemies are all forgotten in this display of generosity and fair play towards the rural poor.

The point is that a splashing news story on rural repression fulfils the psychic need of newspaper editors and their patrons far more than does evidence of the rot around them. Also, any systematic analysis of the latter will soon expose their own involvement in a system of privilege and exploitation that pervades the whole society. More important for the analysis presented here is the fact that the position of the poor and the weak in the rural areas will not improve so long as power and decision making remain outside their reach. It is not until the levers of State power move downwards that the poor majorities can aspire to stake a claim in them and use it against their traditional exploiters. Concentration of power and resources at higher levels necessarily limits their availability at lower levels and therefore concentrates them there also.

The same analysis applies to the argument that increase in the power of the States will not improve the condition of the backward regions which is the responsibility of the Centre. Yet, what does our experience show? More than twenty-five years of centralized planning decision making has only widened regional disparities. To think that backwardness of backward regions can be removed without allowing them to take the vital decisions that affect them which—means giving them the power to do so is to fly against all facts. It is simply wrong to expect that disparities in development, whether regional or between classes, can be rectified without involvement and participation of the people concerned.

We can no restate our basic analysis in a set of propositions. (1) The Indian political system has been in a stagnant position for many years and now funds itself in a deadlock. Neither the authoritarian nor the Westminster style parliamentary democracy approach seems to work. The main snag in both is the centralization of the political process; intended and deliberate in one, innate in the other. Nor is restructuring along an alternative framework of development possible without opening up the democratic structure and moving it closer to the base.

(2) The existence of massive poverty has all these years been made (an excuse for concentrating power and resources at the Centre), presumably because it could deal with it better. For some time, failure to do so was ascribed to local vested interests. Later, it was felt that the policies were not right and there was need for an alternative framework of policy. It is now clear that the biggest vested interests emanate from the nature of the Indian State and that no amount of tinkering with policy will change things. What needs to be changed is the nature of the State and the statist assumption that the problems of the people can be resolved through the machinery of the State.

The statist assumption is in turn based on a fundamentally technological view of human problems. This is the view that deep-seated social maladies like the pervasive poverty based on a state of deprivation can be removed by technological means only. We know that this is not true, that the removal of such deep-seated social maladies is an essentially political task, a task in which the people who are most affected participate in making the decisions that affect them. Building such a structure of participation is far more important for the removal of social and economic ills that are development programmes from above, no matter how well-conceived they are.

(3) Such a structure of participation is inherent in the democratic premise on which the Indian polity is supposed to be based. But the pre-existing State did not permit such a polity to evolve. It was a colonial State drawing its authority from the masters and not from the people. This State still survives, even if in an attenuated form. There is a new set of masters in command but many elements of colonial rule still persist and there does exist a measure of colonial relationship between New Delhi and lower down.

(4) To move towards a structure of democratic participation if the type discussed here necessarily involves changing the structure of the State. This

involves a change in power relationships between the Centre, the State and lower down. Without such change, Indian democracy is bound to run into a deadlock and sooner or later flounder. The sway and power of charisma is in direct proportion to the lack of structure and institutionalisation of the political process. Only a decentralized State can provide such institutional safeguards against the cult of personality and role of charisma. Everything seems to point to the need for decentralization. It is indeed an historic necessity.

(5) Is it possible to move towards decentralization without providing greater autonomy and commensurate resources to the States? We do not think so. Merely holding elections of panchayats and municipalities does not mean decentralisation. They need to have significant power and resources to work with and they need to be organised vertically through functional inter-relationships along various tiers reaching out to the State level. But this is not possible without first (or simultaneously) endowing the States themselves with significant power and resources.

(6) There are two opposite temptations that the Centre and the States must respectively avoid. One is the Bismarckian notion of a direct appeal to lower levels without permitting intermediate structures to grow; the modern version of this is populism. The other danger is in the opposite direction namely, the growth of regional overlords through the increased power of the States which is not shared further down. To steer clear of both these dangers, it is essential to agree that greater autonomy for the states is at once part of a larger process of decentralization and an essential pre-requisite thereof.

(7) Two other corrolaries are necessary in the Indian case. First, it is not difficult to provide autonomy at the levels of existing States; in many of them there is need to provide autonomy to important regions within the State. Second, there is a genuine fear that the more prosperous and powerful States will benefit more from the process of devolution. This should at all costs be avoided. Indeed, one of the justifications of greater autonomy at the State level is that it will put an end to the present situation in which advanced States get the better of the others by virtue of their pull at the Centre. The new strategy should be to both allow a large measure of selfreliance at the State level so that hitherto untapped potentials are released— this itself will begin to narrow disparities and at the same time provide transitional correctives by weighted allocations and transfers.

(8) Such corrolaries only underline the ultimate aim of any democratic restructuring: enabling the people to participate in shaping their collective future. Political decentralization is only a means to this and federalism a means to that means. Institutional structures by themselves produce no change; so much depends on the interst, the vigilance and the organization of the people themselves. But in the absence of an institutional structure that responds to people's initiatives it is not possible to mount them. Indeed, institutional innovations designed to respond to historic needs from time to time provide the stuff of a dynamic polity. The difficulty with a functioning democracy is that it so much disarms the people that a revolutionary upheaval becomes difficult to mount. But the great thing about a functioning democracy is that it can itself become a vehicle of revolutionary change through structural change in response to historic needs. And it can do this without upheaval. But if it fails to do this for long , its future is in peril. Indian democracy faces this challenge at the present time.

Having laid out the larger perspective of Union State relations and the specific propositions that follow from it, we can briefly address ourselves to the institutional initiatives/correctives that a healthy federal process calls for.

Legislative Relations

India, according to Article 1 of the Constitution shall be a Union of States. Article 2 empowers Parliament to admit by law into the Union, or establish new States on such terms and conditions as it thinks fit. According to Article 3 Parliament may by law form a New State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State. The Parliament may also by law increase or diminish the area of any State or alter it boundaries or name.

While giving the power in article 3 to the Parliament to form new States, it was also provided that no bill for this purpose may be introduced in Parliament except in the recommendation of the President after he has ascertained the views of the legislatures of the States concerned. The constitution provides for consultation with the State legislature but there is nothing which makes it obligatory for the Parliament to accept the views of the legislature of the State concerned. The fact that it is open to the Parliament to alter or even do away with the very existence of a State and to create in its place a number of States or to create another State by amalgamating its territory with some other areas shows that the very existence of the States as also the extent of their boundaries is at the mercy of the Central Parliament and that the latter can tamper with it by passing a Bill with simple majority. There is not even the requirement of a particular number of members in each house of the Parliament, apart from the requirement of quorum, for the passing of such a Bill. Such a law is not an amendment to the constitution. The fact that no Parliament would normally ignore political compulsions and venture upon the rash course of tampering with a State and its boundaries against the wishes of the people therein may be true, but this fact cannot obliterate and hide the constitutional position that under the provisions of the Constitutional as they stand, the very existence and survival of a State as also the extent of its boundaries depends upon the sufference of the Parliament.

In the face of the above constitutional position, it is apparent that the cancept of the State being co-equal of the Union in traditional federal polity does not apply to India. The dependence and subordinance position hereof the States vis-a-vis the Union is highlighted by the provisions of articles 2, 3 and 4.

Article 3 requires reconsideration The proviso to the Article has to be modified making it obligatory to obtain the consent of the Legislature of the State

concerned before any Bill affecting that State is introduced in Parliament as in the case of Jammu and Kashmir. Merely sending the draft Bill for the views of a State and proceeding into Parliamentary enactment after some time and even if suggestions are made, ignoring them, is inconsistent with the intention of the Constitution makers as also of the federal character of the Constitution.

The view that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States, is not correct. More sources of taxing power have to be given to the States.

Article 249 and 252 may be omitted and resolutions so far passed under Article 252 may be treated as withdrawn and *status quo ante* should be restored.

Further, in order the ensure the freedem of the legislative organ of a State, it should not be made subject to the control of either the executive organ of the State or the executive organ of the Centre, in the exercise of the legislative powers. Under the Government Rules of Business, even Under Secretaries and Deputy Secretaries to Government can function on behalf of the President and the will of the State legislature can be thwarted or controlled by these officers on behalf of the President. But for the control vested in the executive by provision in the Constitution, such as these requiring previous sanction or/and subsequent assent by the executive, whether called the Governor or the President, for legislative measures, the legislative organ would be independent. Just as the judicial organ is independent of the executive and legislative organs *vide* Smt. Indira Gandhi's case AIR 1975 SC 2299, the legislative organ should be ensured sufficient independence and not made subordinate to the executive organs of the State and the Centre. In the matter of assenting the State Bills the President may be made to act on the advice of a Committee of Parliament and not the central executive.

Since we have a Parliamentary system of Govenment and since no legislation can be passed without the necessary majority, when once a law in the exclusive field of the State legislature is passed, it should be virtue of that passage, become the law of the State. Whenever any legislation is undertaken by the State or the Centre in respect of a matter specified in the Concurrent List as the case may be the Centre or the States should be consulted.

The 1st proviso to article 31-A(1) and the proviso to Article 304 may be omitted. There is no reason why the State Legislature should not have the same legislative power as Parliament.

Role of the Governor

The Governor strictly has no role in the context of the Centre-State Relations. Both the founders of the Constitution as stated in the Debates of the Constituent Assembly and the decisions of the Supreme Court do not envisage any such role for the Governor. Instead of election of the Governor by the State Legislature, involving a lot of expenditure the Constitution makers considered nomination of an eminent person by the Centre with the consent of the Chief Minister of the State, would be a better procedure and adopted it, without making a specific provision for the consent of the Chief Minister but with the distinct statement in the Constituent Assembly that it would be with such consent. The Supreme Court has also held in Dr. Raghukul Tilak's case AIR 1979 SC 709 that the Governor's office is an independent constitutional office which is not subject to the control of the Government of India.

The Governor should be a purely ornamental functionary as observed by Dr. Ambedker vide Constituent Assembly Debates, Volume III, page 468. As observed by the Supreme Court the Governor is but a "shorthand expression" for the State Government vide Maru Ram's case AIR 1980 SC 2147 at page 2169. So far as Constitutional functions are concerned other than the few cases in which he is required to act in his discretion as he is required to act as per advice of the Council of Ministers, and as he is not a subordinate authority of the Government of India, he has no role and would not have any role in the Centre-State Relations.

Before making report to the President suggesting action under Article 356 (1), the Governor should follow the principles of natural justice. He should first send a notice to the Council of Ministers specifying the matters which according to him has the effect of the Government of the State not being carried on in accordance with the Constitution when a duly established Council of Ministers is functioning and is carrying on the Government. The Government of India acting as the President will also have to follow the principles of natural justice in similar circumstances. But when a party in power has lost a vote of confidence in the Legislative Assembly by the passing of a no-confidence motion against the Ministry, or a motion of confidence is defeated and there is no person who is supported by a majority of members of the Legislative Assembly, the report can be made without following principles of natural justice, as that would be a clear case of the Government of the State not being able to be carried on in accordance with the Constitution and as there would then be no Council of Ministers collectively responsible to the Legislative Assembly of the State to which a notice can possibly be given.

At present, the principle of natural justice is not being followed in exercising the powers under Article 356 (1); presumably because there is no express provision for following that procedure. But the law laid down by the Supreme Court in several recent decision makes it clear that this principle will have to be followed to supercede the State Government and the State Legislature, as envisaged by Article 356 (1) of the Constitution. The condition precedent for the exercise of the power is that the President (which means the Council of Ministers in the Centre) is satisfied that a situation as arisen in which Government of a State cannot be carried on in accordance with the provisions of the Constitution. In the light of the decision of the Supreme Court in A.K. Roy's case AIR 1982 SC 710, with reference to deletion of Clause (5) of Article 356 by the 44th Amendment of the Constitution the President's satisfaction under clause (1) of Article 356 is justifiable. In Mohinder Singh Gill's case AIR 1978 SC 851, the obligation of satisfying the principle of natural justice for the

exercise of a power under Article 324 of the Constitution was held to exist. Following that decision in S.L. Kapour's case AIR 1981 SC 136, the supersession of the New Delhi Municipal Committee by the Lt. Governor of the Union Territory of Delhi under Section 238(1) of the Punjab Municipal Act, 1911, as applicable to New Delhi, without giving an opportunity to the Committee to show cause against the proposed supersession was held invalid the Hon'ble Learned Judge Chairman of the Commission on Centre-State Relations was also a concurring learned Judge of this Bench of the Supreme Court. It is therefore necessary to make an express provision in Article 356 (1) that before a report is made by the Governor to the President he should give an opportunity to the Council of Ministers to show cause why action under the said Article may not be taken. Further, the President when he acts *suo moto* under Article 356(1), or does not agree with the cause shown by the Council of Ministers to the notice given by the Governor, a show cause notice should be given to the Council of Ministers. The right of the people of the State to be governed by their representatives should not be taken away except when there is no person who commands a majority of members of the Legislative Assembly. It is also necessary to ensure that the democratic government in a State is not superseded except when it is impossible to carry on the Government as envisaged by the Constitution. A simple lapse or erroneous action should not result in the democratic government being dismissed, and the Legislature made ineffective on dissolved.

The functions/duties of the Governor in the appointment which also includes the dismissal of Chief Minister under Article 164 have been performed primarily either at the behest of the power at the Centre or to ensure as far as possible that the interests of the party in power at the Centre which has its Branch in the State is safeguarded. Instances of abuse of the power vested in Governor under Article 164 have been indicated in Part-II of the white paper. In order to ensure that the democratically elected representatives of the people are not deprived of their Constitutional right, it is very necessary to modify Article 164 making it obligatory for the Governor to appoint a person who commands a majority among the elected members of the Legislative Assembly and it should also be made clear that the Governor cannot dismiss him when he has the majority. It is also necessary to modify Article 163(1) making it clear that the Governor should act in accordance with the advice of the Council of Ministers except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion, even in matters where he exercises his discretion it should be made clear that the discretion should be exercised to ensure promotion of the purpose for which the discretionary power has been conferred and in public interest and not arbitrarily. In Maru Ram's case AIR 1980 SC 2147 at pages, 2170, 2171 and 2173, the Supreme Court has observed.

"All public power, including constitutional power, shall never be exercisable arbitrarily or *mala fide*.

* * * * *

The rule of law, under our constitutional order, transforms all public power into reasonable, responsive, regulated exercise informed by the high purposes and geared to people's welfare".

In Shamsher Singh's case the Supreme Court has stated that :

"In all matters where the Governor acts in his discretion he will act in harmony with the Council of Ministers. The Constitution does not aim at providing a parallel administration within the state by allowing the Governor to go against the advice of the Council of Ministers".

In the light of the decision of the Supreme Court to Dr. Raghukul Tilak's case AIR 1979 SC 709, it is necessary to make a specific provision that the Governor can be appointed only with the consent of the Chief Minister. Provision should be made to ensure appointment of fair minded men of high calibre and integrity as Governors. If this is done they will surely act efficiently and impartially in the discharge of the limited discretionary function to be discharged by the Governor.

The Karnataka Government has issued a White Paper on the Office of the Governor which elaborates some of the principles involved in both contextual and operational detail. The document is annexed as a part of this Memorandum.

Inter State Council

Crucial to a harmonious relationship between the Union and the States and between States, are modes of consultation and consensus-making that reflect and advance the federal spirit. The Constitution provides for an Inter State Council, a provision that has so far not been utilised. In the early decades of national consolidation and democratic and secular institutional building the task of consensus making was performed by one dominent party that (with important exceptions) ruled at both the Centre and the States. Under a cohesive leadership occupying positions of authority at various levels and dominated by a person like Jawaharlal Nehru with strong democratic instincts and a capacity to share power with outstanding leaders at the State and lower levels, perhaps the need for institutionalizing federal relations was not pressing. Now with a more complex and multi-party structure of governance the role of bodies like the Inter State Council becomes vital.

The Inter-State Council can serve as a forum for discussions between the Union and the States on matters where there is need for discussing the effects of the Union policies on the States. Coordination of taxation policies can be facilitated by the Inter-State Council. Issues like regional imbalances, Central investment in the State, mutual economic cooperation among the States and sorting out of any operational problems that may arise in the process of harnessing the natural resources and their development for the benefit of the country as a whole and all the States can be usefully achieved by the Inter State Council.

There is also urgency to think of all-India bodies like, National Developmental Council, Planning Commission etc., as federal institutions with a federal

mode of functioning rather than as mere arms of the executive at the Centre. It is necessary to view these bodies federally for evolving a broad political consensus on basic tasks and challenges as well as for sorting out problems which are in need of proper understanding and equitable solution. A detailed matrix of viewing the whole development process as federal in the context of these All-India bodies is discussed later in the Section of Fiscal and Financial Relations.

Media

Radio and Doordarshan : In the Indian situation, the objective of communication policy must be to awaken the people, inform, mobilize and educate them to be democratic citizens since eternal vigilance is the price of liberty, ensure equity and equality of opportunity, safeguard national values, preserve both unity and diversity, and promote development and accepted national goals.

Broadcasting is a Central subject under List I—Union List Entry 31 in the Seventh Schedule of the Constitution. So are telecommunications services and space facilities on which broadcasting leans. The Radio and, with satellites, television are the only media which are instantly public and international broadcasting as the very name suggests in not a point-to-point communications system like a telephone or postal service. Again, broadcasts range over national borders and therefore impinge on international relations. Likewise broadcast frequencies, being limited, are internationally allocated by the International Telecommunications Union. Allotted frequencies are therefore national assets or scarce natural resources which must be nationally regulated. For these reasons, broadcasting is a Central subject.

Nevertheless, India is a plural society and a Union of States or Federation. Central Control over such powerful and expanding media has endangered political controversy in the past and could conceivably do so in the future. It also has cultural implications in so far as it influences language content, musical expression, and dramatic forms especially with regard to folk music, dance and drama-skills and riches to be pres rved, revived and given a new lease of life in newer formats.

It is, therefore, important that both Radio and Doordarshan should be made autonomous and registered as a National Broadcast Trust as recommended by the Verghese Committee. The Board of Trustees would be appointed in consultation with the Inter State Council.

The Central and State Governments should have reasonable access to the broadcast media to explain official policies. As in the case of the Prime Minister the leader of the opposition in the Lok Sabha should also be accorded facilities for making national broadcast. A similar procedure should apply to facilities for the State Chief Ministers and leaders of the opposition in the State Legislature. These broadcasts should however be distinguished from party political broadcast for which a separate fair code should be evolved.

We would also comment on the recommendations of the Verghese Committee with regard to the vestting of rights for grant of the licenses for broadcasting.

The allocation by the ITU of frequencies to the nations of World entails international negotiation which is Central responsibility. The allocated frequencies being finite, must be regarded as a scarce natural resource whose allocation among different wireless users of which the National Broadcast Trust is only one, the defence forces, police and aviation and shipping authorities being others must vest in some authority. The Central Government is under Entry 31 of List I in the Seventh Schedule the concerned Government for purposes of Licensing, and it is the Wireless Adviser in the Ministry of Communications who grants licences and regulates frequencies under the Indian Telegraph Act.

However, the right to licence broadcasting should not or need not necessarily vest the Government with the right to regulate broadcasts. There is a difference between the fact of broadcasting (the licensing of transmitters) and the act of broadcasting (pogramming). Any confusion here is cleared by reference to the concept of a National Trust, the nation ("we, the people") being represented by Parliament of which the Government constitutes the executive branch. If the people are the ultimate sovereign in a parliamentary democracy then they are entitled to the fullest information and contrasting views and idea so that they might decide for themselves and vote accordingly. A free and autonomous broadcasting system is thus part of the democratic dharma, accountable to the people through Parliament but not controlled by the Government.

Once the National Broadcast Trust comes into being, the Ministry of Information and Broadcasting should shed its direct responsibility for broadcasting and might thereafter appropriately be redesignated "Ministry of Information".

Newspapers and Periodicals

The distribution of newsprint has been used to impose control over newspapers and journals. Due to absolute control of Government over radio and TV, Newspapers and periodicals are the only Independent means of communication.

Fixation of quotas for newsprint should be completetely abolished and the import of newsprint should be put under OGL. This is essential for the development of newspapers and periodicals of different political, cultural and language persuasion without government's interference either at the Central or State Level.

If some of the small newspapers and periodicals want government's assistance for the procurement of newsprint, then their specific request can be serviced by organisations like STC, etc. This must be purely on the basis of initiative by the newspapers and periodicals.

Judiciary

The foremost step required is to reinforce the autonomy and dignity of the judiciary.

One of the ways to ensure the autonomy of the judiciary is to see that it is not infringed through the budgetary control of the Government.

Another measure which has sought to impinge on the autonomy of the judiciary is the question of transfer of High Court Judge by the Central Government. This must be given up and the High Court judges should not be subject to transfer at the will of the Executive. Whether considerations have to be applied about the composition of a High Court in a given State in terms of the background of the judges, the matter must be decided at the time of their appointment.

These suggestions are offered to ensure that the judiciary continues to play an independent role in all its spheres and particularly in the sphere of Centre-State issues which might require resolution at the hands of the courts.

Administrative Services

At the Conference of Premiers held in October 1946 it was decided that it would be desirable to have an all India administrative service which primarily set the requirements of the provinces but from which the Central Government could also draw a given number of officers for meeting its own needs. Under the enabling provision Section 263 of the Government of India Act 1935, the Indian Administrative Service and the Indian Police Services were consequently constituted. This was subsequently included in the Constitution which describes the all Indian services as services common to the Union and the States.

Article 312 of the Constitution of India empowers Parliament to create one or more all-India services including the Indian Administrative Service and the Indian Police Service which existed at the commencement of the Constitution. In exercise of these powers Parliament enacted the All India Services Act in 1951 of which the three main features are :—

(i) the constitution of various all India services of which only the Indian Administrative Service, the Indian Police Service and the Indian Forest Service still exist.

(ii) the Joint control of the Central and State Governments for the regulation of recruitment policies and conditions of service of the all India Services.

(iii) the ultimate authority of Parliament in regard to all rules framed under the Act.

In any consideration of the gamut of factor that have a bearing on central-state relations the concept and functioning of all-India Services also needs to be examined.

One of the main features of the All India Services Act was the exercise of joint control over the services by the central and State governments. In this context there are two relevant provisions of the Act and the rules framed thereunder that require consideration. In the Act itself Clause 3 reads as under :—

"3. **Regulation of the recruitment and conditions of services :**

(i) The Central Government may, after consultation with the Government of the States concerned (including the State of Jammu and Kashmir) (and by notification in the Official Gazette) make rules for the regulation of recruitment and the conditions of service of persons appointed to an all India Services".

"The joint control of these officers by the States and the Union Government and by the location of the ultimate authority over them in the latter provides a measure of remote control which by its very nature is more objective, and which is meant to enable the officers to fulfil their responsibilities without succumbing to stresses and strains of local influences.

However, the implication of the vesting of the ultimate authority in the Central Government is that officers belonging to the All India Services and serving in the States will inevitably owe their loyalty to the centre which is the final arbiter of their service conditions and career. Not only is this theoretically violative of the basic federal structure but in practice has led to very difficult situations particularly in States ruled by parties in opposition to the ruling party at the Centre. Most recently the conduct of senior administrative and police officers in Andhra Pradesh and Jammu and Kashmir has come in for serious criticism for the reason that they acted against the interest of democratically elected state governments and in contravention of the law directly under order of the Governor, who in turn were acting under central direction.

In the political situation as it is now emerging with the growing assertiveness of regional forces the existence of the all India services can further complicate matters and deepen conflict instead of seeking solutions to resolve differences of opinion and interest.

In effect this means giving a political function to the services which are supposed to remain aloof from policies and function in a non-partisan manner and is really an extension of the role of the imperial civil service in pre-independence days.

It appears that during the last few years the Central Government has also been thinking along these lines and taking steps which have further diluted the so-called "joint control" of services and instead strengthened the powers of the central government. During President's rule in Assam consequent upon the regional movement in that state the central government inducted a large number of non-local (non-Assamese) IAS and IPS Officers indicating thereby that even officers of the All India Services who were natives of the State were considered not fully reliable while dealing with a situation involving issus of a regional nature. After the military intervention in Punjab there have been statements (including from the Prime Minister) that the policy of inducting at least fifty per cent 'outsiders' into each State cadre would henceforth be implementead very strictly. For one thing this suggests that the Central Government would like to tighten its control over the State administrative set up even further. Secondly, what is even more pernicious is that implied innuends that "outsiders" would be more amenable to such control

while "insiders" cannot be relied upon as they would come under the sway of 'local influence'. Such an approach is clearly antithetical to the federal principle and will only result in accentuating the hostility between the IAS and the state services as well as the IAS and the political leadership at the state level.

Yet another incursion into the powers of the state government to exercise control over their own state cadre is the recent amendment to Rule 6 of the IAS 'Cadre' Rules which reads as under :

"Deputation of Cadre Officers—(A) A Cadre Officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government be deputed for service under the Central Government or another state Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government". Thus any officer of a particular State Cadre would be deputed for services with the central government or another state government only with the concurrence of the 'parent' government. However, the amendment adds a proviso which reads as under : "Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government shall give effect to the decision of the Central Government". As a result of this even if the state government does not agree to release one of their officers, the Central Government will again have the final say. With this amendment even the fiction of dual control over the all India services has been laid to rest. All these changes in the law and practice as it has evolved over the year have fundamentally altered the basic concept and structure of the all India services. They would now appear to have become cadres of administrators who occupy the top level posts in the states but owe their basic loyalty to the centre. Clearly this can have serious implications for the state governments particularly those ruled by opposition parties. It is, therefore, not surprising that some of these state governments have suggested that the all India services be disbanded.

If the originally conceived benefits of these services are no longer real and added to this is the suspicion and hostility that they evoke, there would indeed be a strong case for disbanding the IAS and the IPS. In fact when the All India Services Act in 1951 was passed the intention was that, in addition to the IAS and the IPS, an Indian Service of Engineers, an Indian Forest Service and an Indian Medical and Health Service would also be created. However, only the Indian Forest Service was set up while in respect of the other the idea was abandoned primarily on account of opposition from the State Governments who in turn conceded to the pressures from the corresponding state services. Thus the objective of building up a number of centrally administered services is no longer relevant in the present day context. However, the question of whether to disband the IAS and the IPS requires very careful consideration with a long term perspective. If some of the original purpose can be reinfused there could be advantage in retaining these services as federal services provided the following steps in restructuring are taken .

(i) All matters relating to policy or rules affecting the all India services should first be placed before the proposed Inter-State Council and action initiated only after obtaining the approval of the Council by means of a formal resolution.

(ii) Clause 3 of the All India Services Act should be amended to replace 'consultation' with the States by 'concurrence' of two-thirds of the State Governments.

(iii) The amendment to Rule 6 of the IAS (Cadre) Rules made administrative grievances of officers to avoid delays that normally occur in courts. The selection of members for these tribunals should be subject to the confirmation of the Union Public Service Commission in order to ensure that the tribunals are manned by persons of competence and integrity.

Police

Police is a state subject. It is not even in the concurrent list. Yet the Central Government has built up a huge and ever increasing central police force. In the last two decades, the expenditure on central police force has gone up by sixteen times, from Rs. 32 crores to Rs. 510.30 crores, between 1965-66 and 1984-85. Apart from being outside the provisions of the Constitution, the development of Central Police has compounded the problem of effective law and order maintenance in the States. Instead of developing an effective police force of their own for immediate deployment, the States have been made dependent on the Central Government for supply of para-military forces and Central Intelligence Services and grants for policing, from time to time.

Even if in spheres like finance and industrial licensing, the states are able to get more powers, the centre's hold on the states' law and order machinery is so tight that it could negative even the limited autonomy the states enjoy. As recent events (Andhra, for example) have shown, central forces were deployed purely for political reasons. As R. F. Rustomji has put it, the Central forces have been grossly overstrained and have been less than effective".

It is imperative that the existing constitutional position with regard to the police must be maintained. The states must build up their own police force to deal with the law and order problems effectively. There should be no further expansion of the Central Police Force, it should be absorbed in the states or phased out.

Fiscal and Financial Relations

As in other areas, in fiscal relations also Centre-State relations have been dominated by a trend towards over-centralization in regard to both policy and administration. Constitutional provisions defining the relative spheres of the Centre and the States have been violated; and planning and financial institutions which were to have operated objectively and with a measure of autonomy have been systematically

politicised or emasculated. In the event fiscal and financial relations between the centre and the states, as well as the entire planning process, have become a major source of disharmony in the federal polity.

Since 1951, when planning was accepted as a prime instrument of national economic development, the range and magnitude of developmental responsibilities of the States have increased enormously. But there has not been a commensurate enlargement of the States' access to real or financial resources. Notwithstanding some of the welcome steps taken by recent Finance Commissions to narrow down this yawning gap between states resources and their developmental and non-developmental responsibilities, a mechanical approach has characterised the statutory transfer of funds to states from the common pool of tax and other government revenues. Progressively more and more resource transfers from the centres have become discretionary, resulting in discriminatory treatment of states on political considerations.

Again, over the years, there has been an alarming increase in central government expenditure on subjects which according to the Constitution fall within the States' jurisdiction. Apart from causing avoidable multiplicity and distortion in developmental and non-developmental expenditures, this has eroded the authority as well as effectiveness of State administrations in several areas. In like manner, central incursion into tax and revenue areas earmarked for states in the Constitution has exacerbated the working relations between them.

All of thses tendencies have combined to create an acute imbalance between resources and responsibilities at the state level. The divisible pool from which transfers in accordance with the recommendations of the Finance Commission are made has not taken a shape commensurate with changing federal relations and responsibilites. Likewise, the Gadgil formula for distribution of central assistance to state plans has created new tensions, while seeking to benefit the less developed states. The enormous increase in the debt-servicing burden of states, and the severe restrictions placed on their access to the capital market have also become serious irritants. And solutions to these problems have been rendered difficult by the ineffectiveness of the National Development Council as a policy-making body; by the overlapping roles of the Finance and Planning Commissions; and by the subordination of the Planning Commission, Reserve Bank of India and other national institutions. to central government departments. The consequence of these centripetal forces can hardly be other than pushing centre-state relations to the brink of a crisis.

Any improvement in centre-state fiscal relations will therefore require quick and basic adjustments in attitudes, policies and instrumentalities. And these adjustments have to cover all type of transfers. In matters of resource allocation, there cannot be a hard and fast distinction between "Plan" and "non-Plan", "developmental or non-developmental", "revenure" or "capital" accounts. Rubrics and classifications of this sort are essentially administrative derivatives, and they should not be permitted to interfere with optimality in resource utilisation. Indeed, even the Seventh Schedule of the Constitution, listing the separate and concurrent jurisdictions of the Union and the States, does not establish any exclusive or pre-emptive claim of one list over the other on the national pool of human, material or financial resources. Criteria of equity or efficiency underlying the sharing of resources between the central and state governments cannot be applied differently to different expenditure-headings. Regardless of instrumentalities any reform of the fiscal structure should encompass the entire range of government functions—developmental as well as non-developmental.

Proposals for changes in the respective responsibilities of the centre and the states in regard to general administration, police, law and justice have been made earlier. It is necessary to review here only the economic and developmental functions, in the administration of which serious conflicts between the Union and the States exist.

Division of Developmental Responsibilities

Given the national commitment to economic and social development through planning, governments at both the centre and the states will continue to have heavy planning responsibilities. Some division of these responsibilities between the governments already exists. But this has to be stream-lined and rationalised according to clear principles to avoid ugly and socially disruptive controversies.

What in essence are the principles that should govern such classifications? First and foremost, all these sectors or programmes for which detailed local knowledge is critical for successful planning have obviously to be decentralised to the maximum extent possible. Thus agriculture and allied activities which are both location-bound and natural resource-bound, or infrastructure and social service sectors concerned with universal necessities like health, education, water supply, sanitation and so forth, naturally lie within the jurisdiction of state and local governments. And it is necessary to ensure that the central government does not get involved directly in these sectors.

Secondly there are schemes or programmes where size and geographical incidence should guide the division of responsibilities. On sectors like irrigation, mining energy, transport and higher education, there cannot be any exclusive claim of either the States or the Centre. Manifestly, large-scale projects of inter-state or national importance should be the responsibility of the centre, and the others of the state. In some of these fields, there is, in fact, a case for greater rather than less centralisation. Thus the planning and management of major irrigation schemes (with cultivable command area exceeding, say, 10,000 hectares), major power generation schemes (with capacity exceeding 250 mw) and major universities and research institutions can be centralised with advantage. However, the decision in such cases must be that of a truly objective planning body, and subject to the approval of a truly effective National Development Council and not left solely to the Central Government.

Thirdly, there is the manufacturing sector the planning of which has to be located at every level

because of the great diversity of activities involved. While proximity to raw-materials or markets may influence the location of some industries, many branches of manufacturing are footloose. They are not tied to locational factors; and for many of them, there will be a variety of viable technologies and scales of operation. Manufacturing possibilities have therefore to be explored and appraised all the time at every level. The location of each activity has to be decided on the basis of comparative social advantage of different locations and sizes, and responsibility for planning distributed accordingly among different levels of governments.

Finally, there are sectors or activities which have to be planned and administered for the country as a whole, and the responsibility for planning in these areas has necessarily to vest with the centre. Railways, major parts, national high-ways, tele-communications, oil exploration and production etc. belong to this category, besides the large irrigation projects and the like mentioned earlier.

Admittedly, there will be borderline cases, the responsibility for which has to be specifically decided by a federal body. But there is little doubt that over large areas, central control or sponsoring of plan schemes is neither necessary nor advantageous. With the increasing importance of anti-poverty and employment generation programmes in national development strategy, the share of states in total development spending must increase. And within each state, share of rural development investment allocable by district and block level bodies must also increase. It is totally irrational for anti-poverty schemes to be centrally sponsored. The role of the centre in rural development (including industrial development) should be restricted to providing block funds and laying down some very broad guidelines. Within these parameters, and subject to the constraints of available funds, states and local bodies should be free to decide the allocation of resources among the different activities as also the formulation and execution of projects.

A dynamic federalism of this calibre which permits greater financial autonomy to the states has to be established, ensuring greater financial autonomy to the States has to be established, ensuring greater correspondence between the obligations to spend and the powers to collect taxes or borrow. This balance has been badly upset by the centre and it is necessary to restore it.

Measures which are necessary for the purpose include redefinition of the powers and scope of the Finance Commission, the Planning Commission and the National Development Council, as well as a more rational system of savings and credit allocation through commercial banks and other financial institutions.

The Finance Commission

Financial transfers from the Centre to the States in the form of tax shares, grants and loans are provided for in Articles 268, 269, 270, 272, 273, 275, 282 and 923; and Article 280 provides for the constitution in every fifth year of Finance Commission to review and make recommendations of these. Eighth such Commissions have so far given their award, and despite the effort of some of the recent finance Commissions to redress the balance, the distribution of tax powers as well as the actual sharing of tax and other government receipts it continues to be heavily tilted in favour of the Centre.

Compared to the Central Government, the tax jurisdiction of States is limited mostly to inelastic sources like land revenue, lands and buildings and motor vehicles. Even an item like sales tax has become somewhat inelastic by the manner in which the Centre has weilded excise duties for resource mobilisation. Similarly, the Centre's export policy has impinged adversely on sales tax yields. As against this, surcharges on income taxes, substitution of excise duties by higher prices for products of public enterprises, etc., have diverted a larger proportion of divisible revenues to the Central budget. It is high time that these imbalances are corrected, and a more viable relationship between the budgetary responsibilities and access to tax resources is established.

Free the Finance Commission from Shackles

While the Constitution does not specifically envisage 100 per cent distribution to the States of revenue derived by the Centre from a particular tax-source, it obtains from prescribing any lower percentage. This percentage has to be determined by the President/Parliament after considering the recommendation of the Finance Commission. The Finance Commission has the power to review and recommend changes in the division of specific tax proceeds between the Centre and the States as a whole, as also the inter-state allocation, subject to no constraints whatsoever in as much as it is laid down under Article 280 (4) that the Finance Commission 'shall determine their procedure'. The Constitution does not lay down any guidelines for the Finance Commission or the President/Parliament to follow. The Constitution does not empower the President/Parliament to restrict the Finance Commission's freedom in any manner direct or indirect. The provision in the Constitution which envisages discretionary grants by the Centre for any public purpose cannot be taken to reduce in any way the importance of either the grants-in-aid of revenues or the Finance Commission's powers for developing additional Central funds to the States in need of assistance.

Inspite of all this, successive Finance Commissions have been constrained by the guidelines included in the Presidential Orders appointing them. The terms of reference have become more numerous and more specific from one Commission to another. For the Eighth Commission, the Presidential Order included almost all the terms of reference of the Seventh Finance Commission; and over and above that it asked the Commission to examine the scope for raising revenue from taxes and duties mentioned in Article 269 of the Constitution, but not levied at present and the scope for enhancing revenue from the duties mentioned in Article 268. By laying down certain specific guidelines in the Presidential Order, a continuing attempt has thus been made in the past several years to give a certain direction to the thinking and scope of successive Finance Commissions. But under the provisions of the Constitution, there is no ligation on the part of Centre to issue such specific guidelines.

It may be argued that the Central Government would be well within their rights to request the Finance Commissions to look into any financial problems, which in their view, is a matter of importance. But being an interested party themselves, should the Central Government put forward, as part of the terms of reference, suggestions or guidelines as to how the Commission should approach the r work and what major consideration they should take into account in determining the resource transfers ? It would clearly be appropriate for the Central Government to submit their views and suggestions in a separate memorandum to the Finance Commission, as is now done by the States. If this is done, it would enable the Finance Commissions to carry out their task objectively without any pre-determined framework.

Statutory Transfers

There has developed excessive centralisation in the matter of devolution of resources, despite the recommendations of the Seventh and Eighth Finance Commissions which have facilitated larger resource transfers to the State. A variety of plan and non-plan transfers which are discretionary constitute a source of irritation in so far as some transfers take place irrespective of the record of financial management, development programmes and the tax effort.

Statutory transfers cover both the transfers through Divisible Pool Mechanism as well as the revenue gap grants under Article 275 of the Constitution. In deciding these transfers, the Finance Commissions have generally followed a gap-filling approach although the Eighth Finance Commission has tried to vary this to some extent. In the process, the Commission's dispensations have often led to severe penalising of States which have raised more resources by additional taxation and otherwise, as well as by a very judicious management of their resources. In contrast, wind-fall gains are conferred on States that have grossly mismanaged their finances and have failed in their tax effort. This is highly inequitous and it is important even within the area of statutory transfers, the amount transferred through the automatic mechanism of the Divisible Pool should increase in conformity with the functions and responsibilities of the States. Adjustments necessary to achieve this purpose are indicated below.

Divisible Pool : Need for its Enlargement

At present the Divisible Pool from which tax resources are transferred to the States comprises of the following :

(1) Tax on income other than corporation tax.
(2) Estate duty.
(3) Union excise.
(4) Additional excise.
(5) Tax on goods and passengers.
(6) Agricultural wealth tax.

Corporation tax which was previously included in the Divisible Pool was left out by an amendment to the Finance Act in 1959 by which income tax paid by the companies was excluded from sharing with the States. The Centre has also imposed surcharges on income-tax, the proceeds of which are kept out of the Divisible Pool. States have regularly represented to the various Finance Commissions that these measures have deprived them access to expanding sources of revenue to which they had a constitutional entitlement. The proceeds of the corporation tax which are kept exclusively by the Centre were about Rs. 2,364 crores in 1983-84 as compared to the yield from income tax of about Rs. 1,670 crores. Together with customs duties whose proceeds were about Rs. 5,879 crores in 1983-84, altogether Rs. 8,243 crores are kept out of the Divisible Pool as a result of these reservations. Moreover, in 1983-84, out of the total Divisible Pool Rs. 10,196 crores, Rs. 4,793 crores were transferred to the States. Thus, the States' share in the Divisible Pool came to only 47 percent of the total amount of the Divisible Pool, as against 53 percent for the Centre. Compared to the total revenue of all the States, what comes to them from the Divisible Pool forms only 17 percent. There is therefore every justification for enlarging the Divisible Pool by at least including the corporation tax in it. Out of such an enlarged Divisible Pool, 75 percent of the proceeds should be distributed among the States. With the proceeds of customs duties accruing in its entirety to the Centre, such a scheme would amount to Centre sharing 50 percent of its total revenues with the States by way of devolution of tax revenues. Karnataka Government consider that such a resource transfer is a more equitable one, in the present context of the need for a more balanced allocation among the different States.

Giving Revenue Gap Grants out of Excise Duties un-constitutional

According to the Constitution the deficit of the States after devolution should be made up by the grant-in-aid under Article 275. The Eighth Finance Commission has proposed a new method, viz. utilising 5 per cent of the excise duty revenues for giving grants to make up such deficits. The share of excise duties to be transferred to the States is assumed to have been nationally raised from 40 percent to 45 percent. This is an eye-wash in so far as States are made to feel that there is an increase in the percentage share, but in reality the share has remained at 48 percent as before, because the national 5 percent is intended only for distribution to deficit States. If the deficit States had been given grants out of the Centre's share of revenues, the increase in the States' share of excise duties would have accrued to all the States. The new principle amounts to an earmarking of excise duties for meeting the States' deficits which is unwarranted and un-constitutional and has hurt the States which have managed to have a surplus. The Union Government should not try to find funds for giving Article 275 grants out of the resources which would otherwise accrue to all the States.

Fiscal Efficiency

Under the present system, fiscal efficiency on the part of any State has become a self-hurting process. Economies in expenditure, better implementation resulting in larger resources flows with the minimum of investment, and mopping up of incremental incomes for development purposes have all implied that such States as have acted on these lines lose the benefit of revenue gap grants. States which

have swept aside these considerations are rewarded with revenue gap grants; thus fiscal in efficiency is rewarded whereas fiscal efficiency is severely penalised.

The Finance Commissions have so far not attempted even an approximate assessment of the fiscal potential of each State on the basis of certain relevant parameters and evaluates the performance of the States against the potential so determined. In the absence of such an effort, no scope exists for introducing fiscal efficiency as an important criterion for resource transfers to the States.

It is true that the distribution between plan and non-plan expenditures is somewhat an artificial one; but it does provide a fiscal basis for focussing attention on the development programmes for which resources will have to be harnessed. A suggestion is often made that the Finance Commission itself may function as a single Agency for deciding on the total transfers from the Centre to the States covering both plan and the non-plan expenditures. However such a body could well become administratively too unweildy; and it may not be able to combine efficiently the multi-sectoral perspective necessary for investment decisions with the responsibilities of determining tax devolutions and statutory grants to States. Further, despite all its other shortcomings, the Planning Commission provides a flexible mechanism for heads of State Governments to have a direct and comprehensive dialogue with the Centre on resources, programmes and policies which it is important not only to preserve but enlarge. It is therefore helpful to continue with the present system of quinquennial Finance Commission, and continuing Planning Commission—but with certain changes in its character and functions which we have suggested in a subsequent paragraph.

In defining the responsibilities of the Finance Commissions and the Planning Commission, a plausible line of demarcation is to take all items of capital formation on the plan side, and leave the responsibility for financing recurrent expenditures within the ambit of the Finance Commission. This would help restrain governments from undertaking capital formation outside the plan; and it would provide a more rational basis for classification of Government expenditures both at the Centre and in the States.

National Expenditure Commission

A corollary to this approach would be the need to apply uniform standards of assessment to the recurrent expenditures of both Central and State Governments, with a view to deriving the "savings" out of revenues for financing development outlays. Even the Finance Commission, in its present form, is not adequately equipped to make a thorough review of Central expenditures. As has already been mentioned, Central Government spending on States' items like maintenance of law and order, agriculture, education, health, etc., has continued to grow from year to year. A decision of the National Development Council that expenditure on Centrally sponsored schemes should not amount to more than 1/6th of Central assistance given to the States has been observed more in the breach. Notwithstanding the fact that at the time of the formulation of the Sixth Plan, nearly Rs. 2,000 crores worth of Central schemes were dropped and transferred to the States, within the next four years the expenditures of the Centre on Centrally sponsored schemes has increased by two to three times. The amount now spent on such schemes is even greater than the total amount of the Central assistance given to the States plans. For example, during 1978-79, Centrally sponsored and Central sector schemes in Karnataka amounted to Rs. 40 crores as against Rs. 88 crores given as Central assistance. In 1983-84, Centrally sponsored and Central sector schemes rose to Rs. 120 crores as against Central assistance for the plan of about Rs. 99 crores given to the State under the Gadgil formula.

This is only one component of the total Central expenditures. In other areas like defence, there is hardly any non-departmental scrutiny for ensuring that expenditures are cost-effective. It is high time that an objective assessment of the Central expenditures is made, for obtaining optimal results. Karnataka Government therefore suggest the setting up of a National Expenditure Commission to go into the expenditure of the Centre and State Governments thoroughly and rationalise the basis for assessment of revenue surpluses for the guidance of future Finance Commissions. The National Expenditure Commission recommended there would be an ad-hoc and not a standing Commission.

Market Borrowings

Market borrowings of the States play an important role in financing development programmes. In recent years, inadequacy of States' own resources and the limited Central assistance available for State plans on the basis of the Gadgil formula have continued to increase their need for such borrowed funds.

At present decisions on market borrowings of States are not based on any rational principles. The allocation between the Centre and the States is also highly arbitrary and is disproportionately tilted in favour of the Centre (4:1). This apart, States which have large revenue surpluses or which have received more of institutional finance also happen to get a larger share of market borrowings, while relatively small allocations have been made to the States having deficits or marginal surpluses and smaller loan assistance from other sources. There is thus no equity in the distribution of market borrowings, which should normally serve as a balancing factor in the State Finances.

It is therefore necessary that market borrowings are allocated between the Centre and the States and among the States on an equitable basis. Karnataka Government would suggest a 50:50 sharing of the "bond" market between the Centre and States and the following criteria for inter-state allocation.

Criteria	Weightage (per cent)
1. Debt Management	20
2. Tax effort	20
3. Drought affected population	20
4. Per capita Central Plan assistance	15
5. Availability of institutional finance	15
6. Budgetary position of the States	10
	100

National Debt Commission

The issue of indebtedness of the States to the Centre has received very casual treatment at the hands of the different Finance Commissions. Under the existing pattern of Central assistance for the State Plans, 70 per cent is given as loan and 30 per cent as grant excepting for hill areas like Assam, Jammu & Kashmir, Nagaland etc., for whom a more liberal pattern of 90 per cent grant and 10 per cent loan is adopted. For the hilly areas of Uttar Pradesh, Tamilnadu and West Bengal, the assistance has been in the shape of 50 per cent grant and 50 per cent loan.

This proportion of 70 percent loan and 30 per cent grant has led to States being in a perpetual state of indebtedness to the Centre. For example, in the case of Karnataka, during the Fifth Plan period, the State received Central loans to the extent of Rs. 5,173 crores whereas the State repaid to the Centre by way of principal and interest Rs. 5,260 crores. Again during the 4 years of the Sixth Plan (1980-84) the State repaid by way of principal and interest Rs. 13,589 crores whereas it received Central loans amounting to Rs. 12,572 crores. Thus the State has repaid almost Rs. 1,000 crores more than it has received during the 4 years of the Sixth Plan alone. This is probably true of many other States and it is not surprising that the States' indebtendness has been increasing from plan to plan because of the faulty composition of the grant and loan components.

Attempts have been made in the past to tackle this problem of mounting indebtedness by rescheduling debt or providing some debt relief. This however can only be palliative and not a solution. A more radical approach of scaling down past debt and laying down the guidelines for inter-governmental lending is long overdue. Given the fact that the Centre's resources, like those of the States, are derived from a common national pool, there is no compelling reason why the loan component in Central assistance should be as high as 70 per cent. Only that element dependent on or derived from the Centre's borrowed funds, or Central assistance applied to demonstrably remunerative commercial purposes could logically be treated as loans. When Central assistance is used for development schemes in the area of social services, it is unrealistic to expect such outlays to be self-liquidating or suitable for loan financial on commercial terms. Karnataka Government therefore feel that the present loan/grant component should be radically changed. Of the entire plan assistance, only such portion as is given to the States out of funds borrowed on the domestic or foreign market by the Centre should be treated as a loan. Such rationalisation alone can enable the States to get out of their "debt trap" and breathe a fresh air of financial autonomy.

Even the debt position of Government of India is alarming, in so far as its total debt now forms 41 percent of the national income. Its effects on inflation, interest structure and income distribution have not been analysed objectively so far. It is therefore imperative that an expert body examines the full implications of the national debt as well as the indebtedness of the States to the Centre.

Karnataka Government suggest the setting up of a National Debt Commission to go into the entire question of the debt of Central and State Governments. This Commission should, in the first instance, make recommendations for reducing the existing debt burden of the States; and secondly, to lay down the criteria for future policies for Governments' market borrowing and for inter Government lending.

Some Suggestions on Debt Policy

Without seeking to cover this difficult area fully or in detail, Karnataka Government would suggest the following desiderata :

(a) While the actual amounts of market borrowing by each of the Governments have to be worked out (by the Planning Commission and RBI) on the basis of the budgetary and monetary conditions in that year, the general principles to be observed in regard to the relative shares of the Central and State Governments in market borrowing, interest differentials, sequence of entry into the market etc., should be laid down.

(b) The National Debt Commission should also work out, in consultation with the Planning Commission and the Reserve Bank of India, the conventions that should be observed by the Central and the State Governments when borrowing against dated securities from banks and other financial intermediaries.

(c) The National Debt Commission should further lay down, in consultation with the Planning Commission, the types of lending by the Central Government to State Government for development purposes. In particular, it should define purposes for which Central Government loans to State should be strictly on market-related terms; and purposes in respect of which loans on "soft terms" would be justified. Expenditure on fixed capital assets undertaken by the State Governments for education, health, environmental protection, community welfare and security etc. are some of the purposes which merit "soft lending". How and in what measure the lending terms are to be softened are matters for detailed work out from year to year, in the context of prevailing resource position, urgency of need, interest rates etc.

(d) Government sector borrowing abroad should continue to be undertaken by the Central Government. However, every effort should be made to pass on the benefits of soft-loans fully to State Governments, and to minimise the costs of Inter-mediation in respect of other loans.

Like the National Expenditure Commission, the National Debt Commission is envisaged as a "one shot" operation, rather than a continuing body. Both these Commissions will exist only so long as it takes them to lay down the principles guidelines for other bodies like the Finance Commission and the Planning Commission.

National Development Council

While questions relating to the rescheduling or reduction of the existing debt owed by States to the Centre lie properly within the purview of the National Debt Commission, matters relating to the allocation

of the annual "capital resources"—that is to say, loans and all other receipts of Central and State Governments on "Capital and Public Deposit Account" net of inter-governmental transfers-cannot be assigned to it or to the finance Commission. This task is a continuing one and belongs more properly to the National Development Council aided by the Planning Commission and such other bodies as it may deem fit. The rest of this note deal with this aspect of financial arrangements.

The NDC should be in fact as in name, the highest authority deciding on all matters of policy regarding mobilisation of resources for development and the uses to which these resources should be put.

By its very natures, the NDC will be a large body. However, as of now, it has become totally unwieldy and it is necessary prune it and streamline its *modus operandi*.

Membership of the NDC should be confined to the Prime Minister, the Finance Minister and the Planning Minister at the Centre; the Chief Minister and the Planning Minister of each State. At the official level, those in attendence should include, besides the professional members of the Planning Commission, the Governor of the Reserve Bank, and the Chairman of NABARD and IDBI; the Cabinet Secretary, the Planning Secretary and Economic Secretary at the Centre, and the Chief Secretaries of States. With such a reduced NDC, it should be possible to meet at least twice a year—once before the Central and State annual plans are formulated, and again in September or so when the prospects regarding agriculture, electric power and foreign aid for the year are clearer. It could meet more often, if the need arises.

The NDC cannot obviously discuss and decide on the details of policy or resource allocation. This should be entrusted to a limited number of Standing Committees of the NDC, which should meet every quarter to review progress and make recommendations to the main body of the NDC at each of its sessions. Precisely what Standing Committees should be set up, and for how long, are matters for decision.

These Standing Committees, as well as the main NDC, should be serviced by the Planning Commission. For this purpose it will be necessary to reconstitute the Planning Commission to enable it to function independently of the Central Government. Its functions should also be defined more precisely. While the Prime Minister and the Planning Minister at the Centre should continue to be the Chairman and the Deputy Chairman respectively, the "fully" Commission should have as its member four Chief Ministers elected on a Zonal basis, the Central Finance Minister and not more than five full time "Professional" members appointed by the NDC.

The Planning Commission should have the responsibility of preparing the National Development Plan, specifying the objectives and strategy of development for medium and long-tems plans; national policies for resource mobilization; and broad pattern of investment allocations; the type and extent of institutional change required for the above, etc. in other words, prepare the broad "national plan" within which the shorter period operational plans of both the Central and State Governments ought to be formulated and implemented.

The Planning Commission should have monitoring responsibilities in respect of achievements of plan objectives (as approved by the NDC). But it should have no executive responsibility in respect of either the Central or State plans.

Reconstitution of the Planning Commission will imply that separate boards or authorities should be set up both at the Centre and the States to formulate the constituent plans for each year as well as for the national plan period (five years). It should be the responsibility of these agencies to co-ordinate the activities of functional departments within the corresponding government, and to liaise with the (National) Planning Commission.

In order that the Planning Commission should be formally as well as factually independent of the Central Government, its administrative budget should be shared equally by the Centre and the States as a whole. The share of each State should on the basis of an agreed formula, subject to review by the NDC at the beginning of each plan period. The tachnical staff for the commission should be appointed by the Commission itself, under such conditions and rules at it may decide.

National Credit Conucil

Inasmuch as the NDC will be concerned with national objectives for development, it has to deal with policy and instruments for planned allocation of both 'public' and 'Private' investment. This requires better arrangements than at present for allocation of saving and investment notonly through government budgets but through the financial institutions as well.

For this purpose, arrangements have to be made for solving and implementing nationally-oriented policies, satisfactory to both the Centre and the States. There is at present considerable dissatisfaction among the States in regard to their access to private saving through financial intermediaries. Besides borrowing from the Central Government, States and State agencies have also to borrow from the bond market; and they have to provide for an adequate supply of institutional credit for agriculture, industry and other activities in their States.

Formally, the responsibility for laying down general guidelines in these respects vests with the Reserve Bank of India and the apex banks for agriculture and industry, viz., NABARD and IDBI. These are statutory authorities and are expected to operate autonomously and with complete objectivity subject only to the overriding objectives of national policies. But in reality, these organisations are totally under the control of the Central Government and the States interests are not being properly safe-guarded in such matters as market borrowings, loans and advances to public sector institutions and relative share in total credit.

Currency and banking have admittedly to be on the Union list and policy in this regard cannot be formulated at anything but the national level. But in the formulation of this policy, it is vital

that the regional and State Government's requirements are properly taken into account. Without participation by State Government in decision-making in these areas, regional distribution of these resources will continue to be skewed as at present. The proportion of direct borrowing on the market by States to total public borrowing will continue to be small; and taking into account the increasing resource by the Central Government to "deficit-financing", this inquitable situation will be perpetuated.

To deal satisfactorily with these problems of institutional finance at the same time as the national objectives of optimum saving and optional resources allocation are secured it is necessary to establish under the aegis of the National Development Council, a National Credit Council consisting of representatives of Central and State Governments at ministerial level, the Governor of the Reserve Bank of India, the Chairman of NABARD, IDBI, Export-Import Bank, and the LIC. The Union Finance Minister and the Governor of the Reserve Bank of India should be, respectively, Chairman and Deputy Chairman of the NCC, with either finance or Planning Ministers from States nominated on a zonal basis by the NDC as other ministerial members. The secreteriat service for this body should be provided by the RBI, with such assistance from the Planning Commission's technical staff as may be mutually agreed upon.

It should be the responsibility of the NCC to consider all questions of institutional finance both short-term and long-term. It should meet every quarter, for review of inflation, development finance, banking and credit trends, on the capital market etc., and decide on (a) the short-period adjustments within the framework of national policy as approved by the NCC and (b) changes in policy to be submitted to the NDC, Central or State Governments as may be appropriate. Like the Planning Commission, the NCC should also report regularly to NDC.

All operational questions of banks and other financial institutions should normally be left to the Reserve Bank of India and the other apex institutions, and both the NCC and the governments should refrain from dealing directly from the day-to-day management of commercial and development banking institutions. It is not necessary that State Governments are represented on the boards of directors of individual banks. (Even the Central Government nominees on the board of nationalised banks should avoid interfering unduly with the banks' management).

However, it is necessary that the "Local Boards" of the RBI, IDBI and NABARD (and of the State Bank of India) which now exist only formally should be assigned the specific role of truly conveying and problems and needs of each State covered by them to the Central Board and the top management of these institutions. For this purpose, senior officers of State Governments—such as Commissioners for Institutional Finance should be made members of these Local Boards, whose meetings should be presided over by Deputy Governors of RBI, or their equivalents in other apex institutions. Organisational charges of this type are urgently needed also to ensure that working relations between bank staff and State Government functionaries at all levels are mutually more accommodating and productive than are at present.

Decentralised Planning

Although "Economic and Social Planning" is on entry in the concurrent list of the Seventh Schedule, in practice, the degree of consultation necessary between the Centre and the States in order to make planning a joint endeavour has not been forthcoming. We have therefore made our suggestions in the previous paragraphs for making the National Development Council as a forum for discussion and debate on the complexities of National Planning as well as of Decentralised Planning. We have also offered our views on the restructuring of the Planning Commission to facilitate both effective consultations between the State Governments and the Planning Commission and also the decentralisation process in the sense of planning from below.

If decentralised planning is to take place, it is surely unnecessary for the Planning Commission to scrutinise minute details of all the schemes proposed by the State Government, although national priorities must necessarily be incorporated into State plans. Such national priorities should emerge as a consensus between the Union and the State Governments at the National Development Council. The Planning Commission's scrutiny of State Plans should consequently be confined to only a few sectors such as major irrigation, large and medium industry, power and transport. We similarly view with great apprehension the extent to which the total resource transfers under Centrally Sponsored and Central Sector Schemes and burgeoned in recent years. Currently, for Karnataka, the Central resource transfer under such schemes equals the Central resource transfers for funding the State Plan. We strongly urge that Central assistance under Centrally Sponsored and Central Sector Schemes should be limited to 1/6th of the quantum of the aggregate Central assistance for the State plans. Such schemes should conform to certain desirable guidelines like constituting Inter-State Schemes and being significant from a national point of view.

The finalisation of the State Plan outlays should be such as to permit the States to make lumpsum allocations to the districts to facilitate District and Block Development Planning. This would be possible only when the approval of outlays by the Planning Commission is restricted to a few major sectors of development as mentioned earlier and leave the rest to the States to determine the allocations to the districts on the basis of criteria similar to that of Gadgil formula with such modifications as may be necessary for achieving reduction in regional imbalances within the State.

We believe strongly that decentralised planning is crucial to the success and viability of our planning system. Indeed such decentralised planning will have to extend much below the State level. Just as the Union and the States have to work in concert and harmony cutting across Party and ideological differences and reflecting the yearings and aspirations of the people at large, the same kind of consultation and sharing of power is called for at levels below

the States. The Karnataka Government has itself taken a decisive step in this direction by passing the Zilla Parishad Bill for implementing democratic decentralisation upto the Mandal level. Its implementation is awaiting the consent of the President for the past 6 months.

It needs to be stated that unless decentralisation at lower tires is accepted nationally, only a few States adopting this path will not induce decentralisation. Furthermore in order for this to become possible, there is need to remove some serious anomalies in the present situation. First, elections at Zilla Parishad and lower levels ought to be made mandatory as at Union and States levels and should be conducted by the Election Commission. Second, representation of Local Bodies in State Lagislatures should be made mandatory. Third, Government at District and lower levels should not be viewed as arms of the administration at higher levels but as elected bodies served by administrative services that are wholly responsible to the elected bodies.

Unity in Rich Diversity

In short, the overarching concern of our memoradum is to develop the Union-States relations in such a way as to impart fresh vitality and dynamism to democratic federalism and serve the people, resolve conflicts, arrest confrontationist postures and produce a unity that is rooted in the rich diversity of our society. The broader perspectives call for closing the growing gap between our institutional set-up and the democratic ideology it is supposed to serve. To achieve this, democratic structures have to be respected and be vested with autonomy which carries withit a balanced distribtion of responsibilities, powers and finances.

All the instruments like the legislative procedures, the planning process, political and financial decentralisation, the media, the judiciary, administrative services, the police, the Finance Commission, the Planning Commission, National Development Council, and other All India bodies, have to be geared up with restructuring wherever needed to meet the requirements of the new sociopolitical economic order, consistent with equity harmony, regional balance and dignity of the different States and the people inhabiting them. The Union and the States may have to subject themselves to equal degree of discipline, understanding, unity and sacrifice enthused by a deep sense of the much needed transformation and commitment to resolve issues through democratic means and institutions specially constituted and strengthened for the purpose.

Karnataka

WHITE PAPER ON THE OFFICE OF THE GOVERNOR

Introduction

This House will recall that on 17th August I had promised to prove to the hilt the remarks I had made on Governors of States in my inaugural speech to the Seminar on Centre-State relations in Bangalore on 5th August. I am fulfilling that promise today.

Let me, to begin with, quote my remarks in their entirety, so that the House will appreciate their full import and meaning. I had said "The ultimate objective being the same, the Union and the States must function on mutually complementary and co-operative basis. They are and they should feel that they are equal partners in the great adventure of national reconstruction and development. This naturally requires the recognition of equal importance of both the functions, mutual respect and honour. A super power attitude and show of superiority on the part of the Union, which is the natural consequence of the concentration of powers and resources, has been responsible for generating a feeling of frustration and sense of injustice and discrimination and helplessness on the part of the States which in turn produces the dangerous forces of regionalism. The concentration of power has also distorted the scheme of the Constitution and led to the devaluation of important institutions like the Planning Commission and the Reserve Bank which have become the extended departments of the Executive. Even the Governor has become a glorified servant of the Union. An omnipotent and omnipresent Union that the present Central Government has growing into and withering States are the very negation of the democratic polity".

In thus placing the remark on the Governors in its proper context my intention is not to blunt its sharpness but rather to emphasise the gravity of my criticism in the light of the damage which has been done to the norms of the democracy as well as to the federal principle. My remark had been made after the fullest deliberation.

I was glad to note that the Seminar's conclusions announced in a press release on 7th August were in the same vein. It said, I quote, "An institution of crucial importance, on whose impartiality and integrity the autonomy of the States and the soundness of Union-State relations depend, is the Governor of the State. It is unfortunate that on more than one occasion the Governor has by and large been made to function as an agent of the Union Government. This position is totally violative of the Constitution. In Raghukul Tilak's case, the Supreme Court has said quite categorically that the Governor is 'not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the control of the Government of India'.

"But on far too many occasions, the actual practice has been contrary to this constitutional position. The Governor's power to appoint the Chief Minister and dissolve the State Legislature has on several occasions been used to flout the expressed will of the people. It is therefore, felt that the Constitution should be amended to ensure the independence of the office of the Governor".

Coming as these conclusions did form a gathering of distinguished people from all parts of the country which included eminent academicians, jurists, journalists, experienced administrators and persons who have distinguishad themselves in various fields, and from which people connected with active politics had been excluded, I had every reason to feel fortified in my remarks.

The issues I raised at the seminar were addressed to the people of the country. As I said in the speech, it is necessary to have a national debate in which various aspects of Union-State relations are considered. Foremost among these is the position of the Governor under the Constitution and the totally different position which is his in actual practice.

I present to the House this White Paper which will describe both with full documentation. I place this document before the people of the country as a contribution to the national debate and in no spirit of confrontation. I shall wellcome opposing view points and, indeed, comments on and criticisms of the White paper itself.

But, as the White Paper itself says, our hopes rest mainly on the surest guarantee for the successful working of our democratic Constitution—an informed vigilant people of our country.

BANGALORE, RAMAKRISHNA HEGDE

September 2, 1983 *Chief Minister of Karnataka.*

Constitutional Position and Political Perversion

There is, perhaps, no other provision of the Constitution of India which received closer attention or a more detailed scrutiny in the Constituent Assembly than the ones which establish the office of the Governor for each State of the Union of India and define the manner of this appointment and his functions and duties. These provisions received particular attention from the great leaders of the freedom movement, Shri Jawaharlal Nehru and Sardar Vallabhbhai Patel, and were the subject of detailed exposition in the Assembly by the Chairman of its Drafting Committee, Dr. B. R. Ambedkar, and his colleagues, Sir Alladi Krishnaswami Ayyar, Shri T.T. Krishnamachari and Shri K.M. Munshi. They were debated at every stage and underwent a radical change. Yet, it is highly significant that the central concept was never seriously in issue. The Governors would be the Constitutional heads of the States in a federation in which both the Union and the States would have a parliamentary form of government.

The office of the Governor is of crucial importance not only for the proper functioning of the federation but also for the success of democratic government in the country.

It is, therefore, a matter of the greatest concern that these very provisions of the Constitution should have been consistently, systematically abused and perverted and the Governor reduced to the rank of "a glorified servant of the Union" in order to serve and promote the interests of the ruling party at the Centre. The result is not only a gross distortion of the federal principle but also a negation of democracy. The issue is not one of the State versus the Union but of the law of the Constitution versus political malpractice.

This White Paper documents, both, the constitutional position of the Governor as it emerged from the labours of the Constitution-makers in Part I and the political perversion of the high office over the years in Part II. It is published in the firm belief that an informed public opinion is the best guarantee for the redress of wrong and the sure foundation of which our democratic Constitution rests.

PART I

The Constituent Assembly met for the first time on December 9, 1946 in conditions of great upheaval. On April 30, 1947, the Assembly adopted a Resolution setting up simultaneously two Committees. One was asked to consider and report on "the main principles of the Union Constitution." Its Chairman was Shri Jawaharlal Nehru. The other was asked to consider and report on "the main principles of a model Provincial Constitution." Its Chairman was Sardar Patel.

The Provincial Constitution Committee first met on May 5, 1947 and adjourned. It met again on June 6, 1947 three days after the Partition Plan had been announced. The very first thing which the Committee discussed was "the question of the functions of the Governor of a Province and the mode of his appointment." (For the minutes of the meeting see B. Shiva Rao, The Framing of India's Constitution. The Indian Institute of Public Administration, New Delhi, 1967; Select Documents; Volume II, page 646).

Opinion was divided between those who suggested that the Governor should, as in the United States of America, wield executive authority and be elected directly by the people and others who preferred that he should be "a Constitutional Head acting on the advice of a Prime Minister" who would be responsible to the legislature and that the Governor should be "appointed by a system of indirect election."

Likewise, some members suggested that "the Central Government should have a wide range of authority over the Provinces and that the Governor should function as a liaison between the Central Government and the Provincial executive and that he should be nominated by the Central Government. In the discussion that ensured on these various suggestions, it was felt that the primary question to be considered was whether India should be a unitary State with provinces functioning as agents and delegates of the Central authority or whether India should be a Federation of autonomous units ceding certain specific powers to the Centre. It was also considered that as this is a point of common interest to the Union Constitution as well as the Provincial Constitution Committees, it would be desirable to have a joint meeting for the purpose of discussion".

Accordingly, a joint meeting of the two Committees was held on June, 6, 1947 under the Chairmanship of the President of the Constituent Assembly, Dr. Rajendra Prasad. Both issues were clinched at this meeting. It was agreed "that the Constitution should be a federal structure with a strong Centre" and that the "Provincial executive should be of the Parliamentary Cabinet type, with such suitable modifications as may be considered necessary in the light of Indian conditions".

The meeting agreed that "there should be a Governor at the head of every Province" and, also, that,

"the Governor should be appointed by the Province, and not by the Central Government". The mode of appointment agreed was "indirect election on the basis of adult franchise through a special electoral college."

On June 8, 1947, Sardar Patel reported the conclusions to the Provincial Constitution Committee which preceded to discuss the Memorandum on the Principles of a Model Provincial Constitution, dated May 30, 1947, prepared by the Assembly's Constitutional Adviser, Sir B. N. Rau. (It envisaged the parliamentry form with the Governor elected by the Provincial Legislature, removable by impeachment and endowed with "special responsibilities.")

On June 27, 1947 Sardar Patel forwarded to the President of the Constituent Assembly the Report of the Provincial Constitution Committee to which was annexed a Memorandum on the Principles of a Model Provincial Constitution. (For the text see Shiva Rao's Volume II, Select Documents, page 656). The Governor was to be elected directly by the people on the basis of adult suffrage and be removable by impeachment. He was to act on the advice of the Council of Ministers except in respect of four matters: "the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof"; the summoning and dissolving of the Provincial Legislature; elections; and, appointment of the members of the Provincial Public Service Commission and of the Provincial Auditor-General.

Submitting the Report to the Constituent Assembly on July 15, 1947, Sardar Patel said that both the Committees had come to "the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of the Constitution the British type of Constitution with which we are familiar."

Analysing the four discretionary powers, he pointed out that elections would be the charge of a Commission appointed by the President (the Election Commission) while the appointment of members of the Public Service Commission is generally made on the recommendation of the Cabinet. Therefore, "practically the only powers left to the Provincial Governor is the power to report to the Union President when a grave emergency arises threatening menace to the peace and tranquillity of the province and the summoning and dissolving of the Provincial Legislature". (Constituent Assembly Debates; Volume IV, page 579).

The Assembly adopted the Report. In October 1947, Sir B. N. Rau prepared a Draft Constitution embodying the Assembly's decisions. The Draft was then considered and thoroughly revised by the Drafting Committee which submitted a Draft Constitution to the President of the Assembly on February 21, 1948. The Draft was published to elicit public reactions. (For texts of the two drafts vide Shiva Rao; Select Documents, Vol. III, pages 1 and 509, respectively).

A major change in the Draft was in respect of the election of the Governor. Article 131 of the Draft suggested two alternatives; one was appointment by the President from a panel of four candidates elected by the legislature and the other was direct election by the people of the Province. The reason was that some members of the Drafting Committee were of the view "that the coexistence of a Governmor elected by the people and a Prime Minister responsible to the Legislature might led to friction and consequent weakness in the adminsitration." It may be noted, however, that the Governor was under the Draft removable from office only by impeachment (Article 137). There was also a Schedule embodying an Instrument of Instructions to guide the Governor in the exercise of his duties.

To examine the Draft in the light of the comments and suggestions received, the President of the Assembly appointed a Special Committee. On April 10, 1948, this Committee recommended that Governors should be directly appointed by the President and it was "not necessary to provide a panel of candidates for such appointment." (Shiva Rao; Select Documents, Vol. IV, page 409). Shri Jayaprakash Narayan was among those who had made suggestions on the Draft and his comment on the appointment of Governors was pointed and perceptive :

"The co-existence of a Governor elected by the people and of the Chief Minister responsible to the Legislature may lead to friction. If the Governor is appointed by the President on the advice of the Federal Government out of a panel of four persons chosen by the Provincial Legislature by means of a single transferable vote, the Federal Chief Minister is likely to choose out of the panel a man of his own party even if the latter had not secured the largest number of votes. Such a situation is not likely to promote harmony in the Provincial Government and may disturb the harmony which must exist between the Federal and State Authorities."

The Drafting Committee's comment on Shri Jayaprakash Narayan's criticism is quoted below :

NOTE : The criticism that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction and consequent weakness in administration will also apply if the Governor is elected by the members of the Legislature of the State and the representatives of the State concerned in the Federal Parliament. To meet the objection to the election of a panel of candidates for appointment to the office of Governor, the special Committee recommended that the Governors should be directly appointed by the President. It has also been proposed that the Governor should act on the advice of his Minister in all matters. This would obviate the possibility of any friction between the Governor and his Ministers.

"**Drafting Committee** : That for article 131, the following be substituted : Appointment of Governor : The Governor shall be appointed by the President by warrant under his hand and seal".

This is the genesis for the provision as finally adopted by the Constituent Assembly. The Governor would be a Constitutional head of State just like the President of India and be governed by identical conventions of the parliamentary system. This was made amply clear by Dr. B. R. Ambedkar in the Constituent Assembly on December 30, 1948 :

"Under a Parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the

dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir : On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors ?

The Honourable Dr. B. R. Ambedkar : "*The position of the Governor is exactly the same as the position of the President* and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors." (emphaisis supplied throughout.) (Constituent Assembly Debates, Vol VII, p. 1158).

These provisions to which Dr. Ambedkar alluded finally came up for discussion by the Assembly on May 30, 1949. One of the members of the Drafting Committee, Sir Alladi Krishnaswamy Ayyar, explained the change in the procedure of appointment but while doing so he gave the unhappy analogy of Canada for which he was corrected by a colleague, Shri T. T. Krishnamachari. The episode is instructive.

Sir, Alladi referred to the need for averting a clash between the Governor and the Prime Minister of the Province and avoiding the expense of an unnecessary election. He said "A proper analogy has to be sought for in the Constitution of Canada where a responsible Governor obtains. In Canada, the Leiutenant-Governor of each of the provinces is appointed by the Governor-General, that is by the Governor-General on the advice of the Cabinet. There are many features of resemblance and similarity between the Canadian Constitution and our Constitution which, by some critics, has been considered to be quasi-federal. The system in the main we have accepted is the principle of responsible Government obtaining in the Dominions or in the different parts of the Commonwealth. Nowhere does the system of election of the Governor exist where the institution of responsible Government is the main feature of the Constitution."

On other aspects Sir Alladi's words are very pertinent : "In the normal working of the Constitution I have no doubt that the convention will grow up, of the Government of India consulting the provincial Cabinet, in the election of the Governor. If the choice is left to the President and his cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same time has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet Government in the early stages. The central fact to be remembered is that the Governor is to be a constitutional head, a sagacious counsellor and adviser to the Ministry, one who can throw oil over troubled waters. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the provincial Government, is likely to discharge his functions better than one who is elected on a party ticket by the province as a whole based upon universal suffrage or by the legislature on some principle of election.

"One thing I may mention. The point has been raised in these discussions, whether it is wise at all to invest so much power in the Prime Minister or in the President of the Union acting on the advice of the Prime Minister. If you can confide the appointment of the Commander-in-Chief of all the Forces, the Ambassadors in different parts of the world, the Chief Justice and the Judges of the Supreme Court and the appointment of other high offices in a Cabinet responsible to the Legislature, and theoretically in the President, I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention of consulting the provincial Cabinet might easily grow up. Such a convention, as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of Provincial Cabinet........

"In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and clash between the Provinces and the Centre will be avoided which will other wise occasionally result".

The next day, on May 31, 1949, Shri Jawaharlal Nehru intervened in the debate : "I think it would be infinitely better if he (the Governor) was not so intimately connected with the local politics of the province, with the factions in the provinces. And, as has been stated by Mr. Munshi, would it not be better to have a more detached figure, obviously a figure that is acceptable to the province, otherwise he could not function there? He must be acceptable to the province, he must be acceptable to the Government of the province and yet he must not be known to be apart of the party machine of that province. He may be sometimes, possibly, a man from that province itself. We do not rule it out. But on the whole it probably would be desirable to have people from outside-eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally while co-operating fully with the Government and carrying out the policy of the Government at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the

public someone slightly above the party and thereby in fact, help that Government more than if he was considered as part of the party machine. I do submit that is really a more democratic procedure than the other procedure in the sense that the latter would not make the democratic machine work smoothly". (CAD Vol. VIII, p. 455).

Shri T. T. Krishnamachari also spoke and clarified "I would like to refer to the arguments used by my respected friend, Mr. Alladi Krishnaswami Ayyar yesterday, in a very elequent speech in which he drew freely from the Canadian example, of the appointment of the Lieutenant-Governor by the Governor-General of Canada. I will ask the House to examine the whole question for themselves, and they will then realize that my honourable friend, Mr. Alladi Krishnaswami Ayyar, had no intention of using that analogy as anything more than an analogy, and he had no intention of asking this House to accept the entire scheme that obtains in Canada in regard to the appointment of the Lieutenant-Governor."

"In regard to Canada where the constitutional position as it was some time back bore some analogy to conditions in this country, there is one particular principle that is in operation on which I would like to lay some emphasis which will have no application to this country at all. It is avowed by every writer on the Canadian constitution that the whole scheme of the appointment of Lieutenant-Governors and the control that the Dominion exercises over the provinces is such that the ultimate control is in the hands of the Dominion Government. Actually under the Canadian Constitution the Cabinet of the Dominion issues instructions to the Leiutenant-Governors; in fact they have exercised their discretion in removing the Governor. Two instances are known in which the Governors have been removed. The Lietenant-Governor in a Canadian Constitution acts as an agent of the Dominion Government. I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future Governor who is to be nominated by the President to be in any sense an agent of the Central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of Government we envisage for the future".

He went on to emphasise "our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned, which particular person will have a veto and I think conventions have already grown in that direction and the persons so selected will be a person who will held the scales impartially as between the various factors in the politics of this State. The advantages of having a non-party man, a non-provincial man have been amply made out by the Honourable Prime Minister." (C.A.D. Vol. VIII, pp. 459-460).

The concept of the impartiality and independence of the Governor, despite his nomination by the President, could not have been more strongly emphasised by the architects of the Constitution.

It may be noted that all the three leaders who intervened in the debate recognised that the consent of the State's Chief Minister is an essential pre-requisite to the appointment of the Governor by the President. Pandit Nehru : "He must be acceptable to the Government of the Province". Sir Alladi Krishnaswamy Ayyar :"appointed by the President of the Union with the consent, I take it, of the provincial Government"; Shri T. T. Krishnamachari : "Our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned, which particular person will have a veto....". It was on this basis that the proision for the appointment of the Governor by the President was adopted by the Constituent Assembly.

Replying to the debate, Dr. Ambedkar remarked "if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble?"

He candidly said, "From a certain point of view I cannot help saving that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I went to warm the House that the real issue before the House is really not nomination or election—because as I said this functionary is going to be a purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery, is a purely psychological question—what would appeal most to the people—a person nominated or a person in whose nomination the Legislature has in some way participated. Beyond that it seems to me it has no consequence". (C.A.D. Vol. VIII, p. 468).

Dr. Ambedkar did not envisage the possibility of a Governor being removed arbitrarily by the President. "What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reasons which the President, no doubt, feels is legitimate ground for the removal of the Governor. It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure". (C.A.D. Vol. VIII, p. 474).

The Draft Constitution contained an Instrument of Instructions. On October 11, 1949 the Assembly deleted the Instrument for the reasons stated by Shri T. T. Krishnamachary. "It is felt to be entirely unnecessary and superfluous to give such directions in the Constitution which really should arise out of conventions that grow up from time to time, and the President and the Governors in their respective spheres will be guided by those convention". Like Dr. Ambedkar, Shri Krishnamachari also placed the President on a par with the Governors in regard to the applicability of the

conventions. Dr. Ambedkar supplemented this explanation : "So far as our Constitution is concerned, there is no functionary created by it who can see that the instrument of instruction is carried out faithfully by the Governor. Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagure." (C.A.D. Vol. X; pp; 114-115).

To complete the picture, it is necessary to quote the expositions of the d afts men of the Constitution on Article 356 which empowers the President to issue a proclamation assuming to himself the functions of the Government of a State and make certain other provisions, popularly known as "President's Rule" (It was Article 278 in the Draft. Dr. Ambedkar later submitted a revised text).

Pandit Hirday Nath Kunzru put a specific question to Dr. Ambedkar during the debate on August 4, 1949.

"May I ask my honourable Friend to make one point clear? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good Government of the provinces?

The Honourable Dr. B. R. Ambedkar : No. no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or, only when there is such mis-Government in the province as to endanger the public peace?

The Honourable Dr. B. R. Ambedkar : Only when the Government is not carried on in consonance with the provisions laid down for the constitutional Government of the provinces. Whether there is good Government or not in the province is not for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of 'the provision of the Constitution' taken as a whole? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase "in accordance with the provisions of the Constitution,."

Dr. Ambedkar referred him to the Government of India Act, 1935 which used the expression in the notorious S-93. He, however, took care to emphasise the limitations :

> "In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But the objection applied to every part of the Constitution which gives power to the Centre to override the Provinces. In fact, I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is ondowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article." (C. A. D. Vol. IX; pp. 176-177).

It bears recalling that in the opinion of one of the Assembly's leading members, Pandit Thakur Das Bhargava, "the Constitutional machinery cannot be regarded ordinarily to have failed unless the dissolution powers are exercised by the Governor" (in respect of the legislature) (C.A.D. Vol. IX; p. 161).

All these provisions formed part of an entire federal scheme whose fundamentals were described by Dr. Ambedkar time and again. Moving that the Draft Constitution be taken into consideration, on November 4, 1948, he said "The Draft Constitution is a Federal Constitution in as much as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution." (C.A.D. Vol. VII; p. 33).

On August 3, 1949, when the provisions for President's rule in the States came up for discussion, Dr. Ambedkar was at pains to emphasise: "I think it is agreed that our constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to them." Hence, the necessity for explicit provisions concerning Union intervention. (C.A.D. Vol. IX; p. 133).

Finally, when the Assembly had completed its deliberations, Dr. Ambedkar replied to the debate on November 25, 1949 and said "As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned beween the Centre and the States, not by any law to be made by the Centre, but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to be States. But these features do not

form the essence of federalism. The chief mark of federalism, as I said, lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution". (C.A.D. Vol. XI; p. 976).

The Supreme Court of India has had occasion to pronounce on the constitutional position of the Governor.

In Ram Jawaya Kapur vs. State of Punjab (1955). 2 SCR 225, A.I.R. 1955 S.C. 549, the Court said "Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State......In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under Article 53 (1)......the executive power of the Union is vested in the President but under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Minister of the Cabinet. The same provisions obtain in regard to the Government of States; the Governor......occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government."

Similar observations were made in U.N. Rao vs. Indira Gandhi (1971) Supp. S.C.R. 46, A.I.R. 1971 S.C. 1002 and in K.N. Rajagopal vs. M. Karunanidhi A.I.R. 1971 S.C. 1551.

In Samsher Singh vs. State of Punjab A.I.R. 1974 S.C. 2192 a Bench of seven Judges affirmed these pronouncements. cAfter describing how the discretionary powers of the Governor were pruned in the Constituent Assembly, Chief Justice A.M. Ray said : "Articles where the expression 'acts in his discretion' is used in relation to the powers and functions of the Governor are those which speak of special responsibilities of the Governor. These articles are 371A (1)(b), 371A(1)(d), 371A(2)(b) and 371(2)(f). There are two paragraphs in the sixth Schedule, namely 9(2) and 18(3), where the words 'in his discretion' are used in relation to certain powers of the Governor. Paragraph 9(2) is in relation to determination of amount of royalties payable by licences or lessees prospecting for, or extracting minerals, to the District Council. Paragraph 18(3) has been omitted with effect from January 21, 1972" (the provisions concerned the Governor of Nagaland).

He added : "The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in the articles to which reference has been made. To illustrate. Article 239(2) states that where a Governor is appointed as administrator of an adjoining Union Territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the sixth Schedule and Articles 371A(1)(b), 371A(1)(d) & 371A(2)(b) & 371 A (2)(f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again, Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

"In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matt... The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers."

His conclusion was clear enough. "Our Constitution embodies generally the Parliamentary or Cabinet system of Government on the British model both for the Union and the States."

In Hargovind Pant vs. Dr. Raghukul Tilak A.I.R. 1979 S.C. 709, decided as recently as May 4, 1979 by a Constitution Bench of five Judges, the Court had to consider specifically the constitutional position of the Governor.

"It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor.

"His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, not is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the

control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State."

Indeed, Shri G. S. Pathak, a noted jurist said in a speech on April 3, 1970, when he was Vice-President of India. "In the sphere in which he is bound by the advice of the Council of Ministers, for obvious reasons, he must be independent of the Centre. There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers". (quoted in Report of the Centre State Relations Inquiry Committee 1971, Government of Tamil Nadu; p. 125). In such cases the Governor must ignore the Centre's 'advice' and act on the advice of his Council of Ministers. This is the clear incontrovertible legal position.

If there is such widespread concern it is because in all significant respects the actual practice bears little relation to the constitutional position of the Governor. This is unanimously accepted by all outside the ranks of the ruling party at the Centre-by academics, publicists, public figures, jurists, administrators and people from different walks of life.

PART II

The decline began shortly after the Constitution came into force on January 26, 1950 and was serious enough a decade and a half later. Shri Sri Prakasa served as Governor for fifteen years in three States— Assam, Madras and Bombay. In his book State Governors in India published in 1966 he referred to the misconceptions about the office which were prevalent even then. "I know of one Governor who thought he could continue to be a member of the All-India Congress Committee even as Governor. I know of other Governors who used to go to their States and undertake political tours"

Fortunately we had as President no less a person Dr. Rajendra Prasad who intervened. "The Governors could not keep such restrictions on themselves, and they resigned." (Meenakshi Prakashan; pp. 68-69). There is, however, no knowing what damage they inflicted on the high office while they served.

A gross instance which he mentions is that of Shri A. P. Jain who was Governor of Kerala when Shri Lal Bahadur Shastri died in January 1966. "Though Governor and as such above party politics, he took active part in canvassing for Shrimati Indira Gandhi for the Prime Ministership as against Shri Morarjibhai Desai, the other candidate for the office. Shri Jain realised the anomaly of his position and sent in his resignation". His Conduct was the subject of severe censure in the press. It is legitimate to ask whether such a politician could have at all acted impartially while he was Governor. In Shri Jain's case the answer is provided by his own conduct in March 1965 when he dissolved the newly-elected State Assembly even before it was duly constituted by the summons to meet and without giving an opportunity to the leader of the largest single party to form a Government. It is needless to add that that was an opposition party, the Communist Party of India (Marxist).

But it is a measure of the tragedy that Shri Sri Prakasa's own conceptions of the office were in total variance with those which the framers of the Constitution consistently expressed. He wrote "A Governor's first duty is to know that he is the representative of the Centre. The Governor's second duty is to look after the interests of the State to which he is assigned" (sic). (Pages 5-6).

This is a total reversal of the constitutional position. The use of the word "assigned" suggests that the duty to the State emanates from the prior claims of the Centre which assigned him to it.

Shri Sri Prakasa was of the view that "Governorship should be really the last lap on the journey of a politician. If Governors can later become Ministers or hold other official positions, then the dignity of the office is marred" (pp. 62-68).

The Study Team of the Administrative Reforms Commission, headed by Shri M. C. Setalvad, in its Report submitted in September 1967 likewise observed :

"There have been instances of persons appointed as Governors continuing their connection with active politics, and in some cases returning to active politics after ceasing to be Governors. We have no hesitation in recommending that there should be a firm convention that no person who is appointed Governor should take part in politics after his appointment as such". (page 286).

The Study Team noted the qualities expected of a Governor and remarked that "many of those who have filled posts of Governors during the last 16 years have fallen short of this standard. It is our considered view that the real reason for this state of affairs is not the paucity of suitable persons, but the lowly place given to the post of Governor in the minds of those responsible for making the appointments.

"Circumstances devalued the post, and with that there was a logical fall in the standard of selection for Governors. The post came to be treated as a sinecure for mediocrities or as a consolation prize for what are sometimes referred to as 'burnt out politicians'. Most of the persons selected were old men of the ruling party at the Centre. All this should not be construed to mean that no suitable men were appointed but that their number was small."

The Administrative Reforms Commission in its Report on Centre-State Relationships submitted in June 1969 made similar observations. (*vide* page 23 of its Report).

The situation has considerably deteriorated since. At least two members of the ruling party who had to resign from office as Ministers following judicial strictures were subsequently appointed as Governors; to wit, Shri M. Chenna Reddy and Shri Ram Lal.

Quite a few Governors have returned to politics; most notably, Shri D. K. Borooah, the Governor of Bihar, who became a member of the Union Council of Ministers and later a President of the Congress Party. Another such case was that of Shri Biswanath Das, Governor of Uttar Pradesh, who later became the Chief Minister of Orissa.

On the other hand, the term of many a Governor has been cut short or extended for political reasons. Governors have been transferred as if they were civil servants and, at least in one case, even removed.

Dr. Rajeev Dhawan in his study "President's Rule in the States" prepared under the auspices of the Indian Law Institute, New Delhi, writes "A Governor should normally be appointed for five years. But this is not always the case. There are various instances where the Centre may have shortened the tenure of a particular Governor for political reasons. Thus in Punjab in 1966, Governor Ujjal Singh was replaced by Dharma Vira, two days before the latter sent his report recommending the imposition of President's rule in Punjab. Again Governor Dhawan of West Bengal went on 'leave' and later resigned as Governor of West Bengal in 1971 well before his tenure expired. This may have taken place because he invited the Communists to prove that they had a majority in the legislature with a view to forming a government, because they were the single largest minority party...." (N.M. Tripathi Pvt.) Ltd., 1979, p. 118).

This phenomenon has also been noted by a distinguished jurist Shri H. M. Seervai in Vol. I of the third edition of his book Constitutional Law of India published in April 1983: "The events leading up to the resignation of Mr. Antulay and the subsequently events including the sanction given by the Governor to prosecute Mr. Antulay have raised important questions about the postition of the Governor. The present position is very unsatisfactory; however, it will be fully discussed in the Chapter on the Union and the State Executive in Vol. II of this book. It is enough to say that the tenure of the Governor's office at the pleasure of the President, which means, in effect, the Union Government, is most unsatisfactory and is liable to grave abuse. The Governor has certain powers under the Constitution. He is not the servant or agent of the President as the Governor's oath of office clearly shows. The exrcise of the power to remove or transfer a Governor must cause grave disquiet in the public mind. For example, during the hearing of the petition against Mr. Antulay, culminating in the judgment of Mr. Justice Lentin, Air Chief Marshal Mehra was the Governor of Maharashtra. Under the Constitution, a report by the Governor on the the working of the State Ministry is contemplated; Art. 356. Sometime after Mr. Antulay resigned, Mr. Mehra was transferred from the office of Governor of Maharashtra to the office of the Governor of Rajasthan, without any reason being assigned, and he was succeeded by Air Chief Marshal Latif, who, after the appeal Court judgment, gave sanction to prosecute Mr. Antulay, as stated earlier. Public confidence in the position and authority of the Governor would be gravely impared by happenings of this kind. It will be suggested in a full discussion on the Governor's position that his tenure of office must be fixed for a period of 5 years. However, as there is no provision in our Constitution for removing a Governor by a process of impeachment, such as there is for the removal of the President, such a provision should be introduced in the Constitution". (N. M. Tripathi P. Ltd. Vol. I; p. 1070).

In an earlier edition of this work Shri Seervai commented on Article 156(1) which says "the Governor shall held office during the pleasure of the President":

Shri Seervai wrote "it is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. To hold otherwise would mean that the Union executive would effectively control the State executive which is opposed to the basic scheme of our federal Constitution. Art. 156(1) is designed to secure that if the Governor is pursuing courses which are detrimental to the State or to India, the President can remove the Governor from his office and appoint another Governor. This power takes the place of an impeachment which clearly is a power to be exercised in rare and exceptional circumstances". (Second Edition, Vol. II, p. 1074).

On October 26, 1980, the Governor of Tamil Nadu Shri Prabhudas Patwari was removed from office in a most humiliating manner without any reason being assigned.

In 1983, it is only too true to aver that "even the Governor has become a glorified servant of the Union." The office became highly politicised gradually. Norms came to be violated. The report of the Committee of Governors, appointed by the President on November 20, 1970, entitled *The Rule of Governors* did not concern itself with the aspect of the decline of the office at all or with devising safeguards to ensure their independence. The process was not checked, let alone halted. On vital issues affecting democratic government in the States, like the appointment of the Chief Minister and the dissolution of the State Legislative Assembly, the Governors made blatantly partisan decisions solely to promote the interests of the ruling party at the Centre. Article 356 has been consistently abused and the autonomy of the States as well as the principles of democracy flouted.

Judical review of such action is beset with difficulties. But in one case a High Court, while declining to issue a writ, felt constrained to criticise the Governor for violating parliamentary conventions and for refusing to give the opposition an opportunity to form the Government after a Congress Ministry had fallen.

In 1973 in Orissa 23 dissident Congress MLA returned to their parent parties, the Congress (O) and the Swatantra. The Chief Minister, Smt. Nandini Satpathy, resigned on March 1, 1973 while the Assembly was in Session since her party no longer commanded a majority. The Pragati Party led by Shri Biju Patnaik acquired a majority of 72 in a House of 140, a fact which was certified by the Speaker and notified by the Secretary of the Assembly to Governor B. D. Jatti. The majority was also proved by the fact that the Pragati Party's candidate for a seat in the Rajya Sabha, Shri Debananda Amat, was elected, on March 1 polling 77 votes against 60 secured by the Congress candidate.

Yet, in the face of these incontrovertible facts, Governor B. D. Jatti did not call upon the Pragati Party to form a Government but, instead, accepted Smt. Satpathy's recommendation to make a report to the President under Article 356. On March. 5, 1973 President's Rule was imposed on the State.

Shri Patnaik and his colleagues moved the High Court of Orissa. While declining to issue a writ the court criticised the Governor's action.

Bijayananda Patnaik and others versus President of India and others (A.I.R. 1974 Orissa 52) is a particularly noteworthy case. Filed by a majority of the House (74), it was one of the very rare to be taken to Court. Its strictures therefore have a much wider relevance. It said : "....The Governor examined the claim of the Pragati Party of having 72 members on withdrawal of 25 members from the ruling party. He noticed that the figure '72' had been reduced by two within a few hours. After taking into consideration various aspects....he came to the conclusion that there is no guarantee that the present majority claimed by shri Biju Patnaik and his supporters will be stable and if a Ministry is allowed to be formed under the leadership of Shri Patnaik, the said Ministry might not remain for a long time. Thus, the Governor did not call the leader of the Opposition to form the Ministry, not because they had no majority but because he expected that the majority might fall at any moment and there would be no stable Ministry. In arriving at this conclusion the Governor did not honour the convention prevalent in Great Britain in the matter of formation of the Ministry. The breach was in the following way. On the resignation of the Ministry of Nandini Satpathy having lost its majority support in the Assembly. the Governor should have called the leader of the Opposition to form the Ministry. It was for the latter to say whether he would be able to form a Ministry or not. The leader of the Opposition asserted that he had a majority support and that is confirmed by the Governor's own finding that he had support of 70 members. Even assuming that the Governor wanted to test the exact support he should have called upon the leader of the Opposition to test his strength in the House itself which was in Session. This was exactly what the Governer of West Bengal did when he dismissed the Ministry of Ajoy Mukherjee in November 1967....The Governor is not concerned whether the Ministry could be stable in future. If the Ministry which would have been formed by the leader of the Opposition would have fallen afterwards, the Governor would have been justified to recommend for the President's rule if at that time no other person was in a position to form an alternative Ministry by having majority support."

Dr. J. R. Siwach of the Kurukshetra University, a scholar who has made a detailed survey of such situations, makes the following comment in his work Politics of President's Rule in India, published by the Indian Institute of Advanced Study, Simla, in 1979 with a wealth of citation :

"On the other hand, whenever, the Government of Congress Party or a Government supported by it from outside of a Government in which it was a major partner, fell or was about to fall the Assemblies instead of being suspended were immediately dissolved either under Articles 174 (2)(b) as was done in Travancore—Cochin in 1954, in Kerala in 1970, in West Bengal and in Bihar in 1971, or under Article 356 as in Andhra in November 1954, in Pondicherry in August 1968, in West Bengal in 1968 and again in 1971, in Manipur in 1969 and in Orissa in 1973 unless this happened immediately after elections as in Haryana, U.P. and Madhya Pradesh in 1967 and in Bihar in 1969. In West Bengal in 1971 it is interesting to know that when the fall of the Ministry of Ajoy Mukherjee was imminent, since the Congress Party was a major partner in it, the Assembly was dissolved within four months of the elections. In all these cases the Opposition was ready to form the Government. In fact in Travancore Cochin in 1954, in Pondicherry in 1968 and in Manipur in 1969 when the Government was defeated on the floor of the House, the opposition had a legitimate right to get an opportunity to form the Government. Even in other cases where the Congress Ministry or a Ministry supported by it resigned in anticipation of its defeat particularly in West Bengal where the elections were recently held and where the largest party was not given a chance to form the Government, the claim of the Opposition should not have been ignored."

"It should also be noted in this connection that whenever a recommendation for dissolution under Article 174(2) (b) or under article 356 was made by a non-Congress outgoing Chief Minister or a non-Congress Chief Minister having doubtful majority it was rejected in all the cases where the Congress party was keen on forming the Government. For instance, the recommendations of Rao Birendra Singh in Haryana, of Gurnam Singh in Punjab (1967), of Charan Singh in U.P. (1968), of Bhola Paswan Shastri in Bihar (1968), of Raja Naresh Chandra Singh in Madhya Pradesh (1969) and that of Hitendra Desai in Gujarat and Karpoori Thakur in Bihar (1971) about the dissolution of the Assembly under Article 174(2) (b) or under Article 356 were rejected. The Chief Ministers of Haryana and Gujarat wanted dissolution under Article 174(2)(b) and the Chief Ministers of U.P., Madhya Pradesh and Punjab wanted dissolution under Article 356"

As with dissolution of the legislature so, also in the appointment of the Chief Ministers, Governors have, for the most part, acted in a partisan manner to promote the interests of the ruling party at the Centre. The latest in the series is the well-known instance of Haryana only last year while among the earliest and best remembered is that of Rajasthan because the method of physical verification of the opposition's claim was adopted. The Governor Dr. Sampurnanand invited the Congress Party leader, Mr. Mohanlal Sukhadia, to form the Government on March 4, 1967 on the ground that he was the leader of the largest single party with 88 members in a House of 183. On March 12 Shri Sukhadia expressed his inability to do so. The Assembly was to meet on March, 14. But, instead of giving the opposition a chance to form a Government, the Governor recommended and the Centre clamped President's rule on March, 13. The Assembly,

curiously, was suspended, not dissolved. The opposition paraded 93 of its members before the President in the presence of the Union Home Minister, Shri Y. B. Chavan.

On April 28, Shri Sukhadia was sworn in as Chief Minister and President's Rule lifted. He claimed the support of 94 MLAs. Comment is unnecessary. The episode left a sad impression. The president of denying the opposition a fair chance to form a Government hardened into practice.

Rules and concepts were invoked (the claims of the largest single party, stable government, etc.,) but were applied or ignored as expediency demanded. The only consistency in their application was that in almost all cases the interests of the ruling party at the Centre were fully served. In the process, Governors are known to have changed their own publicity expressed opinions as well.

Shri Nityanand Kanugo, then Governor of Bihar, in his report to the President on February 11, 1970, wrote : "In my opinion no Government with any reasonable prospect of stability can be formed now. Therefore, the President's Proclamation should be extended for another term of Six months"

But on February 14, just three days later, he changed his opinion and recommended to the President that there was no need for an extension and invited Daroga Prasad Rai, the leader of Congress (R) legislature party, to form the Government. It proved to be unstable. The Governor in his report on February 14, 1970 said that were 17 MLAs who could not be relied upon. But eleven out of these MLAs were in the list of 172 given by Daroga Prasad Rai.

In U. P., Shri B. Gopala Reddi, the Governor wrote to the President on October 2, 1970, that President's Rule should be imposed because there was no possibility of a stable Government in the State. He said: "I am not at all sanguine that any clear picture about the strength of the political parties or their combination would emerge in the near future. Prolonging the present state of uncertainty is not in public interest and the public interests of the State would be best served if the Legislature is placed under suspension." But after a mere 10 days, on October, 17, 1970, he wrote to Shri T .N. Singh : "I am satisfied that you are in a position to form a Ministry. I, therefore, invite you to form a ministry as early as possible."

In November 1967, Governor B. N. Chakravarti of Haryana recommended imposition of President's Rule although Chief Minister Rao Birendra Singh commanded a majority. The ground he adduced was instability brought about by defections.

In December 1968, however, Governor Chakravarti totally ignored the vice of defection when 16 Congress MLAs defected reducing the Party's strength of 32 in a House of 81. Rao Birendra Singh led 40 MLAs and pressed his claim to form a Ministry. Defections to the Congress followed swiftly. Eight of the defectors were appointed Ministers.

After these defections, the Assembly was summoned on January 28, 1969 only a day before the constitutionally permitted gap of six months. It was prorogued on February 12, 1969. The next Session was from August 20 to August 29, 1969. Thereafter the Assembly met on February 13, 1970 and was adjourned *sine die* on February 27, 1970.

The CPM won 40 seats out of 133 in the Kerala State Assembly election in March 1965. On March, 7, 1965 its leader Shri E. M. S. Namboodripad met the Governor and claimed the support of 23 others as well. But President's Rule was imposed on March 24 and the Assembly was dissolved without its even being summoned to test Mr. Namboodripad's claim —a test to which, by all accepted canons, he was fully entitled.

It is universally accepted that Article 356 has been abused. Implicit in this acceptance is recognition of the sad reality that the office of the Governor has also been abused. *For the Governor's participation is an integral part of the process.*

Governors have not only lent their sevices to keep opposition parties out of office but also to help the Congress party to resolve its internal feuds. A distinct category of cases of imposition of President's rule has come into being—president's rule to help a function-ridden Congress Party in a State to tide over a leadership crisis although the Party's majority was intact.

It was a palpable abuse of an emergency provision of the Constitution for purely party ends.

These cases are well known and are recognised as a distinct category in standard works by scholars :

Punjab	in 1951 and 1966
Uttar Pradesh . .	in 1973 and 1975
Andhra Pradesh . .	in 1973
Gujarat . . .	in 1974
Orissa	in 1976

To elaborate on two of these cases, Shri H. N. Bahuguna resigned as Chief Minister of Uttar Pradesh on November 29, 1975. On the Governor's recommendation, President's Rule was imposed on Nov. 30 and was lifted on Jan. 12, 1976 when Sh. N. D. Tiwari became Chief Minister. The Union Home Minister justified the action as being necessary "just to sort out some small problems, including the election of the leader" by the Congress Party. (Indian Express : December I, 1975).

Smt. Nandini Satpathy resigned Chief Minister of Orissa on December 16, 1976. President's Rule was imposed only to be lifted 13 days later when Sh. Binayak Acharya was appointed in her place. Few doubted that the DMK Minister of Tamil Nadu was over thrown in January 1976 only because of its opposition to the emergency. It had 184 members in an Assembly of 234 whose term was to expire in March 1976.

On January 29, 1976, the Governor Shri K. K. Shah submitted a Report to the President in which he accused the State Government of a "series of acts of mal-administration, corruption and misuse

of power for achieving, partisan ends" and recommended imposition of President's Rule. Two days later the President issued a Proclamation under Article 356. The Government was dismissed and the Assembly was dissolved.

On February 3, 1976 the Government of India appointed a Commission of Inquiry, consisting of Mr. Justice R. S. Sarkaria of the Supreme Court, to inquire into the charges against the Chief Minister Shri M. Karunanidhi and some of his colleagues.

However two memoranda levelling charges against them had been submitted as far back as November 4, 1972. On November 15, 1972 the Prime Minister Shrimati Indira Gandhi, had forwarded them to Shri Karunanidhi for his comments.

On September 30, 1979 Shrimati Indira Gandhi said in Madras, in order to remove "some confusion in the minds of some of our workers" about the Congress(I)'s electoral alliance with the D.M.K. that the D. M. K. Ministry was removed by her in January 1976 since its term of five years was over and "we did not think we had the authority to extend the term" (Indian Express, October 1, 1979). She also said that the C. P. I. and the A.I.A.D.M.K. had "pressurised us" to appoint the Sarkaria Commission. (The Times of India, October 1, 1979).

Be that as it may, these remarks clearly suggest that the Governor's Report was politically motivated.

Following the elections to the Haryana State Assembly in May 1982, the Governor, Shri G. D. Tapase, formally asked Shri Devi Lal, on May 22, to bring his supporters to the Raj Bhavan at 10 a.m. on Monday, May 24. In a House of 90 the Congress(I) had won 36 seats, the Lok Dal 31, the B. J. P. 6, the Congress (J) 3, the Janata 1 and Independents 12. The B. J. P. and the Congress (J) had pledged support to the Lok Dal and so had four Independents. Mr. Bhajan Lal, even with the support of Independents, could claim a total strength of 42.

On Sunday, May 23, without waiting for Shri Devi Lal to present his supporters the next day, as agreed earlier, Governor Tapase swore in the leader of the Congress (I) Party, Mr. Bhajan Lal, as Chief Minister (vide the Hindu May 24, 1982; the Statesman May 24).

On May 24, as many as 45, MLAs went to the Raj Bhavan to register their protest. Governor Tapase's action was widely criticised.

In Assam for the last nearly three years, the opposition has been repeatedly and deliberately denied the right to form a Government although it commanded a majority in the Legislative Assembly and despite the fact that the Congress (I)'s claim to a majority was repeatedly proved to be false. Successive Governors have acted in a partisan manner.

President's Rule was due to expire in Assam on December 12, 1980. Almost a month earlier, on November 17, 1980, the then Union Home Minister, Shri Zail Singh, claimed in the Lok Sabha that the Congress(I) had a majority in the Assembly and would form a Government. The Congress(I) had won only 8 seats in the elections to the State Assembly held in June 1978. Defections since January 1980 augmented its strength. But, let alone command a majority, the Congress(I) Legislature Party was in no condition even to elect a leader. It was so riven with dissension. On December 3, 1980, the Party authorised the Congress(I) President, Shrimati Indira Gandhi, to nominate a leader and pledged its "full and abject" support to the leader selected by her. (The Times of India December 4, 1980).

Three days later on December 6, the Governor, Shri L. P. Singh, swore in Shrimathi Anwara Taimur as Chief Minister. The Congress (I) claimed a membership of 52 in a House of 118 (the total membership was 126 but 8 seats were vacant). The Congress (I) had 45 members. Additional supports of some independents was also claimed. The opposition parties contested the claim, but their objection was rejected.

Shrimati Taimur's Ministry did not last long. She resigned on June 28, 1981 when the PTCA withdrew its support just a day before the Assembly was due to meet on June 29. But the opposition was not given a chance to form a Government. Instead, President's Rule was imposed on June 30, 1981 and was extended for another term on December 30, 1981. It was revoked only on January 13, 1982, when Mr. Keshava Chandra Gogoi, a Member of the Congress (I) Party was sworn in as Chief Minister by the Governor, Shri Prakash Mehrotra. He had been elected the Party's leader on January 11, two days after Smt. Taimur resigned as party leader. Once again, the Opposition's claim to majority support in the Legislature was brushed aside. The opposition leader Shri Sharat Chandra Sinha claimed the support of 65 members. But the Governor promised that Mr. Gogoi would soon be asked to face the Assembly. He was granted, instead, two months to consolidate himself. Even so, he failed.

On March 17, 1982, the Budget Session of the Assembly began. The opposition Left and Democratic Alliance immediately tabled a motion of no-confidence which was admitted that day and secured precedence over other business of the Session. The Alliance claimed a strength of 65 members drawn from 10 parties in a House of 118. Minutes before the legislature was due to meet the next day, on March 18, Shri Gogoi resigned as Chief Minister and did not face the Assembly. The Governor Shri Prakash Mehrotra once again did not invite the leader of the Left and Democratic Alliance, Shri Sharat Chandra Sinha, to form a Ministry, as he ought to have done especially in view of the denial of such an opportunity three times earlier. Instead, he recommended imposition of President's Rule and the dissolution of the Assembly. On March 19, 1982, President's Rule was imposed on the State and its Legislative Assembly was dissolved. The Gogoi Ministry had lasted for just 65 days.

Governors changed. One leader of the Congress (I) Legislature Party another proved unable to command a majority in the Assembly. *The Hindus* New Delhi correspondent remarked : "The Congress, for its part, has not been able till now (Jan. 1982) to demonstrate its majority." (*The Hindu* Jan. 11, 1982).

But on each of the four occasions when the rival claims were tested, the Opposition was denied the opportunity to form a Government and have its claim

to majority support tested on the floor of the Legislature. Finally, when the Congress (I)'s failure to run a Government could no longer be concealed, the State was brought under direct Central Administration, rather then be allowed to be governed by the Opposition Left and Democratic Alliance.

More recently, a Chief Minister has openly accused the Governor of his State of trying to create tensions in order to over-throw his Government. On August 29, 1983 the Chief Minister of Sikkim, Shri Nar Bahadur Bhandari, said of the Governor Shri Homi, J. H. Talyarkhan that he "appears to be ambitious to rule the State under President's Rule". He alleged that the Governor was even meeting the Congress(I) General Secretary and other party leaders, in Delhi to compaign against him. (*Vide* the PTI's Report in *The Times of India*, August 31, 1983).

Earlier, on August 27, 1983, 6 Opposition Members of the Parliament had in a joint letter to President Zail Singh criticised the reported presence of Shri Talyarkhan, at public meeting organised by the Sikkim Pradesh Congress (I) Committee during the Prime Minister Smt. Indira Gandhi's visit to the State. The letter said that while there was nothing unsual in Smt. Gandhi addressing the meeting in her capacity as the President of that Party, "It was a gross act of impropriety on the part of the Governor. He has done great disservice to the august office he is incharge of." The Members appealed to the President to admonish him. They enclosed a copy of a photograph showing the Governor on the dais at the meeting.

The members were Sarvashri Era Sezhiyan, Harkishan Singh Surjeet, Surendra Bhattacharjee, Abdul Rehman, J. P. Mathur and S. W. Dhabe.

Conclusion

The record proves beyond a shadow of doubt that, in most cases, the Governors have used their office to serve the interests of the ruling party at the Centre. It is unlikely that they would have acted thus except at the instance of the leaders of the ruling party. The clear intent of the framers of the Constitution and, indeed, the letter and spirit of the Constitution have been violated in all significant respects. These are : the appointment of the Governor in consultation and with the consent of the State's Chief Minister; the calibre and stature of the Governors; the security of tenure to which a Governor is entitled; the imposition of President's Rule and the Governor's right and duty freely to discharge his functions and duties as head of State without being instructed or dictated by the Centre, especially in regard to the appointment of the Chief Minister and the dissolution of the Legislature. Dr. B. R. Ambedkar stated in express terms in the Constituent Assembly on December 30, 1948 that in regard to these two matters as constitutional head of the State "the position of the Governor is exactly the same as the position of the President. This clear constitutional position has been subverted by destroying the Governor's Independence and suborning his impartiality. Governor's are not allowed to follow and do not follow the established conventions of the parliamentary system in regard to the appointment of the Chief Minister and the dissolution of the Legislature, but abide by the directions of the leaders of the Government of India. This is wholly unconstitutional in itself and quite independently of the fact that those directions are given in order to promote the interests of the ruling party.

In the process, the federal principle as well as the norms of democracy have suffered grievously. The State's autonomy is violated. Its people are denied the right to be governed by its elected representatives in accordance with the established conventions of the parliamentary system as was clearly envisaged by the Founding Fathers of the Constitution.

GOVERNMENT OF KERALA

(a) Replies to the Questionnaire

(b) Memorandum

(c) Note presented by the Kerala State Planning Board

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REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 The Indian Constitution is a Federal Constitution in as much as it establishes what may be called the "dual polity". This dual polity consists of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the fields assigned to them respectively by the constitution. However, a major distinguishing feature of the Indian Federal System from other systems elsewhere is that the Indian Constitution can be both unitary as well as federal according to the requirements of time and circumstances. It works as a federal system in normal times, but in times of grave emergency it may convert itself into a unitary system.

1.2 The basic scheme of the constitution does not require to be changed. Yet thirty-four years is a long enough period to undertake a comprehensive review of the working of our constitutional frame work. Such a review should take note of the vastly increased needs of the States arising out of the responsibility to implement development programmes and social welfare measures, and should recommend suitable amendments to the constitution restoring to the States necessary powers to enable unimpeded growth.

It is considered that a review is necessary in respect of some of the provisions, referred to in the question, which give the Union a supervisory role over the States.

It is also considered necessary that the States should be given an increased share of the overall national resources.

Detailed views are given in the answers to the specific questions in the questionnaire.

1.3 Major Constitutional changes do not appear to be necessary. However, it is felt that there should be sufficient institutional arrangements for constant consultation between the Union and the States and adequate administrative decentralisation to remove irritants and impediments in the sphere of Union-State relations and development administration.

1.4 No, the system as mentioned does not exist.

1.5 Yes to a large degree. The following are some of the measures considered necessary :

(i) An Inter-State Council which may also function as National Development Council may be constituted under Art. 263 of the Constitution, the Article itself being amended to provide that there shall be an Inter State Council which will also be the National Development Council. The Inter-State Council would be a Standing Body to which all issues of national importance can be referred and which can advise on them authoritatively after taking all aspects of the problems into account.

(ii) There should be administrative decentralisation by delegating powers to lower levels within the Central Government, constituting Regional Bodies in place of various monolithic central agencies, constituting local committees with the representatives of the States concerned and the Union Government Central Agency to discuss and finalise matters of regional importance.

(iii) There is need for ensuring prior consultation with the states whenever any proposal for amendment of the constitution under Art. 368 is taken up for discussion in the Parliament.

(iv) The power to reserve a Bill for President's consideration under Art. 200 should invariably be exercised by the Governor on the advice of the Council of Ministers and Art. 200 needs amendment to make this position unambiguous.

PART II

LEGISLATIVE RELATIONS

2.1 The legislative field of the Union was extended by several devices in the formulation of entries in the Lists, some of which were not to be found in the Government of India Act, 1935. Firstly, a number of entries in the State List have been made subject to entries in the Union List (List-II—Entries 13, 17, 22, 23, 24, 32 and 54) or Concurrent List (e.g. List Entries 13, 26, 27 and 57) or any Law made by Parliament (e.g. List II—Entries 12, 37 and 50). Secondly, some entries in the Concurrent List have been made, subject either to the Union List (e.g. List III—Entries 19 and 32) or to any Law made by Parliament (e.g. List III—Entries 31, 33(a), and 40). Thirdly, through several Entries in the Union List itself the State List can be encroached upon by the Union either in public interest or for reasons of national importance (e.g. List I—Entries 52, 53, 54 and 56) (Public interest) and Entries 62, 63, 64 and 67 (National Importance).

In reply to Qn. 7.2, it is pointed out how by progressive enlargement of the Schedule to the Industries (Development and Regulation Act of 1951, by virtue of the exercise of the powers of the Union under Entry 52 in List II, the States' power in relation to industries has been almost completely eroded. Similarly by exercises of the powers under Entry 54 of List I, the development of minerals and mines has been so completely regulated, that State Governments find it impossible to deal with decentralised mining of small deposits.

The State Government would suggest that the Entries in List I in the cases should be so worded as to make it clear that the power will be exercised only in exceptional circumstances. Central Legislation in such cases should be undertaken in consultation with the Inter-State council and the working of each Central enactment, which is undertaken on declaration of 'national interest' or 'public interest' and which would otherwise have fallen within the States' sphere, should be reviewed once in five years by appointing a National Commission including representatives of States also. Necessary provision should be made in the Central statute itself for this purpose.

2.2 The State Government does not suggest any change in the details of the subjects listed under the three Lists in the Seventh Schedule except in regard to 'residuary powers'. In the spirit of co-operative federalism and on the analogy of the Government of India Act, 1935, the residuary powers may be listed in the Concurrent List. Consequently, Article 248 of the Constitution may be deleted.

As regards other provisions of the Constitution, detailed suggestions have bben made while giving replies to the different questions.

2.3 Yes. It is necessary that any legislation affecting the interest of the States should be discussed in a forum like the Inter-State Council, constituted under Article 263.

The State Government is also of the view that whenever any amendment to the Seventh Schedule is contemplated under Article 368, there should be prior consultation with the State Legislatures before the Amendment Bill is introduced in Parliament.

2.4 Legislation made by Parliament on certain subjects within the exclusive competence of the State by virtue of a declaration in 'National interest' or 'public interest' should be only for particular duration subject to periodical review. Please see also Answer to Q.2.1.

2.5 The power to reserve a Bill for the President's consideration under Art. 200 should invariably be exercised by the Governor on the advice of the Council of Ministers. Necessary amendment to Art. 200 may be made so as to place this position beyond, doubt. Some definite time limit may be laid down, say three months, within which the President should communicate to the State Government his decision that he assents to the Bill or that he withholds assent therefrom or that the Bill may be reconsidered by the Legislature as may be recommended in the message contemplated in Art. 200 and 201. Where the President withholds assent, the reason therefor should invariably be stated.

PART III

ROLE OF THE GOVERNOR

3.1 (a) The Constitution visualises the Governor as the head of the State, in whose name the Government of the State is carried on. In the running of the Government, the Governor is to act on the advice of the Council of Ministers. The most important occ sions when the Governor is to act without consulting the Council of Ministers are those relating to the choice of the Chief Minister and when reporting to the President under Article 356 on the breakdown in the working of the Constitution in the State.

(b) Governors have functioned generally as Constitutional Heads of State and have fulfilled the role envisaged in the Constitution. When discretion had to be exercised, for example, in calling or not calling a leader to form a Government when the majority support for him was not clear or then recommending or not recommending action under Art. 356, Governors have adopted different standards.

3.2 The primary role of the Governor is as the Constitutional Head of the State, but he is also the Constitutional link between the State and the Centre. In case of differences, he should objectively counsel both the State and the Central Governments in the larger interests of the State and the country.

3.3 As stated in the reply to Q. 3.1 in cases in which the course of action was not clear and judgement and discretion had to be exercised, the Governors have adopted different standards. Please also see Answers to Q. 4.4.

3.4 Articles 200 and 201 : The Legislature of the State consists of the Governor and the Legislative Assembly, as per Article 168 of the Constitution. Therefore, Governor is part of the Legislature and has equal importance as the Legislative Assembly. The power to make law is conferred by Article 246, on the Legislature. Therefore, a law has to be enacted jointly by the Legislative Assembly and the Governor. That is why provision has been made in Article 200 that a Bill can become law only after assent of the Governor or if recommended by the Governor to the President, then of the President.

Under the Constitution, the Legislative power is distributed between the State Legislature and the Parliament. It may sometimes happen that the law passed by a Legislative Assembly may contain provisions which are beyond the Legislative competance of the State Legislature. In other cases, a law passed by the States Legislative Assembly may embody provisions which may be repugnant to the policy of the Union or injurious to the national interest. In such circumstances it would be necessary that such provisions may require substantial modifications. Under Article 200, if a Bill returned to the House by the Governor is again presented to the Governor for his assent, the Governor cannot withhold assent. Under Article 201, the President is not bound to give assent even if it is presented to him again with or without amendment. If a Bill must be compulsorily so modified by the Legislative Assembly, it can be done only by returning the Bill to the House for effecting such changes as provided in Article 201. Therefore, in view of the distribution of legislative powers between the Centre and the States it is necessary to retain Articles 200 and 201.

There is no instance in this State where the Governnor has withhold his assent or reserved for the consideration of the President any Bill without an advice from the Council of Ministers.

3.5 Yes. In a number of cases, there has been considerable delay. Some examples in this State in recent years are :—

(i) The Kerala Casual, Temporary and Badli Workers' (Wages) Bill, 1977;

(ii) The Public Property (Prevention of Destruction and Loss) Bill, 1978;

(iii) The Kerala Cashew Workers' Relief and Welfare Fund Bill, 1979;

(iv) The Kerala Land Reforms (Amedments) Bill, 1980.

3.6 Answer to Question 3.1 covers the point.

3.7 No.

3.8 No. The responsibility should be left to the Chief Minister who has been appointed by the Governor.

3.9 Such a provision, parallel to Article 67 of the Basic Law of Federal Republic of Germany has serious defect. It may easily allow even minority Governments to continue long. Further it is likely that a successor aspirant will resort to undesirable means to get support from others encouraging horse trading and defection. The better alternative seems to dissolve the Assembly allowing the existing Governments to continue as caretaker and order fresh elections.

3.10 The issue whether an Instrument of Instructions should be issued to Governors was discussed in the Constituent Assembly, but the idea was given up. The Governors' Committee, appointed by the President in 1970, also felt that it was not practicable to prepare a set of guidelines, which could cover all possible eventualities. It does appear, however, that based on the experience of the last 34 years, when Governors have adopted different standards in meeting similar situations, guidelines could be laid down for the exercise of the discretionary powers of Governors.

PART IV

ADMINISTRATIVE RELATIONS

4.1 No instance of any direction under Articles 256 and 257 has come to the notice of this State.

4.2 Article 365 prescribes the consequence of non-compliance by a State of any direction given to it by the Union. The power to give directions by the Union should be there, as a reserve power, in order to maintain harmony in the exercise of executive power by the Centre and the States. However, the provisions of Art. 365 are worded on the lines of provisions in enactments creating statutory authorities. It is true that the powers under Arts. 256 and 257 and consequently the powers under Art. 365 have not been used so far. It will be in the spirit of co-operative federalism to delete Art. 365 from the Constitution. The provisions under Art. 356 should be more than adequate to deal with any situation in which the President feels that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

4.3 Since no direction has been issued under Art. 256, the question is hypothetical. We agree with the recommendations of the ARC, and one of the forums in which such discussions could be held, in cases bilateral discussions do not succeed, will be the Inter-State Council (National Development Council).

4.4 Between 1951 and 1976, there were more than 30 cases of imposition of President's rule in the States. A survey of all these cases would show that in addition to the use of the powers under this Article when an elected Government could not continue in power due to loss of majority in the legislature, the powers were used in one or other of the following circumstances:—

(i) Dismissal of a Government enjoying majority support but the State having large scale internal agitation.

(ii) Imposition of President's rule but without dissolution of the Assembly and keeping the Assembly under suspension.

In 1977, when a new party came to power for the first time at the Centre, the State Legislatures and State Governments led by the Congress Party, were dissolved *en masse*. This was an unprecedented measure. The overwhelming victory of a particular party at the Centre should not have been, and is not, a ground for the President's satisfaction under Art. 356. The Constitution does not say anywhere that the Parliamentary Election should be treated as reflecting the will of the people regarding composition of the State Legislature. The dismissal of nine popular State Governments created a bad precedent. A similar dissolution of a few State Legislatures was done in 1980 also.

The dismissal of a large number of State Governments and the dissolution of State Legislatures on the basis of the election results relating to the Centre and Parliament is contrary to the intent and purpose of Art. 356. Necessary safeguards should be built into Art. 356 to prevent the recurrence of such instances.

4.5 Prolonged President's rule is not a satisfactory solution to such difficulties. Therefore, it is felt that the provisions under clauses (4) and (5) require no change.

4.6 It is felt that the existing arrangements for implementation of functions like Census and Election are working satisfactorily.

4.7 All these agencies have been created in pursuance of certain policies. The question may therefore, be discussed at two levels—whether the policies are necessary and whether within the overall policy, these agencies should be doing what they have been doing.

2. The Agricultural Prices Commission and Food Corporation of India, have been created because of the basic requirement to have a stock of foodgrains under Government control, either by procuring from surplus areas or by importing and to make foodgrains available through the public distribution system of deficit areas. Arbitration between the producer, the processor, the trader and the

consumer is an extremely delicate matter. One way is to leave it entirely to the market. If it is done so in the case of foodgrains, in a country like India in which food production is susceptible to vagaries of the monsoon and large parts of the country are prone to periodic drought and therefore shortage of foodgrains, both the producer and the consumer will suffer. The arrangements to fix minimum prices for procurement from surplus areas through studies by the Agricultural Prices Commission, to stock the grains with the Government of India through the FCI and make them available to the deficit areas, reduce the amplitude of fluctuations in prices that producers will otherwise be getting and in the prices that consumers would other side have to pay. In so far as procurement in India is largely voluntary and is made from surpluses, there can be no real objection to the arrangements that are in force. Surplus areas may feel from time to time that they would have got more if they were free to sell their produce in the market. This may be so. But in years of good monsoon, the prices would also be very much lower. The only beneficiary in such an arrangement would be the intermediate trader.

3. The agencies like the Monoplies and Restrictive Trade Practices Commission and the Directorate General of Technical Development have been created in pursuance of the policies to restrict the growth of monopolies, to deal with restrictive trade practices and to give protection to Indian industry using indigenous technology. The overall policies themselves are unexceptionable. However, because of the manner in which industrial licensing and regulation have been implemented, organisations like the DGTD have got involved in too much of detail. The solution seems to lie in a different line of approach towards the regulation of monopolies, multinationals and protection to small scale industry and indigenous technology (Please see replies to questions in Part VII below.).

4. The Central Water and Power Commission (later the Central Water Commission and Central Electricity Authority) was created in pursuance of Central Acts relating to these subjects. Being basic infrastructural facilities, it is necessary to have a framework of central legislation for purposes of ensuring quality and for dealing with inter-State matters. However, over the years, these bodies have been dealing with too many matters of minor detail in as much as even very small projects had to be submitted to them for clearance. The technical bureaucracies in these authorities go into very great details, while some of the Engineers and professionals in the States which have sent these proposals, project reports and designs are much more competent especially in actual field work when compared to many of the junior functionaries in the central bodies. The answer lies in these central bodies concerning themselves only with projects above a certain size and projects which have inter-State implications.

5. In the case of the Employees State Insurance Corporation and the Employees Provident Fund Organisation it should be enough for the Central Government to provide the legal framework and leave it to the States to implement them and have only small technical agency for periodic inspection and report to the Parliament. It was wholly unnecessary to have created, vast central bureaucracy in these institutions. Similarly, in the case of National Saving Organisation also, the Central Government could lay down the various schemes and facilities and leave it to the States to organise the promotional and other activities. To the extent that post offices mobilise savings, Central Government would be directly involved in it.

6. The Bureau of Industrial Costs and Prices was created in order to advise Government on fixing of reasonable prices for the industrial products which are considered vital to the growth of the economy. With the fall in the functions and role of the tariff commission, the Bureau has also taken over the remnants of that body. In a country of vast dimensions like India, in which industrial products are produced only in certain parts and are also produced by units which vary from old ones to new ones, and which is susceptible to frequent shortages, it is necessary to fix reasonable prices for important industrial products from time to time. Once the logic is accepted, the need for a professional bureau to study industrial costs and suggest prices cannot be questioned.

7. Generally, the question, in these cases, is not basically between the Centre and the States as between Government and the market. If it is accepted that Government intervention in the market is necessary in larger interests as in the case of basic foodgrains and in the fixation of prices of important intermediate goods then the creation and functioning of bodies like APC, FCI and BICP is inevitable.

8. However, since almost all these central organisations deal with subjects which are the concern of States and impinge on the powers of States, institutional arrangements are necessary to ensure that the States are consulted and that their views and reactions are available to the GOI from time to time. It will be worthwhile to have an All-States Advisory Council at the level of Ministers for each of these organisations (or atleast one council for the agencies attached to a Central Ministry), which should meet atleast once a year and discuss the policies, role and working of the organisation/s.

4.8 The All-India Services as they are constituted today have provided a reasonably efficient band of top civil servants to aid and advise the State Government at the policy level as well as in co-ordinating the work at the District level. The good spread of officers from different parts of the country has no doubt given the service its true All-India character. Existing provision for 33.1/3% of promotion quota has protected the interest of the State Civil Service to enter the higher level of Civil Service hierarchy.

Under the present arrangement the top Civil Service in Central Government is largely composed of officers drawn from various State cadres. This helps the Central Government machinery to keep in touch with field conditions obtaining in the State and district level. For this reason also the present arrangements appear sound and desirable.

On the question of disciplinary control and service condition of All India Service Officers, the existing provisions have evoked from time to time a mixed response from the political executive at the State level, depending largely on the political complexion

of the Government vis-a-vis the Union Government. But by the large there is a general appreciation of the usefulness of the present arrangement, which has helped in building a fairly high level of integrity and reasonable efficiency in the cadre.

4.9 In actual practice the Central Government generally deploys the Central Reserve Police and other armed forces in aid of civil power only on the request of the State Government concerned. In fact the Central Government has not been in a position to supply enough contingents of the above armed forces as requested by various States.

We agree with the views expressed by the Administrative Reforms Commission and we are of the opinion that the arrangements contemplated under Article 355 are necessary in the larger interests of national integrity.

4.10 States should also have a voice in the administration of organisations like All India Radio. Doordarashan and other news media as they have a vital role in disseminating accurate information relating to the functioning of the State Governments. Joint Advisory Councils could be formed at the State level for the purpose.

4.11 While in the early years after the coming into force of the States Re-organisation Act 1956, these Zonal Councils did meet at regular intervals, their meetings have now become fewer and far between. Whether and to what extent they fulfil the objectives for which they were sought to be created seems some what obscure now.

4.12 It is considered necessary that steps should be taken to establish an inter-State Council under Art. 263 for the better co-ordination of policy and programmes among the States *inter se* and between the Union and the States. Art. 263 itself should be amended to provide that an inter-State Council, which will also be the National Development Council, shall be constituted. All matters which are of common concern to the States should be brought within the purview of this council for study and deliberation. Any proposal for constitutional amendment affecting Union-State relations should also be brought before the Inter-State Council so that the States' views thereon may be ascertained before the proposal goes to the Parliament.

The composition of the Council may be on the lines suggested by the Study Team of the ARC, that is to say the Council shall have the Prime Minister as its Chairman, the Union Ministers of Home, Finance, and Food and Ministers in charge of other subjects which are of common concern to the Centre and the States and Chief Ministers of all the States as members. Other Ministers from the States may be co-opted according to the needs.

The Law in respect of the constitution and functions of the Council should be a simple one so as to make room for improvements in respect of its functioning in the course of time.

The Planning Commission should be made the Secretariat to the restructured NDC and it should be ensured that the Council meets at least once in six months. The annual reports of the Council should be presented to the Parliament and to the State Legislatures.

PART V

FINANCIAL RELATIONS

5.1 The scheme of devolution envisaged by the Constitution-makers was one under which most of the transfer of resources from the Union to the States was to be made through the recommendations of the Finance Commissions. The need for transfer of resources under centralised planning was not visualised at that time. Transfer of resources for planned development meant transfer of capital resources also. With the centralisation of savings in the country, the quantum of capital resources to be transferred for Stae Plans had to be progressively increased. The pertcentage of resources transferred to the States through the Finance Commissions comes to only 40.4. Nearly 60 per cent of the transfer was made outside the Finance Commissions (vide answer to Qn.5.5). The original scheme of devolution envisaged by the Constitution-makers has not therefore been followed in practice. The question that arises, therefore, is whether any changes are necessary in the constitution based on our experience with the requirements of planned development.

The State Government's detailed views on the overall transfer of resources to the States are given in the reply to Qn. 5.5. We do not think, however, that the various suggestions made to have a single body to allocate Central resources to States or to create a number of agencies are practicable. We feel that the present institutional arrangements—the Finance Commission and the Planning Commission—are perhaps the most practicable mechanism for central assistance. However, the working of the present system should be improved upon and there should be effective co-ordination between the two Commissions as well as objective criteria for determing the quantum of Central assistance to States and its inter-State distribution.

5.2 The overall position stated by the ARC Study Team still holds good, as can be seen from the following table:—

*Central transfers as % of States disbursements**

1951—56	37·8
1956—61	39·8
1961—66	45·7
1966—69	45·2
1969—74	47·4
1974—79	42·1
1979—84	41·6

*Revenue and Capital account taken together.

A complete separation of fiscal relations of the Union and the States is neither desirable nor practicable. Similarly, concentration of all the tax powers with the Union is also not desirable. In the context of planned development, it is necessary to take an overall view of the financial needs of States. All income taxes (including Corporation tax and surcharges) and all excise duties, by whatever name called, should be shareable with the States and the States should get most of the resources transferred through assured devolution but the principles of inter-State distribution should be such that advanced States are not left with

large surpluses. There should also be institutional arrangements for more equitable distribution of resources other than tax revenues between the Union and the States.

5.3 Giving more financial powers to the States may benefit the richer States more and could increase inter-State disparities. We therefore agree with the need for a strong centre having adequate resources to allocate to States in the interests of balanced regional development.

The States feel, on the basis of experience, that the Union Government has been keen only (i) to increase receipts from those sources which are exclusive to it (ii) not to increase revenue from those sources or items which are shareable with the States and (iii) to grant concessions on those sources and items which are shareable with the States so that the quantum of the shareable pool goes down. As a result, as stated in the detailed reply to Qn. 5.5, the discretionary transfers become larger and have not been made in such a way as to reduce inter-State disparities.

We are of the view that what is necessary is to establish institutional arrangements and criteria that will evoke the confidence of States. Most of the transfer fof resources to State may be through assured devolution but the principles of devolution, again, should be such as to reduce the disparity and not increase them. Standards should be adopted and weightage given to such matters of national importance like progress in achieving universal primary education, so that the States which have spent resources to achieve such standards are enabled to meet their commitments.

5.4 It is not correct to say that the deficits in the central revenue account are in any way due to the devolutions to the State Governments. As has been stated elsewhere, the transfers to the States through the recommendations of the Finance Commission and the Planning Commission cannot be considered to be generous or even adequate.

The following table gives the proportion of total central resources transferred to the States over the last 34 years. It shows that there is no increase in the proportion over the years :—

Period	Proportion of Central* resources transferred to States
First Plan (1951—56)	36·4
Second Plan (1956—61) . . .	31·3
Third Plan (1961—66) . . .	31·3
Annual Plans (1966—69) . . .	31·4
Fourth Plan (1969—74) . . .	36·4
Fifth Plan (1974—79)	30·7
Sixth Plan (1979—84)	32·6

*Revenue and capital and including deficit financing.

The answer to the problem of central revenue deficits, which is a recent phenomenon of the last 4 to 5 years, lies in raising more resources through better income tax, excise and customs administration and better control over expenditure.

Revenue deficits should be avoided but over-all deficit financing cannot be totally avoided; it should be kept within reasonable limits so that annual rate of inflation does not in any case go beyond the single digit figure.

Therefore, the answer to the problem of Central deficits lies in a combination of factors viz. raising more resources, better control over expenditure and deficit financing to a certain extent. Subventions from richer States to the Central pool are not practicable in our context.

5.5 There are three channels of transfer of resouces from the Union to the States, viz. statutory transfers made on the basis of the recommendations of the Finance Commission, Central assistance to States given by the Planning Commission for the State Plans and discretionary transfers made by Central Ministries for different purposes. The broad picture of these three categories of transfers during the last 32 years has been as follows :

(Rs. Crores)

Period	Finance Commission	Planning Commission	Central Ministries	Total
(1)	(2)	(3)	(4)	(5)
I Plan	447	880	104	1431
(1951—56)	(31.2)	(61.5)	(7.3)	(100.0)
II Plan	918	1058	892	2868
(1956—61)	(32.0)	(36.9)	(31.1)	(100.0)
III Plan	1590	2738	1272	5600
(1961—66)	(28.4)	(48.9)	(22.7)	(100.0)
Annual Plans	1782	1917	1648	5347
(1966—69)	(33.3)	(35.9)	(30.8)	(100.0)
IV Plan	5421	4731	4949	15101
(1969—74)	(35.9)	(31.3)	(32.8)	(100.0)
V Plan	11168	10353	3761	25282
(1974—79)	(44.2)	(41.0)	(14.8)	(100.0)
1979—1983	17372	15773	6928	40073
	(43.4)	(39.3)	(17.3)	(100.0)
	38698	37450	19554	95702
	(40.4)	(39.1)	(20.5)	(100.0)

2. The statutory transfers on the recommendations of the Finance Commissions have generally shown a tendency for progressive increase. This cannot however be stated about the Central assistance to State Plans, which has fluctuated over the different plan periods. The discretionary transfers from the Central Ministries increased sharply from 7.3 per cent in the first plan period to 32.8 per cent in the IV plan period, but have since shown a shortfall. For the period of 32 years, as a whole 40 per cent of the transfers were through the recommendations of the Finance Commission, an equal percentage through Central assistance for State Plans and about 20 per ent was in the form of discretionary transfers.

3. The composition of budgetary transfers in terms of taxes grants and loans was as follows :

Figures in percentage

Plan	Tax	Grants	Tax & Grants	Loans
(1)	(2)	(3)	(4)	(5)
I Plan	24·0	20·1	44·1	55·9
II Plan	23·3	27·5	50·6	49·2
III Plan	21·4	23·3	44·7	55·3
Annual Plans	24·0	26·0	50·0	50·0
IV Plan	30·2	25·4	56·6	44·4
V Plan	33·0	22·2	65·2	34·8
VI Plan	40·3	27·0	67·3	32·7
All Plans	32·0	28·0	60·0	40·0

4. The tax and grant elements in the total transfers have shown progressive increases over the three decades and correspondingly, the loan content has come down. This is a progressive trend.

5. It is against the background of the above forms and amounts of transfer that the impact of the transfers on different States has to be studied. Ultimately, the objective of all federal transfers should be to bring out about an even development in the country through a reduction of regional disparities. Owing to the centralisation of revenues in our system the opportunity to bring about resource transfers in the direction of inter-State equity is higher than in many other countries. The following tables give a summary extract of per capita transfers to different States under different categories.

Per capita transfer in Rs. (1956--81)

Groups of States	Finance Commn. transfers	Index Nos.	Plan transfers	Index nos.	Discretionary transfers	Index Nos.	Total transfers	Index Nos,
A. High Income States—								
(Punjab, Haryana, Maharashtra, Gujarat, West Bengal)	471	91	338	77	549	118	1,258	94
B. Middle Income States (Tamil Nadu, Kerala, Orissa, Assam, Karnataka, Andhra Pradesh)	542	105	436	99	386	102	1,364	102
C. Low Income States								
(Uttar Pradesh, Rajasthan, Madhya Pradesh Bihar)	459	89	398	90	332	87	1,189	80
All States *	516	100	440	100	380	100	1,336	100

*Including Special category States.

6. While the requirement of special category States which are in the hill area and have small populations are attended to fairly statisfactorily, generally speaking the resource transfers from the Centre to the States have been regressive, with the poorer States not receiving their fair share. If will be, therefore, quite true to say that the present devolutions made through different channels have not bridged the gap in resources for in development between the poorer and richer States. Any improvement in this regard would call for cha ges both as regards (i) the overall quantum of resource transfer from the Centre to the States and (ii) the inter-States distribution.

7. Taking the totality of the Centre's resources (taxes, non-tax and capital) the States' share thereof came down from over 36 percent to less than 31 percent between the first and the fifth plan-periods, clearly revealing a downward trend in the share of States.

8. It has been noted above that there has been a progressive increase in statutory transfers. It is therefore, in the realm of the overall Central assistance to States' plans that a solution has to be found. The quantum of Central assistance to the State plan, as a whole, is now fixed on an *ad hoc* basis at the instance of the Finance Ministry. While the resources for the Centre's plan are increased progressively during a plan period in response to the demands due to inflation and increased costs of investment, there is no corresponding increase in the Central assistance to State Plans. As a result of inflation and rise in costs, there is a deep erosion in the State's resources also. The following table shows the outlay by the Centre, State and Union territories during the VI Plan (1980-85) as now estimated.

	Original size	Now anticipated (Rs. in Crores)
Central Plan	47,250	60,000
All States	48,600	48,000
Union Territories	1,650	2,000
Total	97,500	1,10,000

SOURCE : Sixth Five Year Plan, Planning Commission, 1981 and 1984-85 Annual Plan documents.

9. It will be seen that while the Central plan has gone up by 25 percent, there has been a shortfall, even in nominal money terms in the case of the State Plans. An important requirement in bringing about better distribution of resources between the Centre and the States and ultimately amongst the States themselves, is to increase the overall quantum of Central assistance to the States for their development plans.

10. As regards inter-State distribution, the approach of the VI and VII Finance Commissions, that most of the transfers to the State should be through sharing of taxes is a step in the right direction. However, basic changes were not made in the principles of inter-State distribution. The following table gives per capita revenue surplus of States under the Award of the VII Finance Commission :—

State		Per capita revenue surplus
(1)	(2)	(3)
The Poor Group		
1.	Orissa	15
2.	Bihar	205
3.	West Bengal	157
4.	Kerala	112
5.	Tamil Nadu	159
6.	Madhya Pradesh	282
7.	Uttar Pradesh	233
The Less Poor Group		
8.	Karnataka	343
9.	Andhra Pradesh	217
10.	Gujarat	423
11.	Maharashtra	596
12.	Rajasthan	85
13.	Assam	74
14.	Haryana	676
15.	Punjab	597
The Hill Group		
16.	Himachal Pradesh	22
17.	Jammu & Kashmir	40
18.	Manipur	93
19.	Meghalaya	48
20.	Nagaland	84
21.	Sikkim	31
22.	Tripura	23
	Average	258

11. It will be seen that the minimum surplus per capita was Rs. 15 for Orissa and the maximum was Rs. 676 for Haryana. The ratio between the lowest and the highest per capita surplus is 1 to 45. The recommendations of the previous Finance Commissions also resulted in varying amounts of surplus, all in favour of the advanced States. It would be saying the obvious that States which enjoy large non-plan revenue surpluses under the Finance Commission Award get the advantage of a strong resource-base for their development plans. When revenue transfer is largely through devolution of taxes. Such States also derive the additional advantage of larger revenue buoyance. Under the procedures that are followed by the Planning Commission, the available Central assistance is distributed according to a formula and the size of the States Plan is fixed by adding the State's own resources including the revenue surplus arising out of the Finance Commission Award and the Central assistance. Therefore, States which have the benefit of larger surpluses from the Finance Commission Award also have larger State Plans.

The following table sets out the position :

Sl. No.	States	Average per capita income (1973—76	Per capita cumulative Plan outlay 1951—78)	Per capita non-plan revenue
(1)	(2)	(3)	(4)	(5)
1.	Haryana	1,399	922	676
2.	Punjab	1,586	1,353	597
3.	Maharashtra	1,349	802	596
4.	Gujarat	1,134	840	423
5.	Karnataka	1,045	618	343
6.	Madhya Pradesh	776	525	282
7.	Uttar Pradesh	715	529	233
8.	Andhra Pradesh	928	531	217
9.	Bihar	646	387	205
10.	Tamil Nadu	942	546	159
11.	West Bengal	1,033	455	157
12.	Kerala	948	585	112
13.	Manipur	870	1,147	93
14.	Rajasthan	853	557	85
15.	Nagaland	820	2,650	84
16.	Assam	791	541	74
17.	Meghalaya	850	1,073	48
18.	Jammu & Kashmir	811	1,291	40
19.	Sikkim	820	1,190	31
20.	Tripura	830	783	223
21.	Himachal Pradesh	1,068	1,075	22
22.	Orissa	793	558	15
	Average of All States	930	603	258

12. Greater balance in inter-State distribution of resources can be obtained only if the principles of inter-State distribution are changed and if in the allocation of Central assistance for plans, the position emerging out of the award of the Finance Commission is first taken into account. In other words, it should first be ensured that all States have the same amount of per capita revenue surplus and this should be the first charge on central assistance. This is what is meant by saying that there should be better co-ordination between the Planning Commission and the Finance Commission.

13. As regards the distribution of Central assistance, the time has come to review the existing system based originally on the Gadgil formula. In the initial years, when the formula was devised in 1969 on the eve of the IV Five Year Plan, it brought about a considerable degree of discipline in the distribution of Central assistance to States. During the last 15 years, the formula has got considerably diluted and has also become out of alignment with the emerging needs.

14. It is interesting to recall that the States overdraft problems started assuming sizeable dimensions from the early 70s with the implementation of the IV Plan, when the new Central assistance formula started operating. While many factors such as cost escalations, slackeness in mobilising

additional resources and excess expenditure might have contributed to the increasing budgetary deficits of many States, the fact remains that the Planning Commission's annual review and adjustment of plan outlays and Central assistance for each year, have become mechanical, artithmetic exercise in recent years.

15. Though the Central assistance is said to be distributed on the basis of Gadgil formula the amount that comes within the purview of the Gadgil formula is only 50 per cent, the balance being earmarked for various purposes. A breakdown of the Central assistance in the VI Five Year Plan would bring out this point.

	Rs. Crores	Percentage
(1)	(2)	(3)
1. Allocation for Hill areas, Tribal areas and North Eastern Council . .	1355	8.8
2. Allocation for externally aided projects	1450	9.5
3. Allocations to 8 special category States (Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Nagaland, Sikkim & Tripura)	3245	21.1
4. Amount distributed under the IATP formula	1600	10.4
5. Total 1 to 4	7650	49.8
6. Amount distributed under the Gadgil formula	7700	50.2
7. Total Central assistance (5+6) .	15350	100.0

16. It will be seen that as much as half the central assistance is allocated outside the Gadgil formula the basis of many of these specific allocations has not been clearly spelt out by the Planning Commission. As far as the Gadgil formula is concerned, the elements consist of population 60 per cent, per capita income 20 per cent, tax effort 10 per cent and special problems 10 per cent. It is necessary to re-examine this formula. Not more than a third should be distributed on population basis. The remaining two thirds should be distributed on the basis of per capita income, percentage of unemployment and percentage of population below the proverty line the criteria for all these three and the method of calculation to be determined and applied in a uniform manner in all States. Out of the assistance so arrived at, 50 per cent could be in the form of block grants and loans and the remaining 50 percent could be earmarked for schemes of national priority and the schemes which are considered to be essential in the case of a particular State. It is felt that a formula of this nature would be able to deal with twin problems of inter-State disparities as well as adherence to certain national priorities.

17. As regards non-plan assistance, some of it is given through statutory transfers as recommended by the Finance Commission. They should continue.

5.6 Special consideration in the matter of devolution of resources through the Finance Commission and grant of Central assistance through the Planning Commission is already shown to special category States. It does not appear that the creation of a separate special Federal fund is an appropriate solution to the problem of regional imbalances. It will become one more limited source of funds used for making some amounts available to certain States without making a sufficient dent on the problem of backwardness or regional imbalances. Such a fund might have a justification in a federal arrangement in which the State's resources and functions are by and large matched and the role of the Central agency or federal Government is to specially look after the requirements of economically underdeveloped areas only. Such is not the case in India where the ratio of Centre vs. all States is 75:25 in the case of receipts, the ratio in the case of expenditure is roughly 50:50. Large transfers from the Centre to the States is inevitable in our context.

5.7 The imperative of Part XIII of the Constitution ensuring "freedom of trade, commerce and inter-course within the country" is one of the important positive aspects of the present situation. At a time when in different parts of the world, smaller countries of a region are making every effort to come together and have common markets of different types and are having infinite problems in organising such markets. It is indeed a major positive factor that after independence and with the adoption of our Constitution, India is a common market of over 700 million people. This aspect of our economy has to be fully protected.

2. As regards taxation functions between the Union and the States, the principle that the tax should be imposed and collected by the authority which can best collect it and administer it is a valid one. As regards the various taxes that are now assigned to the Centre and the States in India, there is really no need for many changes except to make all income tax (including Corporation Tax) and all excise duties including special auxiliary etc. by whatever name called, constitute the divisible pool. This single arrangement will introduce in the States a sense of confidence that the Central Government does not adopt measures calculated to reduce the States' resources and increase those of the Centre.

5.8 It is no doubt true that a fragmentary approach to the taxes should be avoided and that taxation should not be so undertaken as to damage the economy or cause harassment to trade and industry. The taxation should be simple and the collection should be efficient. From this point of view, there is no justification for devolving the taxation powers of income tax, corporation tax, wealth tax, estate duty, customs duty, excise duties etc. However, as regards sales tax in relation to excise duties, a practical approach is necessary. Sales taxes are the most important source of revenue to State Governments. In fact, it is the only source within the State Governments which is of any significance to the State revenues. What is needed in this case is not the transfer of more and more items from sales tax to excise duty or additional excise duty but a well-understood and mutually agreed system of cumulative taxation. The following principles could be followed in this regard :—

2. Further inroads into the States' limited sphere of taxation should not be made. The States should be enabled to exploit such resources. In our view instead of the proposals now made by the Government of India to impose excise duties in place of sales tax on some of the commodities, the Central

Government should voluntarily withdraw from excise duties on certain commodities and give up Additional Excise Duties now imposed on certain commodities in lieu of sales tax. (Detailed suggestions in this regard have been made by the National Institute of Public Finance and Policy—Dr. Raja J. Chellaiah).

3. A Council of Central and State Finance Ministers cannot itself control the levy, but frequent exchange of information and periodical discussions on matters of taxation between Centre and State Government, if need be through the establishment of a committee of the National Development Council, will certainly go a long way towards an understanding of the difficulties of each other and also lead to practical steps for taking measures of taxation which do not conflict with each other and which do not damage the economy and production. The discussions between States in a region as regards sales tax matters has helped to bring about some order in sales taxation in the States of the same region.

5.9 We feel that the suggestion that there should be a single body to allocate Central resources is not practicable. These sources available for development from the revenues could be ascertained only after knowing the recources allocated by the Finance Commission for other purposes. A considerable part of the plan finance and of Central transfer for the State plans are capital resources, dependent on the internal and external borrowings (assistance). This has to be continually assessed from year to year.

However, the working of the present system could be improved upon by achieving effective coordination between the Planning Commission and the Finance Commission. For this purpose we suggest that the Finance Commission should have a permanent Secretariat which would form an integral part of the Planning Commission. The Planning Commission in turn should be made the fulfledged Secretariat of the National Development Council.

5.10 The transfer of resources, both statutory and discretionary to the States on the advice of the successive Finance Commissions or otherwise have not promoted efficiency and economy in expenditure nor have they narrowed down the disparities in public expenditure among the States. This is because the transfer of resources on the recommendations of the Finance Commission has been done largely on the basis of a gap-filling approach and the transfer of resources to the States through Central assistance for the plan has been done largely on the basis of distribution on the basis of a general formula of a certain sum of money made available by the Union Finance Ministry to the Planning Commission. In neither case has the devolution been based on a study of the specific needs of committed expenditure or of development.

5.11 It is true that the present mechanism of transfer of resources has some inbuilt propensities towards financial indiscipline and improvidence. This is because the Finance Commissions were largely following the procedure of filling revenue gaps Increasingly, Finance Commissions have been adopting standards to be attained—for example the minimum returns to be earned over a period of 5 years by Road Transport Corporation and Electricity Boards etc. Similar standards have to be adopted in a variety of other cases also through continuous studies. While States which have indulged in improvident expenditure are not to be encouraged, States which have implemented programmes in accordance with the directive principles of States Policy of the nationally accepted programmes should be assured of adequate resources. The only solution is for the Finance Commissions to progressively increase the areas in which certain standards are prescribed and the devolution of resources is done based on such standards.

5.12 and 5.13 We are in agreement with the above proposition, but the Principles of devolution should be radically altered as stated in reply to Q. 5.3 and 5.11. To the extent possible the requirements of the States coming within the consitutional purview of the Finance Commission should be met through devolution of taxes. The instrument grant-in-aid may be used for specific requirements of different States. The special problems of each State should be taken into account and fullest possible discretion should be given to the States to order their programmes according to their own felt priorities. The whole objective of the grants-in-aid scheme should be guided by some kind of an equalisation approach.

5.14 The question mixes up different items. As regards "revenues" from the Special bearer bond scheme etc., these are in lieu of taxes which should have been collected and shared with the States. Therefore, as already stated, the entire proceeds have to be shared with the States. In fact, the proceeds of all schemes, contributions under which are eligible for income tax concession, for example, the newly-announced National Deposit Scheme, should be shareable on the lines of the National Small Savings. The receipts from raising the administered prices of items like petroleum, coal etc. are not "revenue" of the Central Government. The point made by some States, is that the Centre is raising only the prices and not the excise duty on these items and that by this process the Centre has gathered Rs. 6,500 crores through the Central public undertakings, during the lest three years. If the amount had been raised as excise duties, the States would have got Rs. 2,600 crores, under the devolution formula of the VII Finance Commission.

Despite the increase in prices, the Central undertakings except those connected with oil are running at a loss. The point is valid in the case of patroleum.

5.15 One of the major factors compounding the administrative and financial centralisation is the concentration of savings through nationalised banks and the Central financing institutions such as L.I.C., G.I.C., U.T.I., I.D.B.I., I.F.C.I., NABARD, etc. At present there are no institutional arrangements through which the States can express themselves regarding the policies and working of these institutions, on whom depend wholly the investment in agriculture, industry, housing, water supply and urban infrastructure all of which are so vital to the development of each State. The

links between local savings and local investment have been snapped with consequent deleterious effect on both.

2. As stated in the reply to Q. 5.4, there has been declined in the State's share of the tota public sector resources. It can be seen from the following table that the decline is due to the sharp decrease in the transfer of capital recources from the Centre to States.

States' share of Centres' Resources

	Of tax revenue	Of total revenues	Of capital resources	Of total Central resources
I Plan	17.0	23.0	61.5	36.4
II Plan	19.6	27.4	35.2	31.3
III Plan	25.2	24.3	40.3	31.3
Annual Plan	17.6	28.4	34.9	31.4
IV Plan	23.3	33.9	40.2	36.4
V Plan	19.8	31.0	30.1	30.7
VI Plan	26.9	35.9	27.1	32.6

It is necessary to correct this trend in the interest of the finances of the State and the needs of development. For this purpose the methods of distribution have to be altered as stated in the reply to Q. 5.5.

5.16 and 5.17 It is a fact that most of the States suffer on account of growing indebtedness and over draft problems in view of the fact that they do not possess many elastic sources of finance. Repayment of loans also becomes a major burden on the States.

The State Government is of the view that while sharing the capital resources of the nation between the Centre and the States a spirit of partnership should prevail. Just as the Central Government does not expect all its investments to yield returns sufficient enough to recoup the capital invested, it should also not insist that all capital resources transferred to the States should invariably be repaid by them. We would like to submit that a system of loans from the Centre to the States is, perhaps, not prevalent in many other federations. In most of the federations the Central transfers are in the form of grants. In India, the system of loans has developed mainly as a result of planning and the centralisation of savings and the assistance that the Centre has to provide towards investment in State Plans. While we appreciate the unavoidability on the part of the Centre to treat a part of its resource transfer as repayable loans, we would like the terms and conditions of such Central loans to be fixed in such a manner that the repayment liabilities should be restricted only to loans that are used for productive schemes which give direct financial returns. In recent years as a result of he mounting repayment liabilities, there has been a dimunition in the net transfers of Central resources to the States.

We would, therefore, suggest that the loan and grant component of Central assistance should be re-examined so as to bring about a reduction in the loan component on the basis of rational classification of Central loans based on their broad utilisation by the States. It would be much better to bring about such rationalisation and avoid a situation whereby States accumulate large definits on non-plan account and, the Finance Commission subsequently being asked to re-schedule or write-off a part of such loans.

5.18 and 5.20 At present, the Centre's permission has to be taken even for obtaining a loan from Central financing institutions like NABARD and L.I.C. for approved plan schemes. This adds to work unnecessarily and also delays matters. The restrictions regarding borrowing by States may be confined to market borrowing.

We do not favour any major change in the policy relating to market borrowings. For, if States are left free to raise loans from the market, only the richer States would benefit.

What is necessary is to evolve guidelines for the distribution of total market borrowings between the Centre and the States and for the inter-State allocations of borrowings between different States.

The overall quantum of market borrowing is to be decided upon macro economic considerations and this task is best left to be done by the country's central bank. The distribution between the Centre and the States and the inter-State distribution is now done by the G.O.I. and not by the R.B.I. out of the total market borrowing visualised during the current plan period the States were allocated only 20 per cent. The overall market borrowing envisaged for the plan period has been increased from Rs. 19,500 crores to Rs. 22,700 crores. But the States share was not increased.

Better institutional arrangements are necessary for ensuring equitable distribution of market borrowing between the Central and the States and between the States themselves. A Loan council has been suggested because the R.B.I. is now not performing the function. In any case when a Loans Council is set up it will have to be linked suitably with the R.B.I.

5.19 The foreign borrowings of the Centre have different rates of interest from those which are 100 per cent grant of these which have a rate of interest of even 12½ per cent. The entire foreign borrowing and assistance is treated as a pool and funds are made available from it to Central and State projects. The rate of interest fixed for such lending is the same rate of interest as for all other loans for State projects from the Centre. The logic of this from the Central Government's point of view is as follows : while the Central Government may require concessional foreign funds (which do not cast on it a heavy repayment liability in foreign exchange), the terms on which the funds are made available for projects should be the same as for identical projects financed by indigenous resources. The rate of interest charged by the Centre for the loans given by it is itself concessional when compared to the market rates and therefore there should be no criticism of the arrangements.

2. As regards project aided by foreign bodies, a major question arose about adequate project funding in each year's plan budget by the concerned

State Government, if all the resources are treated as a pool, there is a tendency to loose sight of the needs of individual projects. In view of this, starting from 25% in 1971, during the last few years, 70 per cent of the aid given for a project is made available as additional Central assistance to the State Government and is tied to the expenditure of certain sum of money on the concerned project. This has alleviated the problem to some extent.

3. The second set of problems relates to the type of projects for which the funds are actually applied in the States. It is not all projects which can yield adequate financial return. It is necessary to divide projects into those categories which do not yield direct financial returns and those which should and to adjust the grant and loan element and the rate of interest differentially as regards these two types of projects. This should be done not merely in the case of externally-aided projects, but for all plan schemes.

5.21 The question of large over drafts generally arises from the III year of a plan period in the case of those States which do not have a sufficient revenue surplus as a result of the recommendation of the Finance Commission (Please see answer to Q. 5.5). While the requirement of funds increases with the progress of schemes and the rising costs during a plan period, the States find that there is a substantial erosion in their resources due to grant of instalments of additional Dearness Allowance and other items of expenditure related to rise in costs. Since there is no corresponding increase in Central assistance to the State Plans, the State's resources are squeezed between the increasing demands both on the non-plan and plan sides leading to over drafts. On the part of the States, the development is also due to failure to improve the returns from Road Transport. Electricity or other public undertakings and the implementation of new, originally non-planned schemes, during the course of a plan period. During the course of a year, the over drafts are also due to the fact that a considerable part of the central assistance to the centrally sponsored schemes, externally assisted schemes etc., are released towards the latter part of the financial year. Though considerable improvement in payment through instalments has been made in recent years, since these schemes form a large part of overall plan outlay in a State, the effect of payment, based on claims filed after expenditure is incurred on the State's Ways and Means position is quite adverse.

2. As regards remedies, it has already been suggested (Q. 5.5) that the fixation and distribution of Central assistance to plans should be completely revised. It has also been suggested (Q. 6.10) that the number of centrally sponsored schemes should be considerably reduced.

3. On the part of the States, there should be greater faithfulness to the plan as agreed upon.

4. One of the major elements dislocating the State's resources is the grant of additional dearness allowance to compensate party for the rise in cost of living. The real answer this lies in ensuring price stability. In any case, since the Central Government is in charge of price situation, the commitment on this account should be taken into account and the Central assistance for the States' Plan increased correspondingly. The argument th t the expenditure can be met from buoyancy caused by the inflation is not wholly correct. The item which really suffers badly is maintenance of services and assets, as adequate resources for this is not available after meeting the inevitable increase in D.A.

5.22 A generalisation applicable to all States cannot be made. It would, however, be true to say that the tax effort of different States vary considerably. That is why this was treated as one of the items in the Gadgill formula.

As suggested elsewhere (Q. 5.29 and 5.31) the tax effort both of the Union and of the States differ and should be continously studied in a permanent unit in the Planning Commission and the result should be made available to the States and to the National Development Council. When authentic information about resources raised by different States are available to all, the discussions in the National Development Council, in the Planning Commission and the deliberations and findings of the Finance Commissions would become more meaningful.

5.23 The fact that the existence of a parallel economy is acknowledged and that there have been periodic schemes for voluntary disclosure and for Bearer Bonds shows that there is considerable scope for improvement in the collection of income tax. The improvements needed in the two major sources of revenue of the Union Viz., Income Tax and Union excise duties has been studied from time to time by different Committees and several recommendations have been made. The most recent set of recommendations has been made by the Economic Adiministration Commission led by Shri L. K. Jha. However, there has been no basic improvement in the system of income tax and changes have been made in a piece meal fashion from time to time, almost from budget to budget. It is necessary to bring about basic changes in Income Tax Law and administration as recommended by the various Commissions.

In order to have a continuous study of this, it has also been suggested elsewhere (Q. 5.31) that the collection of revenue by the Centre and the expenditure pattern should also be studied constantly by a parmanent unit in the Planning Commission.

5.24 We are of opinion that any move which may affect the financial interest, existing of prospective, of the States should be introduced in the Parliament only after necessary consultation with the States as envisaged under Article 274. We are of the view that it should be made obligatory that the National Development Council be consulted by the President when he acts under the provisions of Article 274.

5.25 State Government is of the view that while considering taxes of the kind mentioned in Article 269, it is necessary that account has to be taken of important factors such as their productivity economic implications as also of their impact on

the commodities or services concerned. Administrative convenience is also an important factor to be taken into account. The State Government would suggest the constitution of an expert committee consisting of the representatives of Central and State Governments and one or two tax specialists to go into the whole question in detail and formulate appropriate recommendations on the taxes to be levied under Articles 268 and 269.

5.26 In its memorandum to the Eigth Finance Commission, the State Government has pointed out that had the tax on railway passenger fares continued to operate, the revenue on the basis of the current passenger earnings of railways, would have amounted to Rs. 100 crores in the place of which the States are being given a paltry sum. Various Finance Commissions had felt that this grant amount was rather too low when judged in the light of what the repealed tax would have yielded, had it continued. We would suggest that the amount of grant should be fixed in such a way that the States would get approximately the same amount as they would have received had the tax continued to remain in force and that the basis of distribution among the States should be in the proportion of non-sub-urban passenger earnings in each State to the total passenger earnings in all the States.

5.27 We have not studied this question and are therefore unable to offer any suggestions. *Prima facia*, it appears that in the case of Union Territories also, the finance Commission could be required to give territory-wise devaluation.

5.28 Past experience has shown that some times the havoc caused by cyclones, floods and drought have been so immense in terms of loss of crops and also human lives that the resulting financial burden on the concerned States has been of a very large order. It is felt that the arrangements that have been tried out so far have proved to be totally inadequate,. The State Government would like to offer two suggestions in this regard. Firstly, we would suggest that the Central Government should set apart a separate corpus for meeting the expenditure connected with the relief measures whenever natural calamities occur in any part of the country. We are recommending this measure since we feel that natural calamities in any part of the country has to be viewed as a national problem and as such, the necessary financial assistance for dealing with such problems should be primarily the responsibility of the Centre. Secondly, the State Government would suggest that in the team which has to assess the extent of damages caused by natural calamities, representatives of the concerned State Government should also be included. The quantum of aid required should be assessed on a systematic basis and not on ad hoc considerations.

5.29 Considering the importance gained by the method of financing though open market borrowings and the relative deprivation faced by the States, the State Government had suggested that a system of loan council as in Australia for the purpose of formulating market borrowing policy and for determining the pattern of distribution of the proceeds between the Centre and the States could be tried out in India also.

The State Government agrees with the view that a lot of co-ordination is necessary in the matters affecting the interests of the States. We feel that there is no need to create a number of independent bodies for the purpose. Instead we are of the opinion that the National Development Council should be made a statutory body under Art. 263 of the Constitution with wider powers to decide on matters relating to co-ordination between the Centre and the States. The law in this regard should be a simple one laying down the composition and functions of the council, of its Secretariat, the Planning Commission, and enabling provisions for committees of members as well as of Officers. The N.D.C. may have different working committees and committees of officers apart from the central working group to go into different issues like the distribution of market borrowings and institutional finance, scrutiny of the expenditure of the Union and the State Governments and economic issues affecting the interests of the States with the assistance of its complete Secretariat consisting of the Planning Commission and the Permanent Secretariat to the Finance Commission.

5.30 The proposition has been stated in the question in too generally a term to be of any significance. It is undoubtedly true that what is important is that the funds are spent prudently and that they benefit the people. Who collects the funds is important from the point that the level at which the funds are collected would be in a position to apply it to the purposes that are considered necessary and urgent. Ideally, each level of Government should be able to raise the resources needed to fulfil its functions so that those who benefit from particular services would also be those who pay for them. However, in a modern economy and in a large country, both for purposes of efficiency and preserving the common market and for purposes of bringing about regional equalisation, the power to levy large resources has necessarily to be retained with the national Government. The real challenge before the country is to find a balance between the needs of decentralisation of power and resources and the reservation of national integrity. maintenance of the common market, and reasonably balance development of all parts of the country, keeping certain national priorities in view.

5.31, 5.38 and 5.39 We agree with the view that the expenditure of not only the States but also the Union should be subjected to closer and objective scrutiny. We do not find any need for establishing a body like National Extenditure Commission. Instead we suggest that the Finance Commission should be provided with a permanent Secretariat, one of the functions of which would be to undertake continuous studies on relevant problems on Union State finances including the review of the revenue and expenditure of the States and the Union Government. As mentioned in the answer for question No. 5.29, the National Development Council should have different working committees one of which will undertake scrutiny of expenditure of the Union as the Finance Commission looks into the expenditure of the States.

5.32 The present form of national accounts makes it possible to have comparable set of accounts for all States and therefore should continue. Some improvements in the accounts were made in the 1970s. In view of the fast changing needs of development and of Government, it is necessary to have a close look at the form of accounts at least once in 10 years.

2. The methods of preparation of the accounts should also be studied and modernised. This requires improvement at the level of Government Treasuries, the Banks, the office of the Accountant General (as at present) and the Reserve Bank of India. The R.B.I. and the Comptroller and Auditor General have to study this question and bring about basic improvements and modernisation in order to speed up the accounts. At present, it is not possible for the State Governments to have any effective system of financial control, as the figures are available after three or four months. Though the prescribed time is 1½ months, which is itself long, it is seldom, if ever, that it is followed in practice. Even the figures of cash balance reported by the R.B.I. for any particular day do not reflect the actual position. The reflect the partial position of receipts and expenditure over a period of 20 to 25 days preceding.

3. The C. & A. G. may be relieved of the responsibility of maintenance of accounts of States as has already been done in the case of Central Ministries. This separation may be part of the study mentioned above, so that the revised arrangements can be brought about in the Seventh Plan itself. As a part of this, either the entire Indian Audit and Accounts Service could be converted into an All-India Services or at least for the purposes of Civil accounts, there could be All-India Service, so that common standards could be maintained.

4. The transfer of responsibility for maintaining accounts to the State Governments and the modernisation of the system should enable the State Governments to have timely information and to improve financial control.

5.33 The main purpose of the audit of Government Accounts is to report to the Legislature on :

(i) Whether the amounts voted by it have been used for the purposes for which they were voted and whether there are any features to be noted either in the form of major departures—large increases or shortfalls.

(ii) Whether in the process of expenditures, the funds has been spent economically.

(iii) Whether the stated purposes have been achieved as a result of the expenditure.

2. The main criticism of 'audit' in India has been that it concentrated only on (ii) above and that also through isolated cases of non-placement of orders on the lowest tender, alleged irregularities and essentially in the nature of faultfinding on minutes.

3. There has been some change in recent years. The C. & A.G. has started auditing the efficiency-*cum*-performance on a whole scheme or programme. In its nature, this can be done only after the scheme/programme is completed and this takes considerable time. Efficiency or evaluation audit can be done only in the case of a few selected programmes from time to time.

4. "Voucher audit" cannot be dispensed with. In view of the large number of transaction in Government these days, the opportunities for fraud through manipulation of records are many. Until we modernise our system and introduce computers, which will themselves detect contradictions, the manual voucher check will have to continue.

5. As regards coverage by audit reports, a judicious mixture of large cases under (i) and (ii) and comprehensive study of selected schemes/programmes under (iii) above would seem to be practicable and desirable course. Even for this purposes, the C. & A.G.'s offices have to be modernised and the auditors at all levels would also require to be trained properly.

6. It is unfortunately true that what little has been done to change procedures and simplify rules has been done at the instance of Government and almost always in the face of routine opposition from the C. & A. G.'s offices.

5.34 The Law is a simple enabling one and because of this, there is considerable scope for flexibility. What is done by the C. & A.G. is dependent upon the areas and points on which he choose to concentrate and the professional competence of this organisation. As stated in the answer to the previous question, the audit reports seldom, if at all, critically examined the trends in expenditure and commented on unusual or noteworthy features, like large increases over the years, conflicting and overlapping expenditures on the same type of activity by different agencies and such matters. The law does not prevent the C. & A. G. from doing all this.

5.35 As regards appropriation accounts, there is considerable scope for improvement in reconciling the accounts as well as in the procedures for the booking of expenditure under works and purchases through the operation of Suspense Accounts. At present, the Accounts are not sufficiently accurate in these matters as they do not reflect the correct position at a given time. The improvement in these directions would involve modernisation through computerisation.

2. As regards audit reports, while the wood may be missed for the trees, meticulous collection of facts and accuracy have been a strong point.

3. Because of the over-growing size and number of Government operations, it is not possible to achieve comprehensiveness. This is one of the strong arguments for decentralisation. If higher levels—both the State and the Central Governments—confine themselves to larger issues, the audit of the reduced size of operations can be more comprehensive.

5.36 In a democratic set up, the Legislature and its Committees are the ultimate authorities to sanction and control expenditure. Historically, the Committees have been examining only the points raised by the C. & A.G. In his reports C. & A.G. has not been raising basic issues regarding unusual growth of expenditure on particular items etc. But nothing prevents the Committees themselves from looking into these questions on the Accounts presented to them by the C. & A.G. This has been done in a few cases by the Public Accounts Committee at the Centre and in the States.

The point to be noted is that the nature of the scrutiny by the Committees depends on what is intended to be checked. For a number of years, what was checked was only isolated cases of alleged irregularities as pointed out by the C. & A.G. There is a gradual change in this and it can be given greater momentum.

5.37 The estimates Committee can act a watch-dog to give useful suggestions on policies and programmes including, *inter alia*, suggestions on legislative and administrative matters. Many reports of Estimates Committees have in fact done this. In order to connect this with the question of scrutiny of expenditure, it will be useful if the Estimates Committees take up for detailed examination such of those areas as are brought out by the C. & A.G. under his audit of schemes and programmes [(iii) in the reply to Q. 5.33 above.]

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1, 6.2, 6.3, 6.5, 6.7 and 6.12 The emergency of Planning Commission and the subsequent experiments in the sphere of planning have significantly influenced the Union-State relations in the country. One important consequence of the system of national planning adopted is that the Central Government advised by the Planning Commission has assumed responsibility for planning the States' development even in spheres such as Agriculture, Public Health, Social Welfare, Education, etc., which have either been constitutionally allotted to the States or are in the concurrent list. The Planning Commission not only indicates broad national priorities has guidelines for development programmes in matters like Agriculture and Social Service but has along with the Central Ministries laid down schemes in those spheres. The result is that instead of planning being responsive to local situations, there is virtually a stereotyped system of schemes for the whole country with its immense diversity. The Planning Commission has not studied, until now, the developmental potential and the differences in emphasis that has to be placed in different States. A major portion of Central assistance flows in the form of matching grants or loans for centrally sponsored schemes.

Since planned development is the most basic task of a large and populous country like India, it is felt that the States should be given an effective say in the preparation of the national plan for development. This could be achieved by re-structuring the national development council and simultaneously vesting wider powers with the council. The N.D.C. should be made a statutory body under Art. 263 of the Constitution which visualises the formation of an Inter-State Council for achieving effective co-ordination between the States and the Union read with the Entry "economic and social planning". The law in this regard should be a simple one leaving the composition (composition suggested in answer to Q. No. 4.12) and function of the Council and its secretariat, with enabling provisions for committees of members as well as of Officers.

We have also suggested that the Finance Commission should be provided with a permanent Secretariat which should form an integral part of the Planning Commission to achieve effective co-ordination between the Planning Commission and the Finance Commission.

The N.D.C. if the above suggestions are implemented, will deal not only with the Plan proposals prepared by the Planning Commission, but also with the review of the Union-State Finances prepared by the Finance Commission's Secretariat as well as the policies and general working of the financial institutions, overall economic issues, etc. The annual reports of the N.D.C. should be presented to the Parliament and to the State Legislatures.

The Planning Commission and the National Development Council could thus be transformed into strong instruments of change and of development, not only of the Central Government but also equally of the State Governments, paving the way for better national integration. This will democratise the planning system infusing greater confidence among the States in the Planning process, while at the same time giving the Central Government necessary co-ordinate authority. The process of resource allocation will be made to subserve new economic priorities which are implicit in a dynamic and growing economy.

The purpose of annual plan preparation at the national level should only be to indicate the broad objective and framework for development keeping in view the national priorities. The detailed sectoral planning may be left to the States. In order to implement the national priorities the Central assistance in the form of 'tied' assistance may be resorted to in respect of schemes of basic national importance.

As far as the role of Union Government on the subjects in the State List is concerned we are in agreement with the Administrative Reforms Commission which visualised the following role for the Central Government in subjects in the State List :

(1) Providing initiative and the leadership to the States and in particular serving as a clearing house of information intimating details and data about good programmes and methods adopted in one part of the country to the rest of the country.

(2) Undertaking the responsibility for drawing up the national plan for the development sector in question in close collaboration with

the States and developing for this purpose well-manned planning and statistical units.

(3) Undertaking research at a national level, conferring attention to the matters which are beyond the research resources of States.

(4) Undertaking training programmes of a foundational nature, example training of planners and administrators and training of trainers.

(5) Taking the initiative in evaluation of programmes with the object of checking progress, locating bottlenecks, taking remedial measures, making adjustments.

(6) Providing of forum and a meeting ground for State representatives for the exchange of ideas on different subjects and for the evolution of guidelines.

(7) Attending to functions of the nature of coordination which can only be handled at the Centre.

(8) Maintaining relations with foreign and international organisations.

6.4 It has already been suggested elsewhere that the Planning Commission should function as the Secretariat of the National Development Council. The Commission as such would then be a Committee of the NDC, but it is not practicable to include in it the representatives of all the States nor will it be correct to make it a purely advisory body of economists and experts. The Commission could continue to consist as how, of the Prime Minister, Union Finance Minister and Deputy Chairman and one or two eminent public men with experience in development as well as a few experts of national standing. Increase in the number of Ministers is also not advisable, as it will make the body unwieldy.

6.6 It is necessary to consider and incorporate national priorities in the State Plans. As stated elsewhere (Q. 5.5), the present methods of scrutiny of the States' plans and finances do not ensure this. While a detailed scrutiny of the minutes is made, the finalisation of the plan is made on routine considerations of availability of State resources and share of central assistance and the State plan so finalised does not have any priorities even as regards the national ones.

2. It is necessary that the State plans are scrutinised from a different point of view, that is to say, from the point of view of—

(i) Whether they follow the priorities and programmes that have been agreed upon at the time of finalisation of the five year plan;

(ii) Whether the schemes of national priority that have been agreed upon are being adequately provided for and are being implemented satisfactorily; and

(iii) Whether the special programmes that have been considered important from the point of view of the particular State are receiving due attention.

It is unnecessary for the Planning Commission to go through and suggest scheme-wise allocations for all the schemes in all the sectors, which are in any case, not followed finally as the size of the Plan is not fixed on this basis.

6.8 As has been pointed out in the detailed reply to question 5.5, while the requirements of very backward States, coming under the special category States appear to be looked after reasonably, the distribution of Central assistance under the present formulae operate against the weaker groups in the rest of the States. The changes that are necessary in determining the quantum of Central Plan assistance and in deciding on inter-State distribution have been referred to in detail in the reply to question 5.5.

6.9 Please see the detailed answer to Q. 5.5.

6.10 The purpose of Centrally Sponsored Scheme originally was to ensure that some schemes of national importance were taken up by the States and certain measures of direction and co-ordination in respect of these schemes could be exercised by the Centre. But gradually the number of such schemes became very large. Most of the programmes envisaged in these schemes could be more appropriately carried out by the States through their own plan. We are in agreement with the view that the provision for Centrally Sponsored Schemes pertaining to subjects coming within the jurisdiction of the States should be considerably pruned. We recommend that the restructured NDC should scrutinise the existing Centrally Sponsored Schemes so as to prune the list to the desirable limit. No new schemes should be taken up as Centrally Sponsored without the prior concurrence of the NDC. Even when such new schemes are taken up, it should only be on the basis of 100% Central assistance and not on the basis of matching contribution. This would ensure that the State Plan priorities are not upset.

6.11 The Monitoring and Evaluation Machinery in the Planning Commission is a well-established one and it has done good work. The Monitoring and Evaluation Machinery in most of the States is in an infant stage and is yet to grow into full-fledged professional organisations. Both at the Centre and in the States, monitoring and evaluation have to the further strengthened. Monitoring has to be strengthened both in the implementing agencies and Ministries as well as in the Central Planning Organisation.

2. While feed-back during implementation is essential for improving implementation and bringing about changes in the programme itself, generally it is found that feed-back which is not favourable to the programme is not liked by those who have initiated the programme. In view of this, reports of monitoring tend to be luke-warm. A number of centres of studies have come into being in the country during the last 10 years. Many of them are manned by competent professional staff. It will be worthwhile to utilise their services in the monitoring and evaluation of selected plan programmes both at the Centre and in the States. Increasing use of independent outside agencies would bring in more unbiased reports on the performance.

6.13 The constitution of Planning Boards/Commissions in the States varies widely from State to State. It is only in very few States that there are organisations similar to the Planning Commission at the Centre, Kerala is one of such State. Whatever be the form and constitution of the planning body, a great deal depends upon the status that is given to it by the State Government. The planning bodies are contributing a great deal in making studies, in collecting data and in helping plan formulation. As far as plan formulation in the States is concerned, the first stage is the preparation of Plan proposals. Upto this stage, the Planning Boards play an important role. In the subsequent stages of finalisation of the plan through discussions in the State Government and with the Planning Commission, Ministries of the Government of India and in adjusting the proposals to the available resources, Planning Boards play much less role generally.

2. Similarly, in implementation also, Planning Boards play very little part. In fact, if a study is made of the State Plans as originally approved at the beginning of a five year plan and the five year plan as it was finally implemented through the annual plans, it will be seen that considerable changes have been made. This is because a large number of new schemes and programmes are sanctioned during the five year period on different occasions. In all these additions to the plan which are made simultaneously as there is a serious erosion in resources, the Planning Boards do not play any role.

3. In reviewing the performance of tne plans, therefore the Planning Boards are reviewing what has actually been undertaken by the Government and not what was planned for.

4. Once the importance of planning is accepted in effect, the State Planning Boards would be strenthened and once this is done, it would not be necesarry for the Planning Commission to go into details of the State Plans to the extent that it does now.

5. Whether the national plan should become progressively more indicative and less imperative is a broader question which is not dependent on the improvement in the working of State Planning Boards. The real positionin a mixed economy like ours is that the national plan would have both imperative and indicative features depending on which sector of the economy and which major products we are dealing with.

PART VII

MISCELLANEOUS

Industries

7.1 Yes. With the passing of the Industries (Development and Regulation) Act of 1951 the States' power in relation to industries has been considerably eroded. There has been increasing Central control in issuing licences for a vast category of industries. There is need for review of industries now controlled by the Central Government.

7.2 At present the Government of India has powers of control and licensing over a large number of industries that have been included in the Schedule to the Industries (Development and Regulation) Act of 1951 by virtue of the exercise of the powers under entry 52 in list 1. The Centre also controls clearance for capital issues, for the import of capital goods and raw materials and for foreign collaborations. The Central Financing Institutions and Advisory and Promotional Institutions play a supporting role in the Centre's control and regulation of industries.

1. The entire system of control and regulation by the Centre has been brought about on the basis of the need for :

(i) protection of infant industry in a developing country;

(ii) import substitution;

(iii) control of foreign investment;

(iv) control over scarce foreign exchange;

(v) control over the growth of monopolies and large houses; and

(vi) protection to indigenous technology.

Since foreign multi-nationals operating in India manufacture even soaps, "soaps" were brought under the Industries Regulation Act. That is how, the list of Industries has been progressively enlarged over the years.

2. An entirely different route was available for the attainment of the objectives mentioned in the previous paragraph. Just as certain industries as reserved for the public sector under the Industrial Policy Resolution, legislation could have been undertaken for laying down the particular industries which would not be open to foreign companies and multi national and/or to Indian monopolies and large houses. Similarly legislation could have been undertaken for reservation of products for small scale industries—such a legislation is now said to be under contemplation as a result of judicial decisions striking down the reservation of a few products for the small scale industries. Please also see answer to Q. 2.1.

3. The Industries (Development and Regulation) Act could be much simpler Act dealing with the control of only a few basic industries and those reserved for the public sector.

7.3 Some improvements have been brought about in the procedure for industrial licensing and for clearance of capital issues, import of capital goods and raw materials and foreign collaboration during the last 10 years. However, the improvements are neutralised by the large number of cases in which these clearances have to be obtained.

2. As a first step, the threshold for such clearance should be substantially increased. For example, the requirements of industrial licensing could be considerably reduced if the enactments as stated in the reply to the previous question are undertaken. The monetary limit in cases in which no import for foreign collaboration is involved could also be increased to Rs. 10 crores and periodically adjusted to inflation once in 5 years.

3. The organisation of the Chief Controller of Import and Exports, the Director General of Technical Development as well as central financing institutions like IDBI and IFCI have set up regional offices during the last few years. Their powers should be considerably increased so that that many of the clearances could be given, under well-understood guidelines, at the regional levels.

7.4 A number of institutions have been set up in States over the years for assistance in financing, in the supply of raw materials and in a few cases in marketing also. But the gaps pointed out by the Committee still persist. This is mainly due to the complexity of the requirements of different industries, the inadequacy of the efforts in relation to such complexity, the *ad hoc* changes in policies and programmes, the uncertainties of the availabilities for materials (materials surplus in one year becomes scarce in another year) and the difficulties in co-ordinating the activities of different agencies. The last one is a very major problem. The establishment of LICs has helped to some extent. But a great deal more remains to be done.

It appears that a time bound programme can and should be adopted in the VII Plan based on a realistic assessment of the extent to which the State Government and its agencies can take up responsibility and discharge them satisfactorily.

In the case of modern small scale industries, from the time of project proposal, appraisal and clearance through implementation and later production and marketing there are problems in the form of too many agencies to be approached for various clearances, inadequate working capital provided by Banks, difficulties in procuring raw materials and difficulties in marketing. The State Governments have to make institutional arrangements for giving all the clearances in one place. This should be one of the important elements of the time bound programme of the VII Plan. The financing institutions have also to participate in this and for this purpose the GOI and the Reserve Bank have to give clear instructions to them. The availability of many raw materials depends a great deal on the policies of the GOI and its agencies. As suggested by the Economic Administration Commission there should also be an immediate review of the taxation policies relating to this sector. It does not appear that marketing of all products can be undertaken by State agencies. The State agencies could deal with a few selected items and in the case of the rest, assist in marketing through counselling and supply of information. The agencies have to be staffed by properly trained people for this purpose.

In the case of traditional industries, the problems of each major industries relevant to a State have to be studied and an agreed set of policies regarding institutional structures (includi g co-operatives), procurement and supply of raw materials, taxation measures and subsidies and marketing arrangements have to be adopted for a reasonably long period of time. The States cannot decide on these by themselves because of the clearances necessary from the GOI for all matters relating to procurement, credit etc. Therefore, arrangements are necessary for joint study by the Central and State Governments and for quick decisions.

7.5 The resources tansfers sanctioned by nine All India Financial Institutions (LIC, IDBI, IFCI, ICICI, ARDC, REC, HUDCO, IRCI and NCDC) upto 1980-81 were of the order of Rs. 19,869 crores. A major part of these resources transfers has gone to the relatively developed States. Seven States, viz. Gujarat, Haryana, Karnataka, Maharashtra, Punjab, Rajasthan and Tamil Nadu with 36 per cent of the All India Population have been able to draw more than 62 per cent of the resources. Two States. Maharashtra and Gujarat with a little more than 14 per cent of the All India population have secured assistance to the extent of 27 per cent of the total amounts sanctioned. The rank correlation co-efficient between the per capita income of States and the per capita financial assistance by All India Financial Institutions gives a correlation co-efficient of +0·72, suggesting that States with high per capita income received more than proportionate share of the resources. To the extent such concentration of institutional assistance has taken place, the concerned State Governments have been enabled to finance a good part of their development from outside budgetary resources. Such States have also been the major beneficiaries of funds transferred from the Central Government under the award of the Finance Commission, as also in the sharing of open market borrowings.

2. One reason for the above situtation could be said to be the higher absorptive capacity of the advanced States/regions resulting from their already well-established industrial and institutional infrastructure. The urban bias of many of these States, which also generally have the benefit of concentration of technical expertise and talents, may also be an important factor. But these aspects only indicate that the process of economic development in the country tends to be more cumulative than equilibrating in character. The avowed objective of reduction of regional imbalances can be achieved only through proper correctives to these tendencies.

3. Certain features of credit dispensation by central financing institution have also contributed to the concentration of assistance to certain areas. These are—

(i) Both the IDBI and IFCI have been concentrating their assistance to selected industries like sugar, cement, textiles and paper and to some extent basic chemicals. Since these industries are largely concentrated in the already industrially advanced States, such States have been the main beneficiaries.

(ii) The financing institutions have been channelising a high proportion of their resources (about 3/4ths) to private sector industrial units. This has adversely affected those industrial backward areas where private entrepreneures or investment are lacking and the few available major industries are operated in the public sector. In the case of LIC, the picture is somewhat better since it has a diversified investment portfolio.

(iii) In the case of ARDC's funding of agricultural projects, it is disappointing that the project and programme chosen for financing turned out to be such as to deny many States of a reasonable share of assistance. Until

the end of 1980-81, as much as 63 per cent of the assistance had gone to finance minor irrigation schemes. An evaluation of the utilisation of these funds amounting to nearly Rs. 1500 crores will be extremely instructive. NABARD, the successor of ARDC, has a much more broad-based programme of assistance. It is hoped that with dynamic policies, NABARD will be able to assist all the States well.

7.6 It is not practicable to take States collectively into confidence on such issues. The criticism, is, however, valid to the extent that no objective criteria seem to be followed in deciding on locations of Central investments in the public sector, especially in these cases in which the location is not pre-determined by natural resources endowment. Choice of location is possible in those cases of industries which are "foot loose", that is, those which are not determined by the availability of particular natural resources. When the III Five Year Plan was being formulated, a Committee was appointed to suggest locations for the various major industries that were proposed in the public sector under that Plan. The Ramananda Rao Committee went into this question and suggested the establishment of units of BHEL, HMT, HAL etc., in different parts of the country. Thus, before the III Five Year Plan began, locations for many of the major industries had already been suggested and decided upon. But for this single isolated case of objective study of location, there has been no rational approach to decisions on locations of Central investment. Such decisions have become increasingly *ad hoc* and arbitrary. The Central Ministries and agencies also ask for various concessions in the form of free land, concessional electricity and water and even housing facilities from State Governments. A firm decision should be taken that in the matter of central public investment, the States will not be required to extend any concessions as the demand for such concessions acts against the backward States. As regards the VII Five Year Plan, a study on the location of industries that may be proposed in the plan should be undertaken as soon as an outline of the Plan is available and in the very first year the location should be decided and a suitable opportunity used for keeping the National Development Council informed.

7.7 Please see the Answers to Q. No. 7.6.

7.8 To the extent that incentives have been given for promotion of industries in backward areas, there has been some establishment of industries in such areas. The Sivaraman Committee had made a number of recommendations on the criteria of backwardness and on the incentives that are to be given for promotion of industries in backward areas. However, the criteria have been considerably watered down. This is not so much due to paucity of information. One of the important decisions to be taken in the context of promotion of industries in backward areas is to decide on those areas in which, for a period of time, starting of new industries (above a certain size) will not be allowed. Unless such a decision is taken or criterion is followed, the tendency for industries to concentrate around certain areas could continue unabated.

2. Indicators for assessing industrial backwardness should be different from those for assessing general backwardness. In a situation of scarcity of capital resources and the need for their efficient application, we should be wary of establishing "Cathedrals in the desert". Setting up isolated industrial units in backward areas without any linkages will not solve the problem of backwardness in any way. The availability of a reasonable level of infrastructure should be one of the important criteria for assessing industrial backwardness. The States have to play their own role in setting up the infrastructure first.

3. The point can be highlighted by citing the example of Kerala. The State has spent over the years substantial sums of money to develop the infrastructure for social and economic development. As a result of this, the State has achieved the highest rate of literacy in the country, lowest death rate, a very low birth rate and reasonably well-developed physical infrastructure. On the other hand, industrial growth has been slow and unemployment in the State is the highest in the country. The infrastructure that has been created at a huge cost is not fully utilised. It should be the specific objective of policy and planning to direct massive industrial investment to such States. Central investment plays an important role in this regard.

TRADE AND COMMERCE

8.1 Art. 307 confers power on Parliament to appoint an authority for carrying out the purposes of Art. 302 to 304 : that is to say, if there are disputes in regard to inter-State trade and commerce this authority may deal with such disputes and decide them. Past experience of the working of the regulations relating to Inter-State trade and commerce would suggest that the time has come to establish such an authority.

Agriculture

9.1, 9.2 and 9.3 The Planning Commission not only indicates broad national priorities and the guidelines for development programmes in matters like agriculture and social services but has along with Central Ministries laid down schemes in those spheres. The result is that instead of planning being responsive to local situations there is a virtually stereo-typed system of schemes for the whole country, with its immense diversity. The Planning Commission has not studied, until now the development potential and the differences in emphasis that has to be placed in different States.

As stated elsewhere we feel that the number of Centrally sponsored schemes should be kept to the minimum and that the Central grant assistance should be in the form of 'tied' assistance only in respect of schemes of basic national importance."

The Union Government's role on the subjects, like agriculture in the State list could be on the lines suggested by the Administrative Reforms Commission as pointed out in our reply to questions in Part VI.

9.4 The question arising in the context of fixation of minimum or fair prices for agricultural items and the public distribution system have been covered in the answer to Q. 4.7. They are not therefore repeated here.

2. In the case of irrigation, as has been stated elsewhere, in respect of projects which do not have any inter-State implications or financial assistance from abroad, the sanctioning of schemes should be left entirely to the State Government. Monitoring and evaluation of schemes above a certain level of cost, can and should be done at the time of finalisation of the plans and also periodically by the Central technical agencies. The present system of detailed scrutiny of all projects costing above Rs. 5 crores is wasteful of time and effort and does not achieve the more important objective of proper evaluation of economic and social benefits.

3. As regards projects on inter-State waters, it is advantageous to retain the need for approval by the Central agencies in the matter of allocation of inter-State waters, the procedures for arbitration and appointment of a tribunal are well laid down. However, on the ground that the tribunals take a long time, an even longer time has been taken by the GOI in trying to work out mutually acceptable solution. Several years have been lost by not referring many inter-State waters to a tribunal or by suspending the continuance of the cases before the tribunal—typical examples are those of the Cauveri water dispute and the Narmada Waters dispute respectively. Since water is a sensitive issue, popularly elected Governments are unable to come to decisions. The only method is to have the disputes arbitrated by tribunals as provided for under the appropriate law. The Central Government should not delay references to the tribunal.

4. As regards inputs, including credit, almost all the aspects from the supply of fertilisers and improved seeds to the supply of credit are matters ultimately determined by the GOI. The provisions of the distribution of inputs and the supply of credit have been progressively improved.

5. As regards forestry policy and administration, until a few years ago, the subject was entirely with the State Government. The forests were viewed from the legacy of the colonial period as a natural resource for exploitation by felling virgin forests and raising plantation. With the growth in population in many parts of the country cosiderable encroachments on forests also took place and State Government had to regularise the encroachments from time to time. The result was that the area under forests in the country and in the different States came down to dangerously low levels. Whether this was due to the fact that the subject was entirely with the State Governments or due to the prevailing notions regarding utilisation of forests and realisation of revenue from them and the pressure of growing population is a most question. With the transfer of the subject to the concurrent list and enactment of the Forest Conservation Law, there has been a 180 degree switch. Even for very small matters, clearance has to be obtained from a Committee in Delhi. In the matter of dealing with our forests, therefore, we seem to be swinging from one extreme to the other. There is need for enunciating a clear cut policy, getting it accepted by the Parliament and the National Development Council and for having in each State an Autority independent of the forest department to be in overall charge of implementing various aspects of the policy and eporting from time to time to the State legislature.

9.5 There are no problems in the sphere of Centre-State relations with respect to the role of agricultural research through ICAR. Establishment of major research institutions is one of the important functions of the Central Government and such research institutions should be further strengthened. They should also considerably enlarge the coordinated projects in States, involving fully the State Agricultural Universities and research institutions. As regards NABARD, comments have been made in reply to some of the questions in Part VII.

Food and Civil Supplies

10.1 There is scope and need for improving consultation. The difficulties faced by a deficit State like Kerala in the matter of food supplies are :

(i) inadequate supply of food grains, especially rice by the GOI for the public distribution system;

(ii) drying up of private trade channels due to restrictions (mostly informal) on movement of food-grains imposed by surplus States; and

(iii) the GOI's stipulation that State Governments or State Government Agencies (like Civil Supplies Corporations) should not make inter-State purchases without the GOI's prior concurrence. Such concurrence is very slow in coming and is given for small quantities only and is compounded by further difficulties in getting the authorisation for credit etc.

As a result, especially in years of drought in the country, the food supply position and the food prices situation become critical in deficit States like Kerala.

The advantage of a national common market is that dfferent parts of the country can produce different commodities efficiently and economically depending upon their natural endowments and agro-climatic condtions States which produce cash crops and earn foreign exchange for the country should not be made to suffer in the matter of food supplies. Supply of an agreed quantum of foodgrains to such States should be accepted a s a national responsibility.

In bringing about inter-State understanding and in working out an agreed policy, more systematic consultations between the GOI and the States would be useful. We feel that taking into account the nature of the monsoon, the National Development Council should discuss in the month of August/September every year, the national food situation and arrive at an understanding on the policies to be followed by the Centre and the different States in the next 12 months.

10.2 A periodic review would indeed be useful. In about once in 5 years, a National Committee with representatives from the Centre, States and concerned interests could be appointed to review the situation and make appropriate recommendations to the Centre and the States.

Education

11.1 It is felt that any criticism that there is unnecessary centralisation and standardisation in the field of education and too much of Central interference in the initiative and authority of the State is not at all justified. At present there is not much centralisation. In fact we require certain degree of standardisation in the matter of pre-degree and university education considering the need for mobility of students from one region to another, the need for unified or standard examination system which will have relevance and parity in the matter of degrees and diplomas issued by various authorities, a broadly unified national time calendar for admission and withdrawals of students, the general need to have parity in syllabi and curriculum with other countries in the field of scientific and technological education.

11.2 It is felt that University Grants Commission, may generally confine its attention in extending financial assistance to the Universities and affiliated colleges. To the extent necessary, the University Grants Commission may act as a co-ordinating body for shaping University and college education with specific reference to the physical facilities, the financial facilities and other allied matters. It would be however useful for a wider body with alround representation viz., from academic circles, educational planners, elected representatives, and administrators to lay down general policy norms for Higher Education. It should however be made mandatory that the UGC should be consulted by any such body before decisions are taken on policy issues.

11.3 There should be a national policy on education so that there will be some uniformity in the educational pattern throughout the nation and there will be scope for mobility for students from one State to another. The policy in its broad lines may be evolved by the Government of India and its execution and the details may be left to the respective States. There may be frequent discussions and consultations between the Centre and the States.

11.4 No difficulty has been experienced in our State in the operation of the constitutional provisions under articles 29 and 30 which guarantee the rights of the minorities for establishing and managing denominational educational institutions. As a matter of fact in Kerala Educational Institutions successfully run by minorities from an integral part of our educational system.

11.5 As far as Kerala is concerned there has not been any specific instance of conflicts of issues between the Centre and the State in regard to any programme of Educational development.

Inter-Governmental Co-ordination

12.1 The inter-State council suggested by us should be able to deal with such matters. A separate commission or council is not necessary.

Kerala

MEMORANDUM

The working of the Indian Constitution with particular reference to the relations between the Union and the States has been the subject of analysis and discussion by a number of scholars, Committees and the Administrative Reforms Commission. The present Commission is, however, the first one to be constituted by the Government of India specifically to examine and review the working of the existing arrangements between the Union and the States in regard to powers, functions and responsibilities in all spheres and recommend appropriate changes and other measures. The task assigned to the Commission is of immense national importance. The Government of Kerala welcomes the Commission which consists of eminent persons with long and wide experience of public affairs.

2. The general principles of allocation of responsibilities among different levels of Government in a country should, ideally, be—

(i) Clear demarcation of functions—Functions must be clearly defined and each particular function should be assigned to a particular level of Government to be performed exclusively by that level;

(ii) Efficiency—Each function should be performed at the level of Government, which can perform it most efficiently;

(iii) Priority to lower levels——Levels of Government which are close to the people should perform as many of the functions as they effectively can, and the higher levels undertaking only those that cannot be so performed.

It is recognised that, in practice, responsibilities can rarely be divided in this rational way. Firstly, the division is not done on a clean slate—there are different institutions with different powers already established and at a perticular point of time, when the division of responsibilities among levels of Government is considered, the historical context plays a very important role. Thus, at the time of finalisation of our Constitution, the fact that India was emerging as single unified country, with a common political system, for the first time in history and after long years of subjugation was a very important consideration. Secondly, the division of responsibilities is a political exercise and is subject to compromise based on what is considered to be most desirable and feasible at a given time. Thirdly, a clear division by subject area has become increasingly diffiicult with the growht of modern technology and the complexities of modern Government and society, with the result that different functions relating to each subject area may have to be carried out at appropriate diverse levels of Government. This is, to some extent, achieved in centrally planned socialist countries, as the lower levels of Government in such countries represent lower tiers of the Central Government. In systems in which the powers and functions have to be designated by statutes, it is not always feasible to list the functions in a detailed and differentiated way. Therefore, the functions are listed in general terms leaving the actual role to be determined in the Government system from time to time.

3. In the discussions in the Constituent Assembly and its Committees regarding the principles of our Constitution, the different alternatives — a unitary state, a federation with a strong Centre and with residuary powers vesting in the Centre or a federation with larger powers for the States — were all considered. One of the early Committees set up by the Constituent Assembly was the Union powers Committee with Shri Jawaharlal Nehru as its Chairman. This Committee came to the conclusion that a unitary State would be a retrograde step both politically and administratively and recommended that "the soundest framework of our Constitution was a Federation with a strong Centre", with residuary powers vesting in the Centre. When the Report of this Committee was discussed in the Constituent Assembly, strong views were expressed against it and in favour of larger powers for States. The general scheme suggested by the Committee was Finally adopted.

4. Introducing the Draft Constitution in the Constitutent Assembly, Dr. B. R. Ambedkar (the Chairman of the Drafting Committee) explained the form of the Comstitution and its essential characteristics. The Indian Constitution, he said, is a Federal Constitution in as much as it establishes what may be called a 'dual polity'. This dual polity consisted of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the fields assigned to them respectively by the Constitution. However, one distinguishing feature of the Indian system from other systems elsewhere is that the Indian Constitution can be both unitary as well as federal according to the requirements of time and circumstances to work as federal system in normal times, but in times of grave emergency consequent on external aggression of war, it may convert itself virtually into a unitary system. There are also powers under the Constitution for the President to proclaim a financial emergency or to take over the administration of a State, when he is satisfied that there is a failure of the constitutional machinery in the State or when a State fails to comply with or give effect to direction given by the Union.

5. Replying to the criticism in the Constituent Assembly "that there was too much centralisation and that the States have been reduced to municipalities", Dr. B. R. Ambedkar observed as follows:—

"As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre a larger field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism, as I said, lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will alter the boundary of that partition. Nor can the judiciary."

6. After the Constitution was adopted, the country has undertaken national planning for development. With the advent of planning, the Union Government's area of influence and operation got extended to all subjects coming under development. The separation of powers and subjects between the Union and the States got increasingly blurred. The preparation of the national plan covering all development subjects, the clearance required for the State plans from the Planning Commission and the Government of India, the detailed examination by Working Groups of the Central Ministries of the State's resources and the development schemes in each sector from year to year, the determination of the quantum of Central assistance and the size of the State plan from year to year, the introduction of centrally-sponsored schemes (not only at the beginning of a Five Year Plan but almost throughltut the plan period) and the procedures for externally assisted schemes have all lead to a high degree of administrative and financial centralisation. This has been further compounded by the concentration of savings through the nationalised banks and the Central Financing institutions like the LIC, GIC, UTI, IDBI, IFCI, NABARD etc. There are no institutional arrangemnts through which the States can express themselves regarding the policies and working of these institutions on whom depend the substantial investments in agriculture (in its widest sense), industry, housing, water supply and infrastructural schemes, all of which are so vital to the development of each state.

7. The issues relating to finance and development have therefore become the most important ones to be discussed in the context of relationships between the Centre and the States.

8. The challenge facing the polity of the country is how to balance the requirements of planning for ational development and those of local initiative local savings and investment. One of the prominent Members of the Constituent Assembly, Shri G. L. Mehta impressed upon the Assembly that whatever the constitutional set up may be, the relationship between the Centre and the States would be determined by economic forces and tendencies. He said——

"Commerce, trade and industry today as well as the economic relationships which they involve are national in scope and cannot be easily divided into Provincial and Federal aspects for purposes of regulation......Unfortunately, the country was prone to fall a victim to fissiparous and disintigrating tendencies and it was essential to guard against them......Paradoxical though it may seem. It is only a strong Centre which can build up adequate provincial autonomy and achieve decentralisation".

9. Thirty-four years is a long enough period to undertake a comprehensive review of the working of the Constitution in the field of Union-State relations. It is a measure of the prescience of our national leaders and Constitution-makers and the national spirit of our people, that the basic scheme adopted by the Constituent Assembly is still relevant. The State Government is of the view that there is need for a strong Centre for preserving and fostering the unity and integrity of the country and the national common market and for national planning for development. The State Government is equally firm in its view that the States should also be strong, as the strength of the Centre lies in the strength of the States and, therefore, nothing should be done in the name of planning or other considerations that would bring about excessive financial, planning and administrative centralisation. The process of planning and financial sharing as at present seems to have become counter-productive in that the peculiarities and special requirements of each region or State are not studied in depth and appropriate solutions and paths of development worked out. There is a strong tendency, backed by the retention of larger resources with the Union, to lay down iniform patterns of development throughout the country, through schemes which are essentially worked out by a distant bureaucracy. The needs of national planning for development and of balanced regional development do not require the involvement of Central agencies in such minutes of development and administration as at present. There is considerable scope for improvement in the institutional arrangements for national planning, for dealing with Centre-State issues, for devolution of larger resources to the States commensurate with their vastly increased responsibilities and for dealing with inter-State distribution. There is great need for evolving new procedures for Centre-State consultations and for establishing healthy conventions.

10. We have presented the views of the State Government on the various issues in the legislative, Administrative, financial and developmental spheres, in the form of detailed answers to the questionnaire received from the Commission. We wish to indicate here briefly the salient points made in the detailed answers to the question.

Legislative Relations

11. The State Government does not suggest any change in the subjects listed under the three Lists in the Seventh Schedule of the Constitution of India except in regard to "Residuary Powers". In the spirit of cooperative federalism and on the analogy of the provisions in the Government of India Act, 1935, the residuary powers may be listed in the Concurrent List.

The State Govement is also of the view that in the case of those entries in List I, under which Parliament can legislate on declaration of 'public interest' or 'national importance', on subjects which are included in the State List, the entries should be so worded as to make it clear that the power will be exercised only in exceptional circumstances. Legislation under the entries should also be undertaken in consultation with the Inter-State Council and should be subject to periodical review, once in five years, by appointing National Commissions including represen tives of States; necessary provision should be made in the concerned Central statutes itself for this purpose.

Whenever any amendment to the Seventh Schedule is contemplated under Article 368, there should invariably be prior consultation with the State Legislatures before the Amendment Bill is introduced in Parliament. The State Government also urges that any legislation affecting the interests of the States should be undertaken only after a discussion in the Inter-State Council (Para 13 below) and on the basis of its recommendations.

The power to reserve a Bill for the President's consideration under Article 200 should be invariably exercised by the Governor on the advice of the Council of Ministers and Article 200 may be appropriately amended for this purpose. A definite time limit may be laid down, say three months, within which the State Government should be informed of the President's decision regarding assent to the Bill or withholding of assent or of the message to the legislature for reconsideration of the Bill. Where the President withholds assent, it may be laid down that the reasons therefor should be stated in writing.

Role of Governor

12. The primary role of the Governor is as constitutional head of the State but he is also the constitutional link between the State and the Central and should objectively counsel both the State and the Central Governments in the larger interests of the State and the country.

Governors have functioned generally as constitutional heads of State and have fulfilled the role envissaged in the Constitution. When discretion had to be exercised, for example, in calling or not calling a leader to form a Government when the majority support for him was not clear or when recommending or not recommending action under Article 356, Governors have adopted different standards. It is felt that it should be possible to lay down guidelines for the exercise of the discretionary powers of Governors, on the basis of the experience of the last 34 years.

Generally speaking, whenever a Chief Minister loses confidence and another leader with clear majority is not available, it is better to dissolve the Assembly and order fresh elections.

In matters relating to confidence of the legislature and proving of majority, the responsibility should be that of the Chief Minister and should not be taken on by the Governor.

Administrative Relations

13. The State Government feels that there is need for constant consultation between the Centre and the States and between the States themselves in the interests of coordination of policy and action. For this purpose and for the purposes mentioned in Article 263, it is necessary to constitute an Inter-State Council. The Inter-State Council may also be the National Development Council to deal with matters connected with National Planning and Development and economic policies. We suggest that Article 263 be amended to provide that there shall be an Inter-State

Council which will also be the National Development Council and which will have such composition, functiuncand powers as may be laid down in the law. The statute should provide for the Council to meet at least once in six months, for committees of Ministers and officers and for presentation of the annual report to the Parliament and the State legislatures. We would request the present commission to make detailed recommendations in this regard.

Differences between a State and the Centre should be discussed bilaterally for resolution and one of the forums in which such discussions could be held in case bilareral discussions do not succeed will be the Inter-State Council.

Article 356 of the constitution is necessary. However, necessary safeguards should be built into the Article to prevent the recurrence of mass dismissal of State Governments and dissolution of State Assemblies based on the results of Parliamentary elections.

The power to give directions by the Union should be there as reserve power, but it is felt that Article 365 which is worded on the lines of provisions in enactments creating statutory authorities is an unnecessary irritant and may be deleted from the Constitution.

A number of Central agencies have been created to handle activities relating to subjects in the State and Concurrent List as a result of national policies regarding procurement and distribution of foodgrains and essential commodities, fixation of prices of importment materials, restriction of monopolies and other matters. Bodies like the Central Water and Power Commission (later Central Water Commission and Central Electricity Authority) were created in pursuance of Central Acts. Being basic infrastructural facilities, it is necessary to have a framework of Central legislation for purposes of ensuring quality and for dealing with inter-State matters. However, the statutes have not been changed with time and, over the years these bodies have been dealing with too many matters of minor detail. For example, the monetary limit of Rs. one crore fixed for power projects in 1948 still remains unchanged, with the result that schemes which the States could undertake on their own 35 years ago have now to be posed for Central clearance. The examination by Central agencies even in respect of small schemes is so detailed that about two to three years are taken before a small scheme is sanctioned. These Central bodies could concern themselves only with projects above a certain size and projects which have inter-State implications. In the case of Employees State Insurance and Employees Provident Fund, it should be enough for the Central Government to provide the legal framework.' Similar is the case of National Savings Organisation regarding which the Central Government could lay down the schemes and facilities and leave it to the States to organise the promotional and other activities.

It will be desirable to have an All States Advisory Council at the level of Ministers for each of the Central organisations which deal with subjects in the State and Concurrent List—— are at least one council for the agencies attached to a Central ministry—— which should meet at least once a year and discuss the policies, role and working of the organisations. States should also have a voice in the administration of organisations like All India Radio and Doordarshan. Joint advisory Councils could be formed at the State level for this purpose.

The State Government is of the view that it is the primary responsibility of the State Government to protect the life and property and reights of its citizens, particularly that of the minorities. At the same time when circumstances so require, the Central Government should not hasitate to take corrective measures and ensure the protection of life and property and rights of persons affected, if any, during disturbances and also should help to rehabilitate the victims.

The arrangements contemplated under Article 355 for the location and use of Central Reserve Police and other Armed Forces in aid for Civil power in a State are necessary in the larger interests of national integrity.

Financial Relations and Economic and Social Planning

14. Taking the total revenues and expenditures, without making adjustments for resource transfers from the Centre to the States, as much as three-fourths the total budgetary resources (tax, non-tax and borrowings) come within the command of the Centre, while on the expenditure side the share of the Centre and the States is about equal. This imbalance between the resources and the expenditure of the States should be reduced substantially.

Further in roads into the States' limited sphere of taxation should not be made. On the other hand, the States should be enabled to exploit such resources fully. In our view, instead of the proposals now made by the GOI to impose excise duties in the place of sales-tax on some of the commodities, the Central Government should voluntarily withdraw from excise duties on certain commodities and from additional excise duties.

In the light of the experience of the changs in the rates of personal income tax, surcharges and corporation tax and in the rates of basic, specific, special, auxiliary and additional excise duties it is necessary to lay down that all income taxes, including corporation tax and surcharges and all excise duties, by whatever name called, should be made sharable with the States by necessary Constitutional amendments.

Before undertaking lagislation to levy or vary the rate structure or abolish any of the duties and taxes under Articles 268 and 269, it should be made obligatory to consult the States under Art. 274. The statutory National Development Council could be the appropriate body for such consultations.

The present institutional arrangemets—— the Finance Commission and the Planning Commission— are perhaps the most practicable mechanism for transfer of resources to the States. However, the working of the present system should be improved upon and there should be effective coordination between the two Commissions as well as objective criteria for determining the quantum of Central assistance to

States and its inter-State distribution. The Planning Commission should be the Secretariat of the statutory National Development Council. The Finance Commission should have a permanent Secretariat and it should also form an integral part of the Planning Commission.

Since the transfer of resources on the recommendations of the Finance Commissions has been done largely on the basis of a gap-filling approach and the transfer of resources through Central assistance for the plan has been done largely on the basis of distribution under a general formula of a certain sum of money made available by the Union Finance Ministry to the Planning Commission, the transfer of resources has not promoted either efficiency or economy in expenditure nor have they narrowed down the disparities between the States. Basic changes are therefore necessary as regards the principles governing the transfer of resources through the Finance Commission and the Planning Commission.

The states should be enabled to get most of the resources through assured devolution, but the principles of inter-State distribution should be such that they do not leave advanced States with large surpluses. Standards should be adopted and weightage given to such matters of basic national importance like progress in achieving universal primary education, so that States which have striven hard and committed resources to achieve such standards are enabled to meet their commitments.

An important requirement in bringing about better distribution of resources between the Centre and the States and ultimately amongst the States themselves is to increase the overall quantum of Central assistance to the States for their development plans.

It is necessary to re-examine the formulae and basis on which Central assistance is made available to the States' Plans. In the allocation of Central assistance for State plans, the position arising out of the award of Finance Commission should first be taken into account. It should be ensured that all States have the same amount of per capita revenue surplus. This is one of the important elements of coordination between the Planning Commission and the Finance Commission.

In recent years, as a result of the mounting repayment liabilities of States, there has been a diminution in the net transfer of resources to the States. The loan and grant component of Central assistance should be re-examined so as to bring about a reduction in the loan component on the basis of a rational classification of the purpose for which capital resources are utilised in the States. It is much better to bring about such rationalisation and avoid the situation in which States accumulate large deficits on non-plan account.

There has been a decline in the States' share of the total public sector resources and this is mainly due to the sharp decline in the transfer of capital resources from the Central to the States. It is necessary to correct this trend in the interests of the finances of the States and the needs of development.

No major change in the procedure relating to market borrowings is necessary but it is essential to have instituitional arrangements and evolve guidelines for the distribution of the total market borrowings between the Centre and the States and for the inter-State allocation. The present ad hoc allocations are largely in favour of the Central Government. The State Government would suggest the Constitution of a Loans Council for this purpose. States which earn large amounts of foreign exchange through export and remittance of non-residents should be given special consideration, as they are not allowed to set up institutions to mop up any part of the savings.

One of the major elements dislocating the States' resources is the grant of additional Dearness Allowance to compensate for the rise in cost of living. Since the Central Government is in charge of the price situation, the commitment on this account should be taken into account in the transfer of resources from the Centre to the States.

Since co-ordination is essential in all the matters connected with the transfer of resources to the States, it will be disadvantageous to create a number of independent bodies like the National Credit Council, the National Economic Council and the National Expenditure Commission. The State Government feels that a reorganised National Development Council with its Committees should be able to deal with most of the matters. Because of the importance and need for co-ordination with the Reserve Bank of India, a Loans Council is suggested separately.

The introduction of large number of Centrally sponsored Schemes during a plan period tends to dislocate the State plan financially weaker States are unable also to fully utilise the Centrally Sponsored Schemes for want of matching resources. The number of Centrally Sponsored Schemes should be reduced, they should be fully financed by the Centre and should be introduced only with the concurrence of the National Development Council.

One of the objectives of national planning and of intermediation by the Centre is to reduce regional imbalances. The preparation of State plans and the finalisation of their size and content should be based not only on the study of the source-potential of the State concerned but also the gaps in development and the special requirements and not in a routine manner.

The criteria for assessing industrial backwardness should be different from those for general backwardness. The point can be highlighted by citing the example of Kerala. The State has spent over the years substantial sums of money to develop the infrastructure for social and economic development. As a result of this, the State has achieved the highest rate of literacy in the country, lowest death rate, a low birth rate and a resonably well-developed physical infrastructure. On the other hand, industrial growth has been slow and unemployment in the State is the highest in the country. The infrastructure that has been created at huge cost is not fully utilised. It should be the specific objective of policy and planning to direct massive industrial investment to such States.

Central investment plays an important role in this regard. A firm decision should be taken that in the matter of Central public investment, the States will not be required to extend concessions like free land etc. as the demand for such concessions acts against financially weaker States.

15. The State Government is confident that the Commission will give due consideration to its views and make recommendations which will help to put the Centre-State relations in our country on healthy and progressive lines, consistent with the need to preserve the unity, integrity and the national common market and to foster rapid and balanced development of all parts of the country.

NOTE PRESENTED BY THE KERALA STATE PLANNING BOARD TO THE SARKARIYA COMMISSION ON CENTRE-STATE RELATIONS

The Planning Board is generally in agreement with the views expressed in the State Government's Memorandum on the respective roles of the Centre and State Governments, the difficulties that have been encountered and their recommendations regarding corrective measures. This Note is therefore limited in its scope and is confined mainly to Centre-State relations which pertain to economic and social planning. It deals with three broad areas : (a) Centre-State relations in ecomnomic and social Planning, (b) Measures to strengthen the planning process at the State level and (c) The decentralisation of Planning.

I

Centre-State relationship in Economic and Social Planning

2. The need for national planning and the role of the Planning Commission as the machinery for planning have now gained general acceptance. But the existing mechanisms and institutional arrangements for plan formulation and implementation leave much to be desired. The preparation of the National Plan has to be the joint responsibility of the Centre and the States. But at present there is a virtual absence of any substantive or meaningful discussions between the Planning Commission and the State Governments in determing the basic parameters of the five year plans. It is true that the final outcome of the exercise is placed before the National Development Council, but this is no more than a formality. The suggestion to accord a statutory status to the National Development Council and make the Planning Commission a Secretariat of the National Development Council has much to be commended.

3. Another matter which is proving to be a major source of irritation is the manner in which the plan programmes are finalised. The present procedures involving detailed scrutiny of individual schemes, big and small, by the Central Working group are frustrating.

4. The institution of a plethora of centrally sponsored schemes has also unsettled the State Plans. While Centrally Sponsored schemes are necessary in the case of a few areas of basic national importance, the introduction of a large number of schemes—from very small ones to large schemes—and the need to find matching funds for them diverts resources from ongoing and other priority State schemes. Correctives need to be applied in two directions. Firstly, the number of centrally sponsored schemes should be minimal, confined only to programmes which are admittedly of national priority. These should as far as possible form part of the Five Year Plan itself. Secondly, a measure of flexibility should be provided to fashion the centrally sponsored schemes to suit local requirements.

II

State Planning Board

5. While the claims of the State Government for their rightful place in the planning process are well taken, it is imperative that the State Governments should equip themselves to assume the responsibility for detailed plan formulation, monitoring and evaluation. To the extent capabilities in these direction are created and strengthened, the justification for a higher degree of decentralisation in decision making from the Centre to the States will be fortified.

6. As early as in the Third Plan, the Planning Commission had advised the State Governments to set up State Planning Boards to provide the technical and professional support to the preparation and monitoring of development plans at the State level. Following the guidelines from the Planning Commission, State Governments have constituted Planning Boards though their functions and status vary from one State to another. But most of them are merely appendages of the Planning Departments which jealously guard their right to plan. It is a most question whether there should be greater devolution of plan decisions at the State level, unless the States accept the discipline of planning and create the necessary infrastructure. Greater decentralisation of resources and powers to the States, is a necessary but not a sufficient condition for real progress. A Planning Board with the required technical competence and adequate powers is a sine-quo-non for the successful formulation and implementation of State Plans. But there is a general reluctance to conform to the discipline of plans.

7. The strengthening of the Planning Board will require that —

(a) The Planning Board should be responsible for the formulation of the perspective, five year and annual plans.

(b) Projects and programmes included in the plan should invariably be on the advice of the Planning Board.

(c) All important issues on economic policies and procedures should be considered by the Planning Board before being placed before the Cabinet for approval.

(d) Any significant changes in the plan programmes during the course of implementation should be with the concurrence of the Planning Board.

(e) Planning Board should be closely associated in all inter-departmental and Central/State discussions on major projects, programmes and policies.

(f) The programmes of Plan implementation should be reported on a regular basis to the Planning Board in order to enable it to undertake suitable monitoring and evaluation and to appraise the Cabinet from time to time on the implementation of Plan and any modification that might be required.

(g) Instead of a separate Planning Department in the Secretariat and a Planning Board, the State Planning Board should be the only planning agency at State level as in the case of the Centre.

(h) The Planning Board should have a statutory status and provision for this could be part of the proposed enactment for making the National Development Council statutory and the Planning Commission its Secretariat.

All of these will call for not only the enlargements of the responsibilities and functions of the Planning Board but also close co-ordination and consultation between the Departments and the Planning Board. Further, the Planning Board should be adequately strengthened with professional and technical personal to undertake macro-economic studies, sectoral planning and concurrent evaluation of projects. Above all, the advice rendered by the Planning Board should be given due consideration by Government.

8. Once reforms on these lines are brought about, it will help to generate a greater degree of confidence at the Centre on the competence and ability of the State Governments to undertake the planning functions more effectively than hitherto. This in turn will smoothen the process of a higher degree of devolution of decision making powers to the States on economic and social planning. It will also open up a direct channel between the Planning Boards at the States and the Planning Commission at the Centre. National Planning will then be a total integrated process with Planning Boards providing effective support from the States to the Planning Commission. This close liaison between the Planning Boards and Planning Commission and the introduction of the programmes for exchanging personnel will be mutually beneficial.

9. Finally it must be said to the credit of the present Kerala Ministry that they have made commondable strides in enlarging the functions of the Planning Board. In reconstituting the Planning Board recently, it has been ordered that all important matters of economic policy as well as the initiation of new projects and programmes should be referred to the Planning Board for its advice. The preparation of the Annual Plan is now a function of the Board and had been discharged by it during the current year. These do represent an advance over the pre-existing position, but there is still considerable improvement to be brought about to achieve a greater degree of involvement of the Planning Board in planning at the State level.

III

Decentralisation of planning

10. In a vast country like ours planning should be a multi-level process. The process of decentralisation of development planning and implementation will have to be taken down below the State level in order to be fully effective. Just as excessive centralisation of planning functions at the Centre can generate serious problems at the State level. equally, concentration of decision making powers on planning and implementation at the State capitals can be inimical to proper planning and implementation of schemes and projects which should appropriately be carried out at the district, block and panchayat level. Decentralisation of planning and implementation of economic development programmes from the Central Government to the State Governments should be accompanied by a similar delegation of powers to the various levels down below within the State level.

11. Decentralisation of planning has a chequered history in Kerala. Several attempts at devolution of functions to the district level have borne no fruit. The Planning Board has now recommended a phased programme of decentralisation which is under the Government's consideration. The crux of the problem in the Centre as well as in the States is the unwillingness of the powers that be to part with power.

12. Decentralisation of the planning process from the Centre to the States will definitely go a long way in establishing a spirit of 'Co-operative Federalism' in our planning system. The Planning Commission has the necessary technical expertise at its disposal for carrying out the responsibilities of plan formulation, and it undertakes macro-level planning exercises. But the States are not actively associated in these exercises. Nor has the Commission any rapport with the State Planning Boards. A beginning may be made in this regard by an arrangement under which all relevent technical papers prepared in the Planning Commission, and circulars issued from time to time in respect of plan formulation and implementation are sent directly to the State Planning Boards.

13. The present practice of States preparing inflated plans and bargaining with the Planning Commission for a large size plan should be discouraged. Once the Plan size and sectoral outlays are decided, the States should be left free to formulate the schemes. Given greater autonomy and initiative, the State Plans will be more purposeful and their implementation can be more effective.

14. The existing arrangements for monitoring and evaluation of plan programmes made in the Planning Commission and in the State are inadequate. In this State the monitoring of plan schemes is carried out by the Central Planning and Monitoring (CPM) Unit in the Secretariat which is functioning under the Planning Department. At the same time the evaluation function is entrusted with the State Planning Board. All the Departments inplementing plan schemes are to report the progress of execution of schemes to the CPM Unit in prescribed formats. Usually there is a time lag of more than a month in the reply of information. Most of the Departments furnish the financial expenditure under different heads and they do not pay much attention to the compiling of physical achievements. It is these skeleton reports which are being transmitted to the Planning Commission, so that the review of the progress

of implementation of plan schemes in the Planning Commission is bound to be tardy.

15. It is necessary to streamline the present arrangements for monitoring. In each of the major Departments there should be a monitoring cell which should continuously update the relevent implementation details and help to maintain a regular flow of information from the departments to the CPM Unit. The Budget contains about 1500 schemes implemented by various Departments. The details collected on each scheme should be computerised. In respect of Major irrigation projects, power projects etc., it is necessary to introduce Network technique (PERT/CPM) for planning, scheduling etc. which will help to establish an efficient monitoring system. At present these Departments are not adequately equipped to monitor the physical achievements and progress of each scheme and consequently mid course corrections cannot be effected. This is the main reason for projects like Kallada, on which work was started during the second Five Year Plan, to spill over from Plan to Plan and it is going to be a continuing scheme in the Seventh Plan also. As the Plan funds available with the State are quite inadequate for setting up the computerised monitoring unit, the cost of computerisation and the expenditure on staff of the monitoring units in the different departments will have to be met by the Central Government. This will improve the functioning of the monitoring cell in the Planning Commission also.

GOVERNMENT OF MADHYA PRADESH

(a) Replies to the Questionnaire

(b) Memorandum

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Our Constitution cannot be described as 'federal' in the strict sense of the term. In fact the word 'federal' has not been used in the Constitution at all. Article 1(1) *ibid* says that India shall be a "Union" of States. According to Dr. B. R. Ambedkar, "although the Constitution may be 'federal' in character, the term "Union" has been used because of certain advantages". The advantages, he explained in the Constituent Assembly, were to indicate two things, *viz.* (a) that the Indian Federation is not the result of an agreement by the units; and (b) that the component units have no freedom to secede from it. Therefore, the word "Union" here does not carry the same meaning as the word 'Union' does in the Preamble to the Constitution of the United States of America, the model federation. The characteristics of a federal State had been deliberately assigned by the Constituent Assembly as a conscious measure of distribution of authority between the Centre and the States. But the authority of the Parliament continues to be wide and overriding in as much as it can even create new States, change the boundaries of the existing States, or abolish any one or more States. The situation could best be described in the words of M. C. Setalvad "as an arrangement arrived at by the representatives of the people for the governance of their country by the grouping of its territories into various regions, by distribution of Legislative and Executive powers between the Government of these regions and the general Government at the Centre, by the creation of institutions and agencies needed for efficient governance of the country."

1.2 The Indian Constitution does not envisage a classic federation nor is it unitary in the sense the Constitution of U. K. is. India is a composite State of a novel type. It enshrines the principle that in spite of federalism the national interest ought to be predominant. As such, any move to water down the authority of the Central Government would not be deemed to be in the spirit of the Constitution. The Rajamannar Committee constituted by the Tamilnadu Government worked on the thesis that India was a classic Federation and consequently federating units should have most of the authority and the Central Government should be left only with the residuary powers. To this extent the approach of the Committee was basically faulty. The distribution of power between the Centre and the States should be continuously reviewed and debated in the Parliament. In fact, this has been the practice all these years.

1.3 Our view is that the existing provisions in the Constitution of India regarding the matters in question whether in normal times or in emergency are adequate. In fact it has been established that they are flexible enough to cope with the situations arising from time to time.

1.4 The federation of the type mentioned in the question does not seem to exist any where in the world. The American federation has been described as an indestructible union composed of States. It is not possible for the Federal Government to redraw the map of the United States by forming new States or adjusting their boundaries without the consent of the States. The same characteristics are found in the Australian Constitution. But even in the United States there is considerable presence of the Federal Government in the States. There is even a federal civil service with representatives in the States. There is a provision for imposition of martial law throughout the country in the United States.

1.5 We are of the view that there is no substantial lacuna, either conceptual or structural in the Constitution. It has great resilience to meet all kinds of situations as they develop from time to time in a comparatively young democracy like ours. In fact, the Constitution has been amended several times in response to new developments and challenges. The responsibility of keeping the spirit of the Constitution intact and alive largely depends on practices and conventions that are developed both by the Centre and the States. The democratic institutions, in India being in a state of evolution, it can be said that even in this respect the evolution has been, by and large, healthy.

1.6 We agree with the view that the protection of independence and integrity of the country is of paramount importance. The Preamble of the Constitution, Articles 5, 9, 256, 257, 258, 260, 352 to 360, 365 and the VIIth Schedule embody some of the provisions in this regard.

1.7 We are of the opinion that through Articles 256, 257, 354 to 357 the Constitution of India has provided a broad and sound framework regarding the obligations of the Centre and the States in respect of the country as a whole and to one another. These provisions are reasonable and rooted firmly in the spirit of mutual trust.

1.8 In our opinion the provisions in Article 3 are necessary and functional. No reconsideration is called for.

PART II

LEGISLATIVE RELATIONS

2.1 We agree that there is nothing basically wroug in the scheme of distribution of Leigslative powers between the Union and the States. The States do enjoy a vast and substantial measures of Legislative

autonomy. There are instances in which the Union Government have legislated upon subjects which materially affect the States. Viewed narrowly, this could be termed as encroachment. However, taking a long term view and keeping in mind the national interest, we feel that this is unavoidable and, in many cases, indeed desirable. For instance, in case of the Union Legislation about forests, it can be seen that it is a measure to prevent serious erosion, if not eventual extinction of a very crucial natural resource, namely forests, done with the additional objective of ensuring ecological balance.

2.2 In spite of temporary tensions and controversies in this behalf, taking a long term view our opinion is that there does not appear to be sufficient ground for making any basic or substantial changes in the distribution of powers under the legislative lists of the VIIth Schedule and/or the contents thereof, or in other relevant provisions of the Constitution.

2.3 Mutual consultation between the Centre and the States is always desirable. However, it need not be formalised by a specific provision in the Constitution. Informal consultations on major Legislative measures in the concurrent list take place even now and could be further developed into a healthy convention. Formal provisions in this regard are likely to cause delay and possible embarrassment on issues which may need urgent legislative action.

2.4 The existing provisions in Article 249 of the Constitution of India in this regard are reasonable and do not call for any change.

2.5 The experience of the States has been that several enactments referred to the Centre either for assent or for clearance tend to take a long time. The procedures in this regard should be so streamlined that only those aspects of the enactments are scrutinized in the Centre which are to be examined from the point of view of their constitutionality and not the whole enactments *per se* as seems to be the practice now.

PART III

ROLE OF THE GOVERNOR

3.1 (a) The executive power in a State is vested in the Governor. He is, however, appointed by the President of India and holds office during the pleasure of the President. He is, therefore, liable to removal at the discretion of the President. The nexus between the Central Government and the State Government regarding the office of the Governor is, therefore obvious.

In so far as his role *vis-a-vis* the State is concerned, in Rai Sahib Ram Jawaya Kapoor *vs.* State of Punjab (1955), the Supreme Court has held that the Governor is only a constitutional head of the executive and that the real executive power is vested in the Council of Ministers. The Governor acts on the advice of his Council of Ministers, generally, but he has also certain discretionary powers. Under the Constitution where the expression "in his discretion" is used in relation to the powers and functions of the Governor the reference is to special responsibilities of the Governor such as Article 371-A and paragraphs 9(2) and 18(3) in the Sixth Schedule. Similarly the powers under Articles 200 and 356 are also to be used in his discretionary capacity.

Under Article 167 it is a duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers for legislation.

The constitutional provisions relating to the role of the Governor in the context of the Centre-State Relations, are, therefore, adequate in as much as the Governor is fully informed of the important affairs of the State and he has a organic link with the Central Government so as to enable him to take up any issue of public importance with the Central Government. The powers relating to withholding the assent on the Bills and reserving them for the assent of the President also equips him with the authority to prevent any law being made contrary to national policies. The provisions under Article 356 of the Constitution also give him a pivotal role in respect of Centre-State Relationship.

3.1(b) In our opinion the Governors have, by and large, lived up to the expectation of the Constitution and their performance has generally fostered the spirit of national integration and solidarity.

3.2 In a federal set-up like our polity there is always a possibility of difference of views between the Centre and the States on a wide range of subjects irrespective of the fact whether the subject finds a place in List I, List II and List III of the VIIth Schedule of the Constitution. The role of the Governor should be to anticipate and identify the areas of differences and to endeavour to remove or diminish them by working as the subtle two way communication channel between the Centre and the State. Thus the institution of Governor should create cohesion and feeling of unity in Centre-State relations, natural divergence of views on various topics notwithstanding.

3.3(a) The role of the Governor assumes special importance in abnormal times when the constitutional machinery of a State is under stress due to instability of the elected Government or some other potent cause. In such circumstances the Governor has to act in an objective manner. In doing so he must keep in mind the solemnity of his oath of office.

3.3(b) The decision to appoint the Chief Minister should be in accordance with the provisions of the Constitution and be guided by the need of providing a stable Government in the State.

3.3(c) No comments.

3.4 The provisions of this Article of the Constitution are such and as provide for the Governor to bring to bear upon the problems of legislation administrative maturity and experience. It provides a safeguard against hasty legislation or legislative measures which are in the long term against the interest of the State. Fortunately, there has been no instance in our State of the Governor having reserved a State Bill for the President's consideration without advice from the Council of Ministers.

3.5 This has been covered in replay to question No. 2.5.

3.6 The view that the Governor is neither an agent of the Centre nor a more ornamental head of the State but a close link between the Centre and the State represents the correct position. Our considered view is that the Governors have acted impartially and fairly in accordance with the Constitution and healthy conventions in discharging their dual responsibility.

3.7 In our view the constitutional provisions regarding tenure of the office of Governor in Article 156(1) are adequate. The deletion of Art. 156(1) will undermine the present delicate role of the Governor as an agent of the Centre. We are, therefore, of the view that no change in this behalf is warranted.

3.8 In our view the present system has worked quite satisfactorily.

3.9 In our view the criticism in this behalf is not well founded. There does not appear to be good and sufficient ground for introducing in our Constitution any provision similar to Art. 67 of the Basic Law of Federal Republic of Germany.

3.10 In case of a high constitutional functionary like the Governor it should be assumed that he will use his discretion under the Constitution in accordance with his oath in furtherance of the good of the people. To give him discretion and then to circumscribe it by issuing guidelines is to repose faith in him and then to doubt his ability to live upto such faith.

PART IV

ADMINISTRATIVE RELATIONS

4.1 Article 256 of the Constitution provides that the executive power of a State shall secure compliance with Union laws. As the Union has Legislative authority over the whole of the territory of India any law enacted by Parliament shall have the force of law in every State. The Article provides that it shall be the Constitutional duty of every State to enforce Union laws as they are applicable to the State. The Executive of the Union shall have the power to give directions to the State to ensure due compliance with enforcement of Union laws.

Article 257 lays down that the executive power of the State even within its proper sphere, must be so exercised as not to impede or prejudice the exercise of the executive power of the Union and, subject to directions issued by the Union Executive in this behalf. The object is to prevent any conflict between the executive policy of the State and that the Union. So, even within the sphere covered by List II read with Article 162, the Union Executive shall have the power to give directions to the State Executive so that the exercise of the State power may not prejudicially effect the exercise of the executive power of the Union to give directions to the States on particular matters.

Article 365 provides that where-in any case the direction given in exercise of power of the Union under any provision of the Constitution to comply with by any State but the State has failed to comply with, or to give effect to, any directions, the President may hold that the situation has arisen in which the Government of such State cannot be carried on in accordance with the provisions of the Constitution.

The Article provides the sanction behind such directions. If any State fails to comply with any such direction, the President shall be entitled to exercise his power under Article 365.

The result of such a decision by the President would be that he can issue a Proclamation under Article 365 taking over the Government of the State. On the President's taking such a decision, the provisions of Article 356 may come into operation.

The provisions of these Articles are in larger interest of the Nation. However, these Articles should be used only where it is felt that their use has become inevitable.

There has been no case so far wherein this State Government was compelled to carry out the directions given under Article 256 and 257 under the threat of invoking Article 365.

4.2 We agree with the latter view. Since Article 365 is purely a consequential enabling clause, it may remain as a reserve provision.

If the directions are given by the Union Government under Article 256 and the State Government does not comply with such directions, the Union Government cannot take any step against such State Government in the absence of the aforesaid constitutional provision.

4.3 The State Government agrees with the Commission.

4.4 Such instances have not come to the notice of the State Government.

4.5 The period fixed by the Constitution (Forty-fourth Amendment) Act, 1978 appears to be sufficient for restoring the normally within the time specified in clauses (4) and (5) of Article 356.

4.6 The present arrangements are working satisfactorily.

4.7 The Central agencies enumerated in this question are handling activities relating to subjects in the State and Concurrent Lists of the VII Schedule to the Constitution, but considering their nature and impact on national life it is advisable not to disturb this arrangement in the name of State autonomy. However, these agencies can deliver goods more effectively if they are more responsive to the needs and problems of the States in this behalf. The role of these agencies need to be reviewed from time to time in association with the State Governments.

4.8 The All India Services have played a valuable role in fostering national integration and combating regional feelings. It is, therefore, a fair assessment of their overall performance that they have lived up to the expectations of the Constitution makers. In the present system the control exercised by the

States over the personnel of these services does not appear to be inadequate for purposes of effective administration.

4.9. As matter of rule deploying of Central Forces in the States should be done with the consent of the State Governments. However, in exceptional circumstances where national security or integrity is threatened and the State adopts intransigent attitude, the Central Government should be free, in larger interest to deploy Central Forces *suo moto* in aid of civil power.

4.10. The television and radio are very powerful media and an instrument of fostering national integration. As such they should continue to be in the Central List. However, there should be a more rational basis for the expansion of these facilities. Madhya Pradesh, because of its large size, has special problems of communication. Therefore, it is all the more necessary that the State gets wide network of radio transmission and television relay stations. The Commission could devise a formula according to which the plan resources going into the expansion of these facilities are equitably distributed between different States.

4.11 The functions of Zonal Councils have been enumerated in Section 21 of the States Reorganisation Act, 1956. Matters of common interest of the States are discussed in the Council meetings. The view of the State Government is that the purpose of collectively pursuing States' interests is properly served by the Council and that it is a useful organisation.

4.12. Under Article 263 of the Constitution there is a provision to establish inter-State Council. The functions to be discharged by such Council are given under the Article stated above. The Supreme Court of India has the jurisdiction to hear disputes between the States involving theex istence or extent of a legal right but certain disputes of non-legal character also arise between the States. Such type of disputes are not fully covered by the Zonal Councils which are in existence now.

The State Government, therefore, feel that inter-State Council should be established to iron out inter-State and Union-State differences and issues and thereby to secure better cooperation between the States.

It is suggested that it should be constituted on the pattern recommended by the Central Administrative Reforms Commission, as below:—

(1) Prime Minister	Chairman
(2) Finance Minister	Member
(3) Home Minister	Member
(4) The Leader of the opposition party in Parliament	
(5) Five representatives on the basis of one each from five Zonal Councils.	
(6) Any Association, Cbinet Minister or Chief Minister connected with any particular subject can be invited for discussions while considering the relevant subject.	

The Council should be set up on a permanent basis. The Inter-State Council should also have its permanent Secretariat like Zonal Council.

PART V

FINANCIAL RELATIONS

5.1 The fiscal provision relating to the sharing of tax revenues as well as power to levy taxes contained in the Constitution were incorporated at a time when the level of technology was low and the expectations regarding the scope for development in the country as well as achievements in certain sectors were limited. With the remarkable progress and advancement in technology it has been possible for mankind to reach a very high standard of living in several parts of the world. Within the country on account of historical and locational advantages certain States have been able to progress much faster than the others. Given the scheme of fiscal transfers and powers in the Contitution on account of the inherent capacity of certain States to grow faster, their resources have also grown faster, with the result that the gap between the other disadvantageously placed States and these States have continued to grow. A time has now come when the country has to take stock of the situation to find out whether the scheme of fiscal powers as existed in the Constitution is sufficient to muster enough resources by the States to discharge their growing responsibilities.

A time has now come when the State Governments are looking for more resources not only to meet their current consumption needs but also to provide for all the multifarious developmental activities they have undertaken. Looking at the provisions of the Constitution in this light we do consider that it is now deficient. We have time and again represented before the Finance Commissions that the Government of India should consider sharing of the proceeds of the Corporation Tax with the States. A time has now come when perhaps the entire scheme of devolution and the entire scheme of sharing of tax revenues as well as the fiscal powers entrusted to the States should be looked into with a view to bringing about such changes as are required to provide substantial resources in the hands of the State Government.

5.2 The constitutional division of sovereignty between the two layers of government—Centre and States—makes the States dependent on the Centre for their fiscal needs. This in itself should normally not be a great cause for concern as in almost all federal governments the constituent States are dependent on the Central Government. The Indian system has a built-in mechanism whereby under the Constitution there is a system of tax sharing with the States by the Union and grant-in-aid to the needy States by the Central Government. The greatest defect in implementation of the system is that the three cardinal principles of better Centre-State financial relations, viz. (a) that every State should get reasonable opportunity to rise to its full stature by harnessing its potentialities in the shortest possible time; (b) that the States which have remained backward despite their natural wealth and resources should be provided adequate assistance to assist them to harness these

resources fully; and (c) that inter and intra regional imbalances be removed, have not been given the primacy which they deserve.

Out of the five alternatives suggested in the questionnaire, we do not advocate (a), (b) and (c) due to the fact that as we have averred in our Memorandum to the Commission we dó not feel that there is any need to make any fundamental changes in the provisions of the Constitution, as these alternatives would require. As for item (d) relating to bringing in more Central taxes such as Corporation Tax, Customs Duty, Surcharge on Income Tax, etc. we have already mentioned in our memorandom that Corporaiton tax should become in shareable as it is indisputable that the State Governments play a major role in the industrialisation of the country by providing land, capital, water, power, and many other inputs at concessional rates. These concessions given by the State Governments render it possible for the companies to generate profits and pay Corporation Tax. Besides, the Surcharge on Income Tax is not different from Income Tax itself. There is no need to keep it separate and levy it solely for the purposes of the Union.

For item (e), i. e. financial resources, other than tax revenues of the Union, we suggest that as during the past so many years inequality between States has widened making the poor regions poorer, special dispensation should be made for these States and regions from the other financial resources of the Union Government so that the initially disadvantaged may eventually wind up equal in resources or rights. The concept of giving grants for upgradation of standards of administration evolved by the Sixth Finance Commission and improved upon by the Seventh Finance Commission was a step in right direction. Though, as is common in all pioneering efforts it could not be fully developed or improved. It should be given a rightful place, meaning thereby that the need for upgradation should be assessed for all services and sectors independently of the current budgetary expenditure, which is distorted due to a multiplicity of factors and does not give the correct assessment of the need of a particular State. Budgetary factors are merely surface manifestations, therefore, what is needed is to go and examine the real factors and then to provide for these real fiscal needs.

5.3 A strong Centre presupposes strong States. India is after all a Union of States; and unless the States are strong the Union cannot be strong. Fiscal autonomy to States may or may not produce the desired result due to the fact that in a vast country like India a combination of factors—historical, demographic, economic and socio-cultural—have been exerting their influence. There are States having vast and varied mineral resources but these are generally exploited by Central agencies and the States get nominal royalties only. These States also do not have the means to fully exploit renewable resources like water. There are on the other hand relatively advanced States, having comparatively modern agriculture or industrial base. In a nascent democracy, which is dedicated to social and economic justice for all, full fiscal autonomy to the States may perhaps not be appropriate at this stage. But within the framework of the Constitution it is not necessary for the Centre to concentrate all financial powers in its own hands. A selective approach is, therefore, necessary where the Centre may have a decisive say in matters of national importance, the States may also be given necessary funds commensurate with the needs and aspirations of the people and to use these funds to the best advantage of the people. Overall national policy may be laid down by the Central Government, but the minute details, method of implementation and within the overall priorities, the best course of action may be delegated to the States.

5.4 We dispute the point that the Central revenue account shows fairly large deficits during the past several years after making the necessary devolutions to the State Governments, as recommended by the Finance Commissions and the Planning Commission. The revenue deficits of the Centre are on account of the phenomenal growth in its non-Plan expenditure. We have the following suggestions to make :

(a) **Raising more revenue resources** :—(i) Through taxation : Almost all the elastic sources of taxation are with the Central Government. Even without raising the tax rate or widening the base most of these taxes have shown considerable elasticity. Corporation Tax has increased at a compound rate of 15 per cent in the last ten years. Union Excise Duties have also registered a similar growth rate; whereas the Customs Duties have of late shown a greater buoyancy. Most of these taxes have high potential of growth in future also. So taxation, as a measure of increasing revenue, is much easier for the Central Government than the States, and should therefore, be resorted to.

(ii) Through subventions from richer States to Central pool under some principles : Though some States may be comparatively richer than other States, but they are in the ultimate analysis, all poor. Some of them may even have revenue surplus, but that surplus is purely artificial in the sense that it has been brought about by curtailing the expenditure very drastically on services and maintenance of assets—Madhya Pradesh is a typical case in point. All States have to depend on the Centre for funding a part of their development Plans. In such circumstances, no State is at present in a position to give any subvention to the Central pool. Of course, there are invisible subventions from States, which may by no stretch of imagination be called rich. For example, poor States like Madhya Pradesh, Bihar and Orissa are getting only nominal royalty on non-renewable resources like coal, iron ore, etc. from the Central Government and its undertakings, thereby giving indirect advantage to the Central Government.

(b) **Better Control over Expenditure.**—Be it the Finance Commission or the Planning Commission, the State Governments are always exhorted to have better control over their expenditure. The States strive to achieve that. This could equally be applicable to the Central Government. It is true that the Seventh Finance Commission took a look at the Centre's finances. However, no Finance Commission goes into the full details of the Centre's expenditure as it does with the minutiae of States' expenditure. While it is true that outlays like those on defence cannot be open much to scrutiny, but a constitutional body like the Finance Commission should be fully authorised to initiate cost effectiveness studies of

the Central Government's expenditure as there is a general feeling that there are a number of areas in which spending of the Central Government can be substantially pruned and the cost reduced.

(c) **Deficit financing.**—In a developing economy some deficit financing would always be there. It is, however, very difficult to quantify the safe-level of such deficit financing. It depends on the circumstances, the need, the cost and benefit and a host of other considerations. While for purposes of development it may be necessary to have deficit financing to some extent, it cannot be treated as a permanent source of resources.

5.5 (a) **The share of taxes.**—At present the two important Central taxes which are distributed to the States are : (i) Income Tax and (ii) Union Excise Duties. Two points are involved here : (a) Enlarging the divisible pool with a view to increasing the share of States in the existing distributable taxes, removing the restrictions through which some parts of the taxes are not shared and restraining the Central Government from taking action which harms the interest of the States, like giving concessions in Income Tax, increasing the administered prices of commodities instead of increasing the Union Excise Duties and, (b) Bringing in some more Central taxes like the Corporation Tax, in the divisible pool.

Under the award of the Seventh Finance Commission, 85 percent of the net proceeds of Income Tax and 40 percent of Union Excise Duties are distributed to the States. Under Article 270 of the Constitution there is an explicit provision to distribute Income Tax between the Union and the States. In the initial years, Income Tax was a major source of revenue. The situation has changed now. The Centre is getting increasingly more revenues from Union Excise Duties, Customs Duties and Corporation tax. If receipts from Corporation tax and Customs Duties are brought into the shareable pool, a different concept of sharing from the present one will have to be worked out. What share of the total pool of the revenues from all these taxes should go to the States will itself be a major concern for the Finance Commission. As regards sharing of the distributable pool *inter se* the States, a uniform formula should govern the distribution.

For *inter se* distribution among States, the State Government is of the view that with slight modification, the formula evolved by the Seventh Finance Commission may be used for this purpose :

Population	10 percent
Area	15 percent
Inverse of per Capita Income	25 percent
Revenue Equalisation	25 percent
Poverty criterion	25 percent

(b) **Plan Assistance.**—There is no reason why the plan assistance to States should not follow the same criteria as evolved for allocation of the divisible pool of tax revenue.

There is another fall out of Plan assistance and that is the growing non-Plan capital gap of the States, which is because of heavy debt burden on the States, with particular reference to Central Loans. The repayment liability of the States increased every year on account of the loans received from the Centre, particularly the block loans for financing the Plan Schemes. It may be pointed out that a substantial part of the capital outlay of States on account of which loans are taken from the Centre are on power, irrigation, roads, buildings and share capital participation in public sector undertakings. Investments on social infrastructure yield very little matching return. Out of the total Central assistance, 70 per cent is paid in the form of block loans. In order to reduce the accrual of future dept burden on the States and the mounting servicing charges, which erode the current revenue of the States considerably, it is suggested that the grant proportion in the Central assistance may be increased.

(c) **Non-Plan assistance.**—Non Plan assistance is usually given in the form of grants-in-aid. As a first step it is suggested that a determined effort should be made to bring all States at par in so far as minimum standards of services and facilities to the citizens are concerned. The resources should be devolved in such a way that the level of backward States in various spheres is raised to at least the All-India level, if not to that of the highest amongst them. For this, criteria other than financial are required.

Unless the financial content of the need is methodically derived from desired physical standards of service levels, the fiscal needs hardly get projected and the relative economic backwardness of a State cannot be accorded the importance which it deserves. The Centre may have adequate safeguards to ensure that the amounts are utilised only for the specific purpose for which they are allotted.

5.6 Considering the existing institutional mechanism within the country to provide additional resources to develop economically under developed areas, what is required is to lay down proper ground rules and guidelines for the functioning of the existing mechanism rather than to create a new fund which will again bristle with complications regarding allocations *inter se* the States.

5.7 We view the Indian Constitution as an organic whole and as we do not advocate altering its basic structure, we are not suggesting the transfer of any of the existing Central taxation powers to the States.

5.8 We agree with the above view. It will be an ideal situation to have a Council of Central and State Finance Ministers looking into the overall fiscal policy for the country, including levy of or alteration in the rates of taxes, both Central and States. This should be preceded by a reform in our existing budgetary procedure of keeping everything secret before the budget is presented to the Parliament or the Legislature.

5.9 The State Government feel that in view of the growing volume of resources to be transferred from the Centre to the States, both on the Plan and non-Plan accounts, it may be worthwhile to set up a Finance Commission on a permanent basis and entrust to it the responsibilities of devolving all resources from the Centre to the States. It

should be a statutory body under the Constitution and would thus command greater respect. Besides, instead of one organisation over-seeing the non-Plan performance and needs and another that of development planning, the same organisation could look after both and thus take an intergrated view of the situation. The State Governments should be given adequate representation in the Finance Commission by rotation. This will also reduce the burden of the Finance Ministry and the Planning Commission and enable them to more effectively formulate and monitor the development programmes.

5.10 By insisting on a realistic forecast of both revenue and expenditure based on past trends and then again reassessing the same according to standardised norms, the Finance Commission's transfers are designed to promote efficiency and economy in expenditure by the State Governments. Similarly, for discretionary transfers also the Government of India lays down vigorous norms. The performance in the case of development Plans is judged by the Planning Commission, while in the case of other transfers the various Union Ministers monitor and assess every item of expenditure by the State Governments.

Disparities in public expenditure among the States have definitely narrowed, but not to the desired extent. The Finance Commissions, excepting the Seventh, had devoted themselves only to covering of fiscal gaps worked out on the basis of forecasts furnished by the State Governments and reassessed by the Commissions. If a State has done its best in raising the maximum resources possible consistent with its capacity and has exercised maximum prudence and caution in so far as expenditure is concerned, it is penalised by this approach. The question of determining the levels of existing services in the manner considered desirable by the Commission and built in their forecast, therefore, need further examination. Fiscal gaps, which ought to be reduced through the process of fiscal needs can be computed only when there is a readiness to move out of the budgetary data whether actual or in the form of reassessed forecasts. Unless the financial content of the need is methodically derived from desired physical standards of service levels and requirements of maintenance of assets, the fiscal needs hardly get projected and the relative economic backwardness of a State cannot be accorded the importance which it deserves.

Similarly in the case of Central assistance for Plan, the Planning Commission have had recourse to the Gadgil formula, in which also 60 per cent of the devolution is based on population. This is the reason why backward States, particularly sparesely populated but large in area, do not get adequate funds for their Plans.

5.11 It cannot be said that the present mechanism of transfer has inbuilt propensities for extravagance. Extravagance in expenditure and populist measures leading to revenue loss are definitely there. Some States get away with it also. So long as transfer of resources is based on so-called "fiscal gaps", computation of which takes into account such extravagance and populist measures, the transfer mechanism itself could be insulated. In fact, it could have a distinctive clause to discourage such extravagance.

5.12 The State Government view with favour the point that fiscal transfers should be effected mainly, if not wholly through devolution of taxes. There is also scope for granst- in-aid. The assumption implied in the approach adopted so far that the States which have no deficit on non-Plan revenue account have all their non-Plan needs fairly adequately taken care of, is far from correct. Besides uniformity in estimating the requirements within the constitutional frame-work of Centre-State financial relations does not mean applying uniform growth rates on the existing base, in order to forecast the revenue gap. When the States are in varying stages of development, the poor amongst them cannot be equated with the advanced States. The measure of equalisation effected so far by seven Finance Commissions has got submerged under the impact of many disequalising tendencies, operating from many sources and the net contribution of the Finance Commissions in terms of equalisation had been negligible or at best meagre. The Finance Commission should thus take care of this ultimate result in their exercises. The only manner in which the purpose can be accomplished is by way of making additional grants-in-aid to backward States, irrespective of their revenue gap, in order to enable them to come up to at least the all-India average in the first instance.

5.13 Broadly, the three principles enunciated by the Seventh Finance Commission for giving grants-in-aid to States under Article 275 are un-exceptionable. In their implementation there are, however, certain constraints and misgivings which should be removed.

(i) For reasons given in reply to question No. 5.12 the Finance Commission should be asked to give up the existing methodology of arriving at the non-Plan revenue gap as a criterion for determining the grants-in-aid under Article 275. It may be noted in this connection that the need for grants-in-aid of the States cannot, and should not, be estimated from the forecasts furnished by the States, or reassessed by the existing methodology by the Finance Commission. Unless the financial content of the needs is methodically derived from desired standards of service levels, it cannot be taken that budgetary needs have been transformed into real needs.

(ii) The Sixth Finance Commission introduced the concept of upgradation of standards of administration, though it gave no separate grants-in-aid for the purpose. It visualised a time-frame of ten years during which the purpose of upgradation would be achieved. Unfortunately, the Commission did not provide any specific grants for this purpose. The Seventh Finance Commission partially remedied this defect in approach. It is heartening to note that the Government of India had realised its importance and kept it as a term of reference of the Eighth Finance Commission also. The Seventh Finance Commission was constrained by the terms of reference under which they were required to restrict their recommendations to six non-development sectors services only. The plea of the States seeking provisions to upgrade the administration in certain other fields like education, etc. was turned down by the

Seventh Finance Commission as not belonging to the category of non-development sectors. A similar restriction has been placed on the Eighth Finance Commission also. Such restrictions should not be placed in the terms of reference of the Finance Commissions.

(iii) Though the Seventh Finance Commission enunciated this third principle also, it has not deemed it desirable to invoke it in its award. It is time to invoke more thoroughly this principle to enable States to meet special burdens on their finances because of their peculiar circumstances or matters of national concern. For example, States having large area like Madhya Pradesh. where the per unit cost of each service is higher than in other States, which is further aggravated by the high percentage of scheduled castes and scheduled tribes population, scattered in tiny hamlets throughout the length and breadth of the State, should come under this category and qualify for special grants-in-aid.

Grants-in-aid, being by their very nature a fixed amount, get severely eroded due to ravages of inflation. It is therefore, necessary that whenever a grant is sanctioned, a suitable built in price neutralisation formula should be evolved and included as a package for working out the quantum to be actually given, so that the real worth of the grant-in-aid, during a particular period, may be evolved and applied.

5.14. We will confine our reply to the two items specifically given in the question. Both the yield from the Special Bearer Bonds and the revenue from raising prices of administered commodities are not Central non-tax revenues as the wordings of the question imply. They are, or ought to be a part of the Central tax revenue, which would have been distributed to the States.

(i) **Special Bearer Bonds.**—The sale proceeds of these Bearer Bonds are the amounts of Income Tax that have been left uncollected during the past years for a variety of reasons. Had they been collected as normal Income Tax, the State Governments would have automatically got a share in the revenue.

(ii) **Revenue accruing from raising administered prices of items like petroleum, coal etc.**—The States are losers here on two counts. Firstly, being termed as national resources, the States get very meagre royalty on the mining of these minerals, and, secondly, instead of raising the Union Excise Duty on these items the Centre raises their prices and hence deprives the States of their due share in the Union Excise Duties. Neither the Finance Commission nor the States have any means of judging the efficiency of the Central agencies in producing these commodities or whether there cannot be any reduction in cost of production. If the price increase is, however, too frequent, substantial and without any cost studies, the States may feel rightly that there is something wrong somewhere. The aura of suspicion should, therefore, be dispelled.

5.15 We don't know how the distribution is affected at present hence, could not offer any comments. However, setting up of a National Credit Council and a National Economic Council may help in determining the share to be distributed between the Centre and the States in a more realistic manner.

5.16 Article 246 of the Constitution demarcates the sphere of responsibilities of the Centre and the States in terms of their legislative jurisdictions as laid down in the Seventh Schedule while the Centre has been entrusted with a few major responsibilities like defence, external affairs, etc., the States have to shoulder major responsibilities for most of the development and welfare functions like irrigation, power, agriculture, education, health, social welfare, etc.

From the period of the second Plan there has been growing centralisation of revenues. On the other hand, compared with the revenues at its command, the Centre assumed relatively less responsibility in the total public expenditure of the country. This resulted in increasing federal fiscal imbalance during the past few years. Thus, the States' own revenues (both capital and revenue) could now finance less than 60 per cent of their total expenditure. It may be observed that there has been a continuous decline in the States' own revenue to finance States' total expenditure upto the end of the fourth Plan. There has, however, been some improvement in the situation during the fifth Plan period. This, in the context of the increasing additional resources mobilisation by the States in recent years, imply that while their capacity to raise their own revenues has reached a plateau, their expenditure needs are increasing faster owing to the increasing demand for development and welfare expenditures from the people.

Fiscal transfers from the Centre to the States are made through three channels, *viz*: on the recommendations of the Finance Commission, Planning Commission and through various Central Ministries. Financial transfers made on the recommendations of the Finance Commission are statutory and in the form of share in Central taxes and grants-in-aid, both of which are non-returnable. Until the end of the fourth Plan such transfers constituted only one-third of the total federal fiscal transfers. However, during the fifth Plan period the share of Finance Commission transfers increased to 44 per cent. Transfers on the recommendations of the Planning Commission are on the other hand discretionary and usually have a mix of 30:70 between grants and loans. When 30 to 40 per cent of the Central transfers are through this medium, the rising debt burden of the States may well be visualised.

5.17 It is necessary that each Finance Commission should look into the problem of growing indebtedness of the States and suggest remedies. The Sixth Finance Commission was asked to suggest changes in the terms of repayment of the Central loans; whereas the Seventh Finance Commission was asked to suggest appropriate measures to deal with the non-Plan capital gap of the States. A similar term of reference has been made to the Eighth Finance Commission also.

A table showing net accretions to resources of the States out of Central loans, after adjusting repayment of principal and interest, is depicted below :

(Rs. in crores)

Year	Gross Loans from the Centre to the States	Repayment of Loans to the Centre by the States	Interest paid by the States on Loans from the Centre	Net transfers on Loan Account from the Centre to the States (col. 2+3–4)
1	2	3	4	5
1971–72	1,192·5	801·4	324·3	66·8
1972–73	1,950·2*	689·6	331·1	929·5*
1973–74	1,552·9	933·9	401·0	218·0
1974–75	1,075·2	505·4	349·8	220·0
1975–76	1,294·3	761·7*	445·7	86·9
1976–77	1,446·2	719·3	485·5	241·4
1977–78	1,910·9	790·1	510·1	610·7
1978–79	3,229·7	868·3	590·1	1,771·3
1979–80	2,668·5	802·7	578·8	1,287·0
1980–81	3,021·9	1,458·2	786·9	776·8

* Including Rs. 421·1 Crores of net ways and means assistance received by the States from the Centre to clear their outstanding overdrafts with the Reserve Bank of India at the end of April, 1972.

In the context of the mounting indebtedness of the States, it may be observed that the problem of Central loans to the State Governments has become an important issue in the debate on Centre-State Relations. Hence any suggestion to reduce the overall indebtedness of the States should take into account the mounting burden of Central loans on the States. The Second Finance Commission to which the matter was referred recommended consolidation of the various Central loans into a few categories with reduced interest rates. The recommendation was not accepted by the Central Government in toto, though certain modifications in the terms of repayment and interest rates were made. The Fourth Finance Commission considered that the States' share of Estate Duty was not sufficient for the purpose of repayment of the States' debt to the Central Government and hence recommended that an expert body may be appointed to study the whole problem of inter-governmental borrowing and to recommend suitable remedies. The Central Government is yet to act on this recommendation. In the meanwhile, the States' debt has gone on increasing in magnitude. The Fifth Finance Commission was asked to examine only States' unauthorised overdrafts and to suggest remedies to reduce them. The Commission did some justice to this.

Central loans have been made to the States under the Plan assistance scheme. Under this scheme, most of the States get 70 per cent of the Central assistance in the form of loans and the remaining 30 per cent in the form of outright grant. In this way the States have been dragged in to a vicious circle of Central loans, which create interest and repayment liability on these loans, and then the need for more loans from the Centre to meet these needs.

The Sixth Finance Commission was asked for the first time to estimate the non-plan capital gap in the States' budgets and to suggest measures to reduce such gaps. The Commission recommended (a) consolidation of some loans into uniform types, (b) extension of the period of repayment of some loans, (c) moratorium on the repayment of some loans and (d) writing-off of some loans. The Commission, however, did not recommend substantial debt cancellation on the ground that it would reduce the pool of resources available with the Central Government for providing further assistance to the States.

The Seventh Finance Commission also supported the Sixth Finance Commission approach, though with a note of caution regarding the plea of the States to write-off the outstanding Means. The Commission divided the loans in to three categories, *viz,* (a) loans applied for unproductive purposes, to be written-off (b) loans for semi-productive purposes to be repaid in 30 years, and (c) loans for productive purposes to be repaid in 15 years. Small savings loans were recommended to be consolidated and to be converted to loans in perpetuity. The Central Government did not accept conversion of small savings loans into loans in perpetuity, though the other recommendations of the Commission were accepted.

Suggestions

Any attempt to suggest solutions to the problem of burden of Central loans on the States should have both short-term and long-term perspectives. This is essential because any realistic solution should go to minimise the immediate financial burden of Central loans on States.

An important short-term policy measure should be debt adjustment in the form of writing-off of certain loans, and interest therein made for socially as well as financially unproductive purposes, such as drought or flood relief and rehabilitation. Another short term solution is the rescheduling of the existing loans, apart from those mentioned above, by extending the period of repayment. For this, all outstanding loans may be consolidated with a repayment period of fifty years, the same as for soft loans obtained from the International Development Agency, with the rate of interest equivalent to the Treasury Bills rate. Finally, the rate of interest charged by the Reserve Bank of India for ways and means Advances should also not exceed the Treasury Bills rate.

As for long-term measures, the first and foremost is that in future the grant proportion in the Central assistance for Plan schemes may be increased to 50 per cent from 30 per cent at present. The Centre could consider evolving a formula on the basis of backwardness of States.

The following table shows net accretion to the resources of the Government of Madhya Pradesh

through Central loans after adjustments for repayment of such loans and Interest paid thereon :

(Rs. in crores)

Year	Gross Central Loans to the State Government	Repayment of Loans to the Centre	Interest paid on Central Loans	Net accretion to State Resources through Central Loans (Col. 2+3—4)
1	2	3	4	5
1971—72	47·51	44·55	19·56	(—)16·60
1972—73	62·12	48·11	19·69	(—) 5·68
1973—74	58·05	54·78	20·36	(—)17·09
1974—75	57·83	22·79	16·26	18·78
1975—76	67·96	36·69	21·81	9·46
1976—77	73·85	32·47	23·79	17·59
1977—78	85·00	42·65	26·09	16·26
1978—79	213·40	38·49	28·60	146·31
1979—80	144·86	36·60	38·55	69·71
1980—81	211·15	55·41	41·27	114·47
1981—82	180·89	53·47	50·91	76·51
1982—83	385·33	74·42	59·45	251·16

5.18 The State Governments' market loans are periodically floated and subscribed usually by the financial institutions. But very little is known about various aspects of this financial operations, particularly the criteria on the basis of which the exact amount of market loans is allocated to each State.

The public debt of the State Governments in India comprises of market borrowings, borrowings of the State Governments' autonomous commercial undertakings from the financial institutions, General Provident Fund of its employees, ways and means advances from the Reserve Bank of India and loans from the Central Government. Here we are concerned only with the State Government market borrowings.

In most of the federations their constitutions have made provisions for the State Governments to borrow both from within the country and from abroad. In India the State Governments have the power to borrow only within the entry and the external borrowings are reserved exclusively for the Central Government.

In India the former British Indian provinces obtained the power to borrow from any source only in 1921. As the country was having a unitary form of administration prior to 1919, the question of borrowing powers of then administrative provinces did not arise. However, the former princely States enjoyed the power to borrow within their respective territories.

The Government of India Act, 1935 continued under section 163 the right of the former provinces to borrow on the security of their revenues. They were empowered to borrow inside as well as outside the country and the Act also conferred the right to borrow short-term loans from the Imperial Bank of India (which was then the Central Bank of the country). However, just as in the case of Local Government Borrowing Rules under the Government of India Act, 1919, clause (3), of Section 163 of the Government of India Act, 1935 imposed certain restrictions on the powers of the former provinces to borrow.

After independence, the Constitution of India has empowered the States under Article 293(1) to borrow within India on the security of the Consolidated Fund of the respective States and also to give guarantee to loans raised by their subordinate authorities or authorities created by the State legislature. According to these provisions, the State Governments can only borrow within the country. The right to borrow from abroad has been reserved exclusively for the Central Government. Even if the State Governments require foreign loans for development purposes, they have got to obtain through the instrumentality of the Central Government.

It is necessary to note here that even the internal borrowing powers of the State Govenments in India are subject to limitations: (a) as may be imposed by the State Legislatures; and (b) if the Central Government has guaranteed outstanding loan of the State or if the State owes a debt to the Central Government, no fresh loan can be raised by that State without the consent of the Central Government. Since most of the State Governments are in fact indebted to the Central Government, they have to obtain the permission of the Central Government to borrow from the public.

There is also a practical problem which forces the State Governments to seek the assistance of the Central Government to borrow in the open market. The Indian capital market is not developed for various reasons and most of the financial Institutions which mobilise public savings for investment are owned and/or controlled by the Central Government. Therefore, any State Government which wants to borrow from these institutions (as they constitute the capital market in the country) has to comply with the policy of the Central Government. Thus, the Central Government, because of its dominant financial position and being the owner of the Reserve Bank of India and various other financial institutions, controls the public borrowing policy of the State Governments. The Reserve Bank of India which is also responsible for the monetary policy and public debt policy of the Government of India has been coordinating the market borrowing policies of the State Government by undertaking to float all the State Government loans periodically according to the economic conditions prevailing in the country. The market borrowings are being allocated between different States by the Reserve Bank of India on advice of the Planning Commission and the Union Ministry of Finance. The criteria on the basis of which the share of each State is determined in the total available market funds, are not made known.

It was, however, observed that there has been a wide disparity in the share of different States. Besides, the Central Government has been taking the loan's share in the total market borrowings; whereas the State Governments appear to borrow more for repayment or old loans than for actual utilisation. Although the

total market borrowings of the State Governments have increased consistently during the past ten years, such consistency is not present in the case of individual State Governments. In case of State Governments like Uttar Pradesh and West Bengal the share has been consistently increasing, but in the case of other States, they have been fluctuating, but what is interesting is that in the case of Andhra Pradesh, Assam, Haryana, Madhya Pradesh and Orissa, the shares have remained more or less constant. These fluctuations suggest that the market borrowings of the State Governments have not been distributed or allocated consistently on any objective principles.

There have been various suggestions to rationalise the allocation of market borrowings among the States. The most important among these is that there must be some objective criteria for the distribution of market borrowings among different States, rather than the present rule of thumb method of allocating the funds.

5. 19 We do not think that this allegation against the Centre is fair. We understand that the Centre while fixing the rate of interest on its loans to the States takes into account the borrowings at liberal rates from the U.N. Agencies. If not, our plea is that the rate of interest should be fixed on a weighted average basis, so that the advantage is shared between the Centre and the States.

5.20 Instead of setting up another Agency, such as the loan Council, the National Development Council (NDC) itself could lay down criteria for sharing of market borrowings as between the Centre and the States and *inter-se* the States also. This could be periodically reviewed, say every year by a Standing Committee of all Finance Ministers.

5.21 Overdrafts by the States is a symptom of a deeper malaise in the finances of the State Governments. Doubling of the Ways and Means Advance was a short-term measure, which was only a palliative and not a remedy for the disease. Unless the root cause is eradicated, the disease of overdrafts will not be steammed.

We cannot blame any single Government for this malaise, While it is true that the sources of Revenue available to the States are limited, the fact can not be overlooked that there is a great deal of laxity in fiscal administration in the States also. Too many Public Utilities are neither run competently nor their services priced at a cost-plus basis, leading to heavy losses requiring budgetary support. Secondly, there is over-capitalisation. States are under various pressures to take up too many projects, needing heavy investment, which results in wastages of resources and consequently, high capital-output ratio and very low rate of returns. There is a general lack of will to collect Government dues in time. These collectively lead to a weak resource base for the States and their ways and Means problems. This is further compounded by the relatively inelastic sources of revenue to the States. The deficiencies in fiscal management by the States are largely found in the Centre's fiscal management also. Though the States' problem of Ways and Means is not a simple one, only an overall National Financial Strategy, which strives for efficiency shown of other considerations alone can solve this deeprooted malaise.

5.22 Article 246 of the Constitution demarcates the sphere of responsibilities of the Centre and the States in terms of their legislative jurisdiction as laid down in the Seventh Schedule. As far as the division of sources of revenue is concerned, the Central Government enjoys a comfortable position with many elastic sources of revenue like Union Excise Duties, Custom Duties, Corporation Tax, etc. which have a national tax base. In contrast, the States are given inadequate and less elastic sources of revenue. A possible exception. is Sales Tax. But its scope has been gradually reduced by the Central Government, by making many inroads into its coverage, like centralisation of Sales Tax on inter-State trade, taking over the power of fixing the rates of Sales Tax on declared goods and services and gradual extension of Additional Union Excise Duties in lieu of Sales Tax to more commodities. What is more, some of the sources of revenue like land taxation and State Excise Duties are entangled in various types of constrains, making it difficult for the State Governments to raise more revenue from these sources. In spite of these constraints, a backward State like Madhya Pradesh, has been able to sustain a compound growth rate of more than 16 per cent per annum in receipts of all State taxes and duties during the past 12 years. Individual taxes, like General Sales Tax, Taxes on Vehicles, Electricity Duty, Entertainment Tax, Taxes on Goods, Stamp Duty and State Excise Duties registered a compound growth rate of 17.5, 21.5, 19.3, 15.7, 13.6, 15.3 and 14.2 per cent respectively per annum during the same period. The per capita revenue from State Taxes and Duties rose from Rs. 20.79 in 1970-71 to Rs. 87.94 in 1982-83 and the average tax propensity (Tax revenue as percentage of Net State Domestic Product) from 4.35 in 1970-71 to 7.15 in 1982-83 which is quite high for a State being almost at the bottom rung of the ladder of economic development. Non-tax revenue has also registered commensurate buoyancy during the periods. Other States have also registered similar trends. Thus, in so far as revenue from State Sources and Additional resources Mobilisation measures are concerned, the State Governments have done, and are doing whatever is possible within the given framework of the Constitution and the prevailing economic situation.

5.23 The State Governments are not competent to make any comment on the performance of the public sector undertakings of the Central Government. We do not have adequate data to pass any valid judgement on how they have performed since their inception. As regards the leakage in Central taxation one can only make a general comment that as in the case of the taxes administered by the States it is likely that there is a substantial degree of leakage in the Central taxation also.

It has long been felt that in this country there has been a tremendous cascading effect of taxes on manufactured items. This is one of the areas in which a study is urgently required. While some time back there was serious thinking about the introduction of a value added tax in the country. in recent discussions such a topic has not emerged. The very fact that of late the Union Finance Ministry has been reducing

taxes on many items indicates that there is a growing realisation that the effect of multifarious taxes on manufactured items is not yielding either fiscal returns of a high rate of growth that we require in this country. At this stage all that the State Government can suggest is that a very thorough study is required in this area in order to find solutions.

5.24 It will be a healthy convention conducive to the stability of State finances if the Union Government ascertain the views of the State Governments and give them due consideration before moving any Bill to levy or vary the rate structure or abolish any of the duties and taxes enumerated in Article 268 and 269.

5.25 Article 269 of the Constitution provides that the following taxes and duties shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of Article 269 :—

(a) duties in respect of succession to property other than agricultural land;

(b) estate duty in respect of property other than agricultural land;

(c) terminal taxes on goods or passengers carried by railway, sea or air;

(d) taxes on railway fares and freights;

(e) taxes, other than stamp duties, on transactions in stock exchanges and future markets ;

(f) taxes on sale or purchases of newspapers and on advertisements published therein ;

(g) taxes on sale or purchases of goods other than newspapers when such sale or purchase takes place in the course of inter state trade or commerce.

Article 269 provides for a special kind of tax rental arrangements between the Union and the States and the arrangement has been provided in the Constitution itself. It does not provide the Centre with any economic interest in this arrangement. Though the Fifth Finance Commission was of the opinion that taxes listed under Article 269 had a greater use in ensuring uniformity of rates of taxes than being a source of revenue to the States, this Article had not been used even for that purpose fully. Further, some of the taxes enumerated in this Article could be fruitfully exploited to yield revenue for the States.

The Central Government has imposed only the taxes and duties mentioned in Article 269(1) (b) and (g). The tax on railway fares, which was levied earlier was repealed in 1961. It is necessary that the potential for raising resources from these taxes and duties should be assessed and the Central Government should be strongly urged to levy at least some of these.

5.26 The tax on railway passenger fares is one of the levies under Article 269 of the Constitution, the net proceeds of which are to be wholly assigned to the States. The tax was levied for the first time under the Railway Passenger Fares Tax Act, 1957. It was, however, repealed by the Government of India in 1961 and the tax was merged in the basic fares from April, 1962 without consultations with the States. Though the levy was given up, the Government of India decided to make an *ad-hoc* grant of Rs. 12.50 crores per year for distribution among the States in lieu of the tax. After persistent demands by the States, the quantum of this grant was raised to Rs. 16.25 crores from 1966-67. It has thereafter continued at the same level till now. An additional grant of Rs. 6.87 crores is also given for Railway Safety Works.

The State Government would like to point out that in providing for an impost on railway passenger fares as one of the taxes to be levied by the Centre and assigned to the States under Article 269 of the Constitution, the architects of the Constitution has presumably intended to give the States access to a modest share in growing revenues of the railways. This objective has been thwarted by the substitution of the railway passenger fares tax by a fixed lump-sum grant. Besides, the fixation of the quantum of grant has been given to the Railway Convention Committee, which is very conservative in estimating the amount to be distributed to the States. Apart from erosion in value due to price rise, the quantum of grant recommended by the Railways Convention Commitee of 1965 is inadequate in this sense also and does not reflect the inherent elasticity of the tax receipts. Both the Sixth and Seventh Finance Commissions were convinced that the pleas of the State Governments for reimposition of the tax or for corresponding enhancement of the quantum of grant were valid and their grievance in this respect needs to be redressed early.

It is indisputable that both passenger traffic and passenger earnings have continued to grow. If due weightage would have been given to this consideration, it would be legitimate to expect that the grant would have been increased at intervals. This was, however, not the case. Assuming the average rate of 10.7 per cent of non-suburban passenger earnings as the tax element, the Seventh Finance Commission calculated that the collection of tax if continued would have been Rs. 56.21 crores in 1976-77 and Rs. 61.17 crores in 1977-78. This represents four times the grant being given to the States now. There has been a tremendous growth in railway earnings since then. It is, therefore, the submission of the State Government that as the determination of the quantum of the grant to be paid to the States in lieu of a tax is an aspect of Centre-State financial relations, which should come under the purview of the Finance Commission, the quantum of grant should be left to be decided by that Commission. Besides, a positive recommendation may be made that either the power to levy to a tax on railway passenger fares be restored or the amount of grant be increased to the level of what the States would have earned had the tax been levied. In the latter case, there should be a provision for annual growth in the grant in proportion to the growth in passenger fare earnings of the railways.

5.27 We have no comments.

5.28 At present, for drought relief expenditure in excess of the margin money the State Governments are required to make a contribution from their Plan

for providing relief employment. The extent to which the State Governments should contribute from their Plan in this manner is assessed by a Central Team, after consultation with the State Governments and approved by the Central Government. This contribution is not to exceed about five per cent of the annual Plan outlay. This Plan contribution of the State Government is treated as an addition to the Plan outlay in that year and is covered by advance Plan assistance. The adjustment of the advance Plan assistance, against the ceiling of the Central assistance for the Plan of the State is effected within five years following the end of the drought. If the expenditure requirements as assessed by the Central Team and high level committee cannot be adequately met in a particular case after the State Plan contribution is taken into account, the extra expenditure is to be met by the Central Government half as grant and half as loan.

This arrangement has not proved favourable to the State Governments and has been found to be unsatisfactory in its implementation. The large-scale expenditure on relief works affects the total economy of the State. The major portion of the States' Plan outlay is exclusively for capital investment in irrigation, power and other programmes and could not be diverted for normal relief works for providing employment in areas or pockets where scarcity conditions occur. It in effect requires diversion of current Plan outlays from areas not affected by scarcity which is always resented. According to the existing practice, the adjustment of the advance Plan Central assistance for relief works is effected within five years following the end of the drought against the ceiling of the Central assistance of Plan, and the repayment of the loan portion of the assistance starts from the next year of the receipt of the loan. This procedure affects the State Governments in two ways. First, the State Government are not able to adjust it without cutting the resources for the Plan. Secondly, by doing so they are not able to achieve the targeted growth. Besides, it is inequitable to burden the State Governments with the repayment liability so soon after the natural calamity.

In the light of our experience we suggest the following :

(i) For computing the margin money the actual additional expenditure incurred by the State Governments both under Plan and non-Plan for relief should be taken into account.

(ii) The ceiling of five per cent on drought expenditure with reference to the State Plan outlay should be removed. The Central assistance in respect of drought relief measures should be by way of additional assistance, *i.e.*, in the form of 75 per cent grant and 25 per cent loan and not an advance which is recoverable.

(iii) The Central assistance, at present, is to be spent before 31st March and the releases are made only with reference to the expenditure upto this period. It may be mentioned that 31st March, even though it is the end of the financial year, is a very artificial date as far as nature's pattern is concerned. Accordingly, if employment is to be given in the event of drought, and other natural calamities, it is necessary that the amount is granted till 30th September, of the next year. This will enable the schemes to be implemented, without rush and wasteful expenditure, generating durable assets while giving continuous employment to the unemployed and under-employed labour, till they get employment after the normal agricultural operations begin.

(iv) The inevitable complementary expenditure in the case of labour-oriented works, which is necessary to make the works durable, should be made eligible for Central assistance.

(v) The expenditure on certain items like emergency water supply by tankers, etc. should be made eligible for Central assistance.

(vi) The loan component of the relief expenditure should be recovered with a five-year moratorium by the Central Government.

5.29 The State Government is unable to understand the idea behind setting up a National Loan Corporation as even today the nationalised banks are by themselves competent to raise loans in the national as well as international markets for economically viable projects. The State Government welcomes the idea of setting up a National Credit Council. We would, however, suggest that all the State Governments should have equal representation in the National Credit Council. This Council should be entrusted with the task of assessing the available credit resources within the country, its growth possibilities and the extent to which it can be tapped for purposes of meeting developmental expenditure. This Council should determine the share of the States as well as the Centre and also the distribution of the share of the States *inter se* amongst them. The State Government also welcomes the idea of setting up a National Economic Council. Here again it is our suggestion that all the States should be given representation in Council. The Council could set up Standing Committees or Expert Bodies for analysing different economic problems of national and local importance within the country. We also agree that the annual reports of the two bodies should be placed before the Parliament for discussion and suggestion as well as before the State Legislature for their information.

5.30 While collection of funds and their distribution in a constitutional set up such as India's is significantly relevant, what is more important is how effieciently the funds are utilised. There can be no two opinions that there is a large scope for improvement in this sphere both at the Centre and in the States.

5.31 (a) *A priori* judgement that the expenditure of the Union is not being organised in the best interest of the nation's growth and instead there are trends for incurrence of infructuous, unnecessary and uneconomic expenditure, may not be fully correct. The need for periodical assessment of Central Government expenditure could, however, not be minimised.

(b) The above reply is equally true for the States also.

(c) In reply to an earlier question we have advocated the setting up of a permanent Finance Commission, having adequate representation of State Governments by rotation. It will not only be the responsibility of this Commission to devolve all resources from the Centre to the States, but in this process also to go into the finances of both the Central and State Governments. The Standing Finance Commission should be an expert body with wide ranging powers having representatives from States.

5.32 We have not experienced any serious problem on this front.

5.33 'Evaluation Audit' can only be possible when there is Performance Budgeting. At present it is very difficult to have evaluation audit of all Government expenditure, though it can be introduced selectively in case of works and similar other Departments where the performance could be evaluated. In addition, the present audit machinery is neither designed nor suited for this function. In order to introduce evaluation audit not only the system of budget and accounting would have to be changed, but a specialised machinery to undertake evaluation-audit will also have to be created. In the prevailing circumstances this is a very tall order indeed.

5.34 In our view the Comptroller and Auditor General as a Constitutional functionary has been discharging his responsibilities satisfactorily in regard to the maintenance of Accounts of the State Governments as well as in conducting audit of expenditure.

5.35 We are entirely satisfied with the reports of the Comptroller and Auditor General presented to the State Legislature. They are comprehensive enough and reasonably accurate for the legislature to take a view on as to how the appropriations given by them to the different departments of the Government have been utilised.

5.36 While the institutions, such as the Public Accounts Committee and the Public Undertakings Committee with the assistance of the Accountant General have been examining the propriety of expenditure incurred by various departments of the State Government they have generally been helpless in preventing expenditure in excess of the appropriation granted by the State Legislature. The Government of Madhya Pradesh has been taking several measures to prevent excess expenditure. Nevertheless due to the lack of any punitive provisions, either in the Constitution or in any other law, it has been impossible to ensure that expenditure incurred exactly tallies with the Appropriations given by the Legislature, either in the main budget or through Supplementary Estimates. The Commission could examine whether any other safeguard can be provided in the Constitution to prevent any form of excess over the appropriation granted by the Legislature.

5.37 The recommendations of the Estimates Committee on wider aspects of the policy as well as certain details of administrative importance have been of use to the State Government.

5.38 We do not advocate the setting up of a separate Expenditure Commission in India. The Comptroller and Auditor General of India has been provided with sufficient constitutional authority to assess the propriety of the expenditure authorised by the Legislature. In order to improve the direction and nature of expenditure we have already suggested a permanent Finance Commission, which while scrutinising the Central and State Budgets would also suggest filling up of lacunae and need for efficiency and better management. Not only that, it would also see that what it suggests is implemented. For Schemes included in the development Plan, the Planning Commission will of course prepare and monitor the development programmes.

5.39 The State Governments have a very bitter experience while implementing the upgradation schemes recommended by the Seventh Finance Commission, in which for the first time the Government of India was required to provide cent per cent grant-in-aid. As it was perhaps for the first time that a Finance Commission formulated such a scheme they were naturally anxious to make it a success. Dilating on the subject of monitoring they, therefore, said : "The main objective of monitoring is to ensure that the funds provided for specific purposes are actually utilised for these purposes, and not diverted. Another objective would be to see that the desired results in physical terms are achieved by incurring expenditure". Nobody can dispute these statements. The Finance Commission, however, rejected the States' request to have the monitoring through the normal audit by the Comptroller and Auditor General of India, for which it was suggested that the upgradation provisions could be shown in separate sub-heads. Instead they recommended that the states may prepare plans of action and get them finalised in consultation with the administrative Ministry concerned at the Centre. The grants were to be released by the Ministry of Finance on the recommendation of the administrative Ministry. This clearance of the plan of action by the concerned administrative Ministry at the Centre proved to be the worst stumbling block in implementation of the scheme. First the plans of action have to be prepared in the minutest detail, without knowing whether they would be approved or not, this took time. Secondly, the concerned administrative Ministry has to be convinced of the viability of these plans of action and that they fit into the upgradation scheme, this took some more time. Thirdly, if due to escalation the cost goes up, the administrative Ministry required that the State Government give commitment that it would shoulder the extra burden, which meant going back to the State Finance Department for preliminary approval. This took some more time. Fourthly, due to the five-year span of the scheme, after which its burden was going to fall on the State Governments, they felt rightly that they should have a say in changing the priorities, which was not allowed. Thus, in the ultimate analysis, the State Governments felt that while the overall need for upgradation should be decided by the Finance Commission, the State Governments, which are the beneficiaries under the Scheme, should be authorised to decide the validity of the expenditure under the approved scheme without the intervention of an external agency. Normal audit will ensure that funds are utilised for the purpose they were intended.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 It has been accepted at all levels that planning should be decentralised and the Government of India have accordingly prepared detailed guidelines for the formulation of district plans in various states. Taking this to its logical conclusion, states will have to be given greater freedom in the formulation of their plans. The Planning Commission may continue to lay down national priorities and targets for various sectors of development planning, but before putting the "Approach to the National Plan" before the National Development Council for their consideration and approval, states should be consulted at length to enable them to express their views on the schemes, proposed therein and to propose their own schemes. Besides, the Planning Commission should lay down national targets only in vital sectors like Power, Major Irrigation, Family Welfare etc. The formulation of other programmes within national guidelines should devolve on the states. The present policy of taking up national issues and priorities by the National Development Council may continue.

6.2 We agree with this view.

6.3 It is true that the present composition and procedure of the Planning Commission do not allow close understanding and consultation with State Governments. It is suggested that there should be a continuous dialogue between Planning Commission and State Government in formulation of sectoral and area planning of the States, periodical review of progress and a better understanding of the impediments faced by the States. The Planning Commission should also have at least fair representations of the State Governments who should be rotated every year. At least once a year all State C.Ms. should meet together with the Planning Commission to discuss national economic problems or at least the National Development Council should meet every year.

6.4 The National Development Council already has representatives of the States. The first alternative is, therefore, not necessary. The 3rd alternative is not possible because planning cannot be made autonomous and independent of the Union Government. The alternative suggested in R. 6.3 may be considered.

6.5 As stated above, Planning Commission can never become autonomous because it must formulate policies on National development programmes according to the directives of the Union Government. The Planning Commission should, however, be empowered to give its own independent view before the National Development Council. It will of course be the NDC which may finally take a decision which should be carried out by the Planning Commission.

6.6 The national priorities will have to be incorporated in the State Plans. However, the Planning Commission while examining the finances and plans of the states should keep in view the needs of the states, their local conditions, local aspirations. Such States, which implement national programmes successfully, should be given incentives.

6.7 No comments. This question has been elaborately dealt with in our answers to questions on Centre-State Financial relations.

6.8 Yes. We agree that the present system of arriving at the State Plan size is faulty. It should be need-based and based on the local problems like tribal population, sparseness of population, lack of infrastructure etc. and the capacity of the state to raise additional resources. In the modified Gadgil Formula 60 per cent of the assistance has been distributed on the basis of population. This is the reason why economically weaker or backward states, particularly sparsely populated states like Madhya Pradesh (which has largest area in the country) do not get adequate funds for their plans. The stress should, therefore, be on the removal of regional backwardness amongst the states and within the states.

6.9 As mentioned in R. 6.8 above, the present system of allocation of Central assistance has not contributed to the attainment of the planning objectives of balanced regional development and removal of poverty, as backward states are not getting the adequate funds to achieve the above objectives.

The present system of determining special Central assistance for Tribal and Hill area sub-plan is adequate, but the mechanism of earmarking of state plan outlays in aggregate and for certain priority sectors is a sort of inducement and distorts the plan priorities of the states as such. This is particularly so, as Planning Commission does not consult the states in earmarking outlays and is generally implicit on this matter.

6.10 It is true that central programmes and centrally sponsored schemes tend to distort priorities in the States. One suggestion is that the present system of financing a new programme for five years only by the centre should be extended to a period of atleast 10 years. Thereafter, a review may be undertaken to determine the impact of the programme before it is absorbed in the non-plan expenditure of the State Government. No new Centrally Sponsored Programmes should be introduced in the middle of a year as State Governments find it difficult to provide matching resources. This very system leads to even financial difficulties. Hence Government of India should determine at the beginning of the plan period their centrally sponsored programmes. If any new scheme has to be introduced, then it should always be at the beginning of a new plan year and introduced only after discussions.

6.11 Monitoring and evaluation programme, to say the least, has been ineffective both at the Centre as well as in the States. Had they been effective, projects would have been completed in time without unreasonable cost escalation. Every project scheme has to be evaluated every year in the States and major project/scheme in the Planning Commission also. There should be some statutory compulsion that major projects are provided adequate funds for their timely completion and new projects are taken up only if there are any balances left in resources. If a scheme does not achieve its objective within

a specified period, it should be terminated forthwith. A suitable powerful machinery should be evolved for the purpose.

6.12 It is hoped that with the decentralised planning, people's participation at different levels will be brought about and a sense of "partners in progress" will be aroused at all levels to ensure that the plan of the Government becomes a people's plan. For this purpose, it is very necessary to take into account views of representatives of the people before a plan is prepared. The present system of preparing plan from the top will have to be discontinued. After giving the guidelines, lower planning bodies will have to be given a certain amount of freedom to prepare a plan which can then be called as their own plan. At the State level and the national level, targets of State and National policies may be spelt out and left to the local or regional planning authorities to adapt the plan to suit local needs. This is indeed a tall order. But if planning has to become more useful, welfare oriented, then involvement of larger number of people will have to be brought out.

6.13 The State Planning Boards in some States have hardly contributed anything in the preparation of the State Plans. The Board only edits the programmes prepared by different departments. If State Planning Board has to become effective, it will have to be given functions as carried out by the Planning Commission. The State Planning Board should take up preparation of a perspective plan, give guidelines on preparation of five year and annual plans, should have close liaison and discussions with the development departments on programmes and policies, should scrutinise and approve every important development programme before it is taken up for implementation and as a watchdog, monitor and evaluate the Plan programmes. The Planning Board should have adequate strength and, if need be, can further be strengthened to take up detailed scrutiny in short time. However, it should be made clear that Finance Department should not entertain any proposal on a plan programme unless it has been approved in principle by the Planning Board.

Industries

7.1 It is true that that the Constitution envisaged Central regulation of only those industries which were of vital public interest and of national importance, but over a period of time, Central control has grown to include within it all types of industries and the only sector left to the States is the small scale sector which is also to a large extent looked after by the Centre.

There has been no instance where the Central Government has used a policy deliberately to the detriment of States' interest. However, Central regulation has, with the best of intentions, led to a situation in many States, particularly like ours, where vast natural resources, particularly mineral resources have remained unexploited. By way of example, the cement industry can be cited. A policy followed by the Central Government in the early 70s of discouraging additional capacity in surplus States slowed down the growth of cement industries in the State and thereby the exploitation of its vast resources of limestone. Similarly, Central licencing has resulted in the States in concentration of industries in a few pockets. Had these powers been with the States, the dispersal of industries within the States and removal of regional imbalance could have been better regulated.

7.2 In our opinion, the Central Government should only regulate those industries which are connected with the security of the country. The licencing powers for the remaining industries could be given to the State Government and the national interest will not be in any way jeopardised because so long as the Central Government controls foreign exchange and the Central Financial Institutions, they can regulate the growth within their guidelines.

7.3 Even though the Central Government have streamlined the procedure for capital goods clearance, foreign collaboration etc. and pace of clearance has improved, yet experience has shown that these do still take a substantial time. It is, therefore, suggested that the Central Government should continue to make guidelines for such clearance but institutions should be set up in the States in which the representatives of State Governments are involved to give clearance so that the work can be expedited.

7.4 It is true that supply of raw material at fair rates to the small scale sector and marketing of their products are crucial factors for the growth of small industries. Most of the States have fairly effective small scale industries development corporations. These corporations have, by and large, so far functioned to provide such of the raw materials as are made available to them from other institutions. There are other institutions like MMTC, STC, etc. which import raw materials for the small sector. The responsibility of providing all the raw materials in adequate quantity has, therefore, never been cast on the Small Scale Industries Development Corporations. In case it is so decided, it would be possible for the Small Scale Industries Development Corporation in our State to organise themselves without much difficulty to undertake this work.

7.5 Statistics will show that substantial portion of the loans from the Central Financial Institutions has gone and continues to go to industrially advanced States. It is our belief that much more than licencing, the Central Financial Institutions can regulate the growth of industries in backward States like ours. It is, therefore, suggested that there should be a State-wise allocation of funds from the Central institutions to ensure removal of regional imbalance.

7.6 We agree that the States should be taken into confidence in deciding Central investment in Public Sector.

7.7 The State Government has no reason to believe that the Centre has either favoured or neglected the State in the matter of its direct investment in heavy industries. However, the State Government would like that the State should be taken into confidence in deciding Central investment in Public Sector.

7.8 We are fully satisfied with the policy announced by the Government of India regarding assistance for development of backward areas.

Replies to the supplementary Questionnaire on Industry

1. The list of industries narrated in Schedule-I of the Industrial Development and Regulation Act are essentially "Key Industries". The Union Government is exercising effective control and regulation keeping in view the need to correct regional imbalances. The decision to set up industries to achieve the aim of removing imbalances totally rests with Government of India. It would be desirable that the Act should provide categorically norms for locating these units in a manner, which can remove imbalances.

2. There should be a uniform legislation throughout the country, in order to have uniform growth of the Small Scale Industries Sector in the country as a whole.

3. The State Government provides infrastructure facilities to promote Industries. The existing arrangement is satisfactory. However, conditions of licence should provide for compulsory development of ancillary industries. States like Madhya Pradesh lack in financial resources and assistance from Government of India is required for the development of infrastructure in backward areas.

4. Yes. There does not appear to be any need for removal of any of the items from the list of items reserved for the Small Scale Sector.

5. We feel that the existing arrangements are satisfactory.

6. Yes, we agree.

7. There should be more frequent consultations.

8. The provisions of the Monopolies and Restrictive Trade Practices Act should be further liberalised and the procedure thereunder streamlined.

Trade and Commerce

8.1 We agree to the setting up of the authority envisaged in Article 307 of the Constitution for the purposes enumerated in the question.

Agriculture

9.1 Even though agriculture is a State subject, it cannot be the concern of only the State, because it has to have relevance to the national requirements of commerce and trade also. The assistance of the Government of India specially in the field of research is of utmost importance to the State.

It is, however, also a fact that the Government of India sometimes places the interests of the Central Government over and above the local interests of the States. This is evident at the time of state plan approval when the Central Government priorities do not match with the State Government priorities. Similarly, in the case of centrally sponsored schemes, the terms and conditions for the whole of the country are kept uniform even though the Agro-climatic conditions differ from State to State. Similarly, in the case of allocation of Research Schemes by ICAR the priorities of the State are ignored.

Therefore, while it will not be proper to treat Agriculture as a purely state subject, the Government of India should also give priority to the interests of the States.

9.2 It is a normal policy of the Government of India to make the State Governments take up certain programmes in the form of Central and Centrally sponsored schemes and then to pass on the entire burden to the State subsequently. Because of Central assistance, the States take up these schemes but later on find it difficult to continue them as such because of financial constrains. Therefore, it is suggested that wherever the interest of the Government of India dictate implementation of a particular scheme in a State, the Government of India should continue to bear the entire expenditure of the scheme as long as the Government of India considers the running of the scheme necessary in the interest of the country.

9.3 The recommendations of the National Commission are very valid and the Government of India should not only confer with the State Government in the formulation of the Central and Centrally Sponsored Schemes, but should also formulate location-specific schemes keeping in view different conditions in different States.

9.4 (a) The Government of India fixes uniform minimum/support prices as well as fair prices for different commodities for the whole country which is not proper. They should be fixed according to local conditions, like productivity, market price etc. which differ from State to State.

(b) In this case the initiative of the Central Government is of utmost importance to the States because strategic inputs like fertilizers, pesticides etc. have to come from other States also. Similarly, in case of credit, only the Government of India can direct the various financial institutions to provide necessary credit.

9.5 The States have neither the resources nor the expertise to tackle the various research problems facing the States. The National Agricultural Research Institutions should, therefore, supplement the efforts of the State Research Organisations in tackling problems of local importance. This aspect is sometimes neglected by the Central Research Institutions which are mostly engaged in National Research problems.

The NABARD like any other national financial institution should not have uniform regulations for all the States. They should formulate credit schemes keeping in view different socio-economic status of each State. They should also try to meet the full financial requirements of the States, keeping in view their particular stage of development.

Food and Civil Supplies

10.1 Present arrangements for Centre-State consultation are adequate and consistent with the actual responsibilities of the State Government.

10.2 Quarterly review will be definitely useful. But the condition of prior concurrence of the Central Government can be eliminated in many enforcements and regulatory orders, where the responsibility of implementation rests with the State Government.

Education

11.1 We do not agree with the view that there is unnecessary centralisation and standardisation in the field of education. If at all, the tendency is just opposite, despite the Centre's constitutional responsibility of coordination and maintenance of standards. If we glance through the list of centrally sponsored programmes during the first three five year plans and now, the facts would become immediately clear. Plan after plan, such programmes are getting reduced mainly because of States' insistence on providing more funds in the State Sector. The less advanced States have suffered due to this policy. At the State level, other sectors of economic development get priority over education in the allocation of resources and vital programmes like universalisation of elementary education, introduction of the national pattern of 10+2 or providing basic minimum physical facilities in the schools have to suffer. In the wake of acute shortage of resources, innovative and qualitative important programmes are not able to get any place in the educational plans. In the earlier plans, most of such programmes were taken care of under the central and centrally sponsored sectors. There is no Central interference and the States are free to devise their plans and strategies. They have full authority and initiative in the matter.

11.2 (a) U.G.C. has made wide ranging efforts in the last several years to improve standards of Higher Education and bring about a coordinated action in the field. Several new concepts and methodologies have been tried and assimilated in the system throughout the country thanks to the efforts and initiatives taken by the U.G.C. However, certain factors such as inadequate job opportunities after the secondary stage of schooling and popular demand for making higher education available in remote areas, the States have been under great pressure to expand the higher education sector without having the necessary resources. Whereas the U.G.C. has done substantial work in terms of consolidation and standardization, it has been severely constrained in promoting and assisting expansion.

It is suggested that U.G.C. must have more effective and live coordination with the State U.G.Cs. wherever such bodies exist, like in Madhya Pradesh. Secondly, U.G.C. must provide financial assistance on a long term basis to centres of advanced and special studies.

Educationally backward States like Madhya Pradesh cannot commit adequate resources towards their matching share for the U.G.C. grants to the universities and colleges of the State. A system of weightages needs to be evolved, so that U.G.C. assistance is made available on liberal terms to such States.

U.G.C. should also take urgent and concrete steps to ensure that regional imbalances in the field of higher education are corrected through a phased programme and its policy is so redesigned that they do not lead to further imbalances.

11.3 The process of discussion, consultation and persuasion is already being followed in evolving consensus on matters of importance to the Centre and the States. The Central Ministry of Education has evolved a system of frequent meetings of Education Ministers, Education Secretaries, Directors of Education/Public Instruction and other officers. There is also a Central Advisory Board of Education (CABE) in which all important issues/programmes relating to education are discussed and a consensus is evolved on them. The Education Ministers of all States/Union Territories are the members of this Board, and its meetings are attended invariably by the Education Secretaries and D.B.Is. For monitoring the programmes of national importance like the universalisation of elementary education for children in the age group 6-14, the Ministry of Education maintains a continuous dialogue with the States through occasional meetings and consultations. However, the Ministry has not yet been able to exercise effectively its influence in getting more resources allocated to poorer states even for nationally important programmes, the result of which is a widening gulf between the developed and less developed states. Education is now a concurrent subject, yet in practice the Centre has not started operating on this provision so far. It is still considered to be basically a State subject.

11.4 The rights granted to religious and linguistic minorities under Article 29 and 30 of the Constitution of India do sometimes come in the way of prevention of victimisation of teachers and employees of such institutions. Suitable administrative and legislative measures should be suggested by the Commission to cope with these impediments.

11.5 Implementation of the University Grants Commission scale to the University and College teachers in the State can be mentioned as an example. The State Government first of all wanted to implement these scales looking to the local needs, administrative convenience, availability of financial resources and the cadre structure prevailing in the Education Department of the State, whereas the U.G.C. was insisting on implementation of these scales, as designed by them without any modifications. The design, however, was based on the scene prevailing Delhi and some other States ignoring the realities prevailing in the State, like Madhya Pradesh. This has resulted in delay in the implementation of the U.G.C. scales. The U.G.C. scales were implemented from 1-4-76 and not from 1-1-73 as was desired by the U.G.C. In order to avoid such situations in future, the better course would be that due consultation should take place between the Central Government or its agencies on the one hand and the State Governments on the other, before schemes are announced which vitally affect resources and administrative structure of the State Govts.

Inter Governmental Co-ordination

12.1 No serious irritants in the Centre-State relations have been experienced in this State. As such it is not considered necessary to set up a permanent institution as existing in U.S.A.

Madhya Pradesh

MEMORANDUM

The State Government are happy to note that the Government of India have appointed a Commission on Centre-State relations with Justice Sarkaria as its Chairman. The State Government are pleased to note that the Commission has been entrusted with the responsibility of reviewing the existing arrangements between the Union and the States in regard to powers and functions and make recommendations for changes and on such other matters as it may appreciate.

2. In the first instance, the State Government want to acknowledge the fact that Constitution of India framed by its founding Fathers, who had been great statesmen and scholars, has stood the test of time. Our Constitution was framed by people like Dr. Rajendra Prasad, Dr. Ambedkar, Pandit Jawaharlal Nehru, Sardar Vallabh Bhai Patel, Shri Sriniwas Shastri, Shri C. Rajgopalacharya and Shri Gopalaswami Iyengar who had been acknowledged as great statesmen and men of wisdom in their times. Whenever constraint has been noticed in the functioning of the Constitution particularly with reference to matters concerning the fundamental rights and the directive principles of State policy the Government of India had been prompt in carrying out necessary amendments to the Constitution. These amendments along with the original Constitution have created a base for the development of the Indian polity into a major technically advanced and developed egalitarian nation.

3. The Government of M.P. feel that in the operation of the Constitution particularly in regard to the provisions relating to Centre-State relations, there has not been any area in which it has felt undue strain, warranting any fundamental change in its structure. We, therefore, in the first instance would like to submit that there is no need to make any fundamental changes in the provisions of the Constitution relating to Centre-State relations.

4. However, over the years on account of the growing responsibilities of the States, their need for resources have grown manifold but unfortunately the Constitutional provisions relating to the sharing of resources have remained unchanged. In the past 36 years since Independence tremendous changes have taken place in the country in regard to the responsibilities of the State *vis-a-vis* the people. We have recognised the need of the State Government to intervene in public activities with a view to eradicating poverty, diseases and un-employment. Public recognition of these economic responsibilities of the State Governments have in turn raised the expectations of the people. To carry out development programmes to achieve these welfare objectives, the State Government has to mobilise resources of a high order. The resources raising powers of the State Government, however, are limited. They continue to remain what they were when the Constitution was drafted and adopted. Despite efforts by the State Governments there are limiting factors which do not permit the raising of resources beyond a particular level. For example, it is not possible to raise Sales Tax beyond a particular level.

5. The State Government is feeling its helplessness in a situation where it is not able to fulfil its commitment to cater to the rising expectations of the people on account of paucity of resources.

It is in this context that the State Government would like to give a few suggestions for the consideration of the Sarkaria Commission which may or may not involve amendments to the existing Constitution.

6. The State Government feel that in view of the growing volume of resources to be transferred from the Centre to the States both on the Plan and non-Plan accounts, it may be worthwhile to set up . Finance Commission on a permanent basis and entrust to it the responsibilities of developing all resources from the Centre to the States. The State Governments should be given adequate representation in the Finance Commission by rotation. This will also reduce the burden of the Finance Ministry and the Planning Commission and enable them to more effectively monitor the development programmes.

7. The State Governments have repeatedly pleaded before the Finance Commissions that the Corporation tax should become shareable. It is indisputable that the State Governments play a major role in the industrialisation of the country by providing land, capital water, power and many other inputs at concessional rates. All new industries are permanently exempted from sales tax for a number of years. These concessions given by the State Governments render it possible for the companies to generate profits and pay corporation tax. The revenue from corporation tax has been increasing at a compound rate of 15 per cent in the last ten years. The VI & VII Finance Commissions recommended that the Government of India should pay attention to the demands of the States for a share in the corporation tax. They could not recommend any further as the Constitution did not permit the sharing of the Corporation tax between the Centre and the States. Our only submission is that the Commission should consider the need for making the Corporation tax shareable with the State Governments.

8. The State Government feel that the surcharge on Income Tax is not different from the Income Tax itself. There is no reason why this portion of revenue should not be shared with the State Governments. The State Government feel that there is no need to keep it separate and levy it solely for the purposes of the Union. It should also be made shareable with the State Governments.

9. The Finance Commissions have continued to increase the divisible share of Income Tax and now it stands at 85 per cent for the States. The Central Government makes changes in the rates of Income Tax which adversely affect the interests of the State Governments. The States are neither consulted nor any warning given to them of such changes. As the Income Tax is a major source of revenue to the States any change adversely affecting them should be affected only after consultation with the State Governments.

10. The State Government acknowledge the fact that for orderly development of the national economy, fiscal discipline has to be observed. Despite the Central Government's directives in regard to the observance of fiscal discipline, there are wide variations in

this regard as amongst the State Governments. More often than not fiscal indiscipline leads to overdrafts. After a lapse of time the Central Government willy-nilly covers such overdrafts by Central loans. In addition to this advantage of Central loans accruing to States with overdrafts, dispensation of the Finance Commission as regards capital gaps confers additional advantages by way of either write off of these loans, or their conversion into long term loans.

11. In the past the State Governments enjoyed the right to levy a tax on a railway passenger fares. This power was taken away in April, 1961. Since then the Finance Commission has been recommending the allocation of a grant in lieu of a tax on railway passenger fare that had been fixed by the Railway Convention Committee. This grant had remained static at Rs. 16.25 crores over the last two decades. The State Government have been pleading before the Finance Commission for the enhancement of this grant. The VII Finance Commission had observed on this matter as follows :—

"We are in agreement with the view held by the earlier Commissions that, though the tax on railway passenger fares has been repealed and what the States now receive are not shares in the proceeds of tax under Artilce 269 but shares in the grant in lieu of the tax, these shares should be determined in the same manner as if the levy and collection of the tax had continued. The general principle for the distribution of proceeds on taxes and duties under Article 269 as enunciated by the Commission in the past is that each State should receive from such taxes, as nearly as may be, the amounts which it would have raised if it had the power to levy and collect them." (Page 68 of the Seventh Finance Commission Report).

"The Finance Commission may not be the competent body to advise whether it would be appropriate to re-impose the railway passenger fare-tax as has been urged by at least one State Government. Nevertheless, we do appreciate the force of the argument put forward by almost all State Governments that a fixed grant is not an adequate replacement of a tax on railway fares, since it does not take into account the considerable buoyance in the earnings of the Indian Railways caused by the rapid increase in passenger traffic." (Page 71 of the Seventh Finance Commission Report).

12. The Commission should recommend the restoration of the power to levy tax on passenger fares and freights to the State Governments or recommend enhancement of this compensation to the extent to which the State Governments would have realised it had the power to levy the tax continued with them.

13. It had also been observed by the State Government and the Central Heads of Departments ask for major concessions from the State Governments for location of industries or other local head offices of the departments. The reality of the situation is that these organisations create an unhealthy competition amongst the States, which the States cannot resist, to provide concessions beyond normal requirements. We feel that the location of Central Government undertakings and offices of Central Government Departments should be based on regional balance and economic considerations rather than on the basis of concessions to be wrested out of the State Governments.

Licensing of Industries

14. A fresh look is needed at the list of industries under the Industries (Development and Regulation) Act. At present any industrial unit falling within the list needs to be licensed by the Government of India. There are, of course, exemptions with regard to the size of the unit. The economy today has become so diversified and needs to move at a faster pace. The present procedures for obtaining industrial licences are quite cumbersome. Quite often, considerations other than economic or removal of regional imbalances have come to play a part in granting licences. Therefore, at least in cases of certain selected industries the State Governments should be authorised to issue licences, subject to any overall guidelines that may be given by the Centre.

Development of Power Sector

15. The Rajadhyaksha Committee recommended that by 2000 A.D. 45% of thermal generation capacity in the country must be with the National Thermal Power Corporation. Almost all the States had opposed this recommendation. While constraint of resources will certainly be the governing factor in investment in power sector, yet greater flow of funds from the Government of India to the States is needed. In the long run decentralised power generation at the State level will certainly be more conducive to efficiency and growth of the country's economy than the generation being done by a Central authority.

Clearance of Projects

16. The present system of clearance of projects (power, irrigation or for that matter any project) by the agencies of the Central Government before they are included in the Plan needs examination. At present, power projects with an investment of more than Rs. one crore and irrigation projects with a command area of more than 10,000 hectares need to get technical and other clearances from the Central Electricity Authority or Central Water Commission, the concerned department of the Government of India and finally the Planning Commission. This is a very time-consuming procedure lasting 3-4 years. Perhaps, the tenure of an elected Government will be over before any project of this size could be cleared at the Central level. The need for such clearance existed in those days where not much expertise and experience were available at the State level. Perhaps we can even say that in certain States, like Punjab, Uttar Pradesh and in the Southern States, the Irrigation Departments have a very long history and tradition. Therefore, the need for clearance, etc. by the Centre should be severely curtailed, extending only to major irrigation projects. So far as thermal power projects are concerned, everything is so standardised today that it does not take much time to prepare the detailed project report. Similarly, any changes in the parameters of a major irrigation or power project cannot also be made without Central concurrence. This should also be avoided. So far

as inter-State projects are concerned, even here, there are Inter-State Control Boards which go into the details of the project.

Legal Matters

17. As per clause 5(4) of Part B of the Vth Schedule to the Constitution of India, President's assent to all regulations made for tribal areas is necessary. It is proposed that so far as the matters which are covered by List II of the Seventh Schedule it should not be necessary to have President's assent because that matter specifically falls within the exclusive jurisdiction of the States. Similarly with respect to the matters enumerated in List III, if the field remains unoccupied, the regulation may, with respect to subject relating to that field, not be required to be sent for the assent of the President. This rule makes the matters consistent with the provisions of Article 254(2) and the policy will then become uniform in respect of the distribution of the legislative powers.

18. At present wherever in a city there are cantonment areas the civil population of the cantonment area is governed by the cantonment board in which the concept of local self Government has been applied with a lot of restraint. In the same city across the road, the rest of the town is governed by either the Municipal Corporation Act or Municipalities Act, where the concept of local self Government is much more democratically applied. Where it can be well understood that the areas of defence establishment where defence personnel actually reside may be placed under the disciplinary control of the military authorities but it is difficult to conceive as to why the civil population of that area should be subjected to that rigour which is non-existent, with the other part of the town. It is proposed that the area of civil population at present governed by the cantonment board should be transferred to the respective municipalities or municipal corporations.

19. As per Article 252 it is necessary for the State Government to pass a resolution authorising the Central Government to make law in respect of particular subject. The law made by the Central Government under the powers so delegated assume the shape of Central law falling in List I so that by such delegation the State Government becomes deprived of all powers to suitably amend it according to the local conditions. The difficulties which are being felt by the Urban Land Ceiling Act are not unknown. Since we have delegated the powers and the Central Government has framed the law on that point it has now become impossible to get it amended. It is proposed that Article 252 of the Constitution be suitably amended so as to place such a law in the category III legislation. In that case the State Government will have power to amend the law if and when the necessity to do so arised according to the local conditions.

20. The existence of working mines in the States increases traffic intensity on its roads resulting in the excessive wear and tear and increase in maintenance expenditure. It also calls for additional development expenditure in the area and the people in the neighbouring areas suffer all the hardships of population and price rise. It, therefore, becomes necessary for the State to invest large amounts in developing that area and in keeping the roads in good condition. This necessity directly arises out of the fact of existence of a mine, the operation of which is a Central subject. Tax on the mineral rights can be imposed only by the Central Government. Vide entry 54 of List I partly the power of regulation of mines and minerals development also vests in the State vide entry 23 of List IX. However, this requires to be clarified that the State Government should have specific powers for the levy of cess on the mineral for the purposes of the development of the mine area and the roads emanating from the mine areas.

Food

21. As the public distribution system has come to stay in the country, there should be effective coordination between the Food Corporation of India and the State Government organisations dealing with procurement and distribution of foodgrains in order to make available foodgrains at the lowest price to the consumer.

22. At present licensing of roller flour mills is being done by the Government of India. This creates an anomalous situation where by there is an unutilised capacity and new licenses are being issued by the Government of India. The powers could be delegated to the States for better coordination and control of this industry.

Forest

23. The operation of the Forests Protection Act, 1980 has created considerable amount of difficulties for various development departments in the State including the exploitation of mineral areas. While it is sincerely appreciated that this Act is meant to conserve the depleting of forest wealth in this country, the Government of India should vest some powers in the States to remove hardships they are facing now.

Centrally sponsored and Central Sector Schemes

24. While most of the Centrally sponsored schemes and central sector schemes are formulated with a view to giving incentives to the State Governments, in their practical application the States have to face problems on account of several conditions imposed by the Administrative Ministries of the Central Government regarding staff, salaries, status etc. While the Central Government may impose conditions regarding implementation of the project, the details of the staff, etc. should be left to the State Governments. The Central Government should also indicate the State sufficiently in advance all the financial liability which the State Government will have to bear on emergence of such schemes during the Plan year as it causes difficulty to the State Governments to reappropriate funds for implementing the programme in the middle of a year. An overall view of the Centrally Sponsored Schemes and the Central Sector Schemes in this context would be welcome.

Salary Structure of Government employees

25. The Central Government takes periodical decisions regarding revision of emoluments; dearness allowance and other financial benefits to their employees. These announcements of the Central Government have necessarily to be followed by the States and in most cases they cause financial hardships to the State Governments. Over the years the pattern has emerged that the State Governments follow the Centre in regard to the dearness allowance even though the pay scales may be different. A time has now come when there has to be serious thought on whether there should be a close consultation between the Centre and all the States together periodically to bring about a national policy in this.

26. The State Government feel that the points mentioned above require careful consideration by the Sarkaria Commission. While they cannot be called irritants in the Centre-State relations, they offer scope for improvement which would make administration smoother and better. Many of the items mentioned above may not require any fundamental charge in the existing Constitution. Perhaps minor modifications would meet the requirements.

27. The State Government takes this opportunity of expressing its gratitude to the Sarkaria Commission for having afforded us an opportunity to submit its point of view for its consideration.

GOVERNMENT OF MAHARASHTRA

(a) Replies to the Questionnaire

(b) Memorandum

Maharashtra

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 If Federal principle means absolute division of Sovereignty and political power between Centre and States, each acting independently of the other in the sphere carved out for it by a Constitution document, the answer to the question is negative. Our Constitution has drawn heavily on the Government of India Act, 1935, which was evolved to give a try to a loose federation comprising of provinces and Princely States littered over the whole sub-continent. But the decision to accept partition of the country per force required the founding fathers to incorporate certain unique features which provide for a strong centre and an inbuilt mechanism to convert the federation into unitary State during emergencies arising out of war, external aggression or armed rebellion, failure of Constitutional machinery and financial crisis. Therefore, if a broad approach is adopted, namely, whether all the basic features of a Federation such as distribution of power between Centre and States flowing from a written Constitution, judicial review of both legislative and executive action etc. are present, then it is amply borne out by our Constitution that the Federal principle is predominant. A strong Centre is a lesson taught by the long history of this nation and the current events reinforce it. On a broad perspective, it can be said that the unique features tending to make the polity unitary are ordinarily dormant giving full scope for the Federal principle to play its role; but when national interest is at stake, it is placed above everything till the occasion lasts. Jurists may choose to call it by any name, either Federal, Quasi-Federal or Co-operative Federation, the fact remains that the Federal principle is predominant in our Constitution.

1.2 Broadly, save some small matter, this Government does not subscribe to the abovementioned view of the Rajmannar Committee. A careful study of the three Legislative Lists shows that by and large subjects of national importance are included in the Central List (List I), subjects of local or regional importance are included in the State List (List II) and subjects with which States are primarily concerned but which are likely to assume national importance or which require uniform policy throughout the country are included in the Concurrent List (List III). An important feature of these lists is that the subjects relating to taxation are exhaustively enumerated both in Central List as well as State List taking care to see that no conflict on that account arises. In fact, there is not a single instance of conflict so far as taxation power is concerned. It is possible to argue that the States should have some more elastic tax resources but this aspect is dealt with in details in part V.

As regards deletion of Articles 251, 256, 257, 348, 349, 355, 356, 357, 365 etc. suggested by Rajmannar Committee, this Government is of the firm view that for national interest, to protect the integrity of the nation and avoid failure of Constitutional machinery these provisions are necessary. Any power to give Directions not adequately backed by a sanction is meaningless. These powers, specially power to assume the functions of the Government of a State in a situation in which the Government of a State cannot be carried on in accordance with the provisions of Constitution or to protect a State from external aggression and internal disturbance are essential to protect the integrity of the nation, otherwise there will be a vacuum resulting in chaos. It is indeed an irony that the hypothesis of the Rajmannar Committee while suggesting these changes that the fear of external aggression and internal disturbance that weighed heavily on the minds of the founding fathers in making such provisions, had ceased to exist, has proved to be a myth and if regard be had to the recent events, the need for such provisions is felt actually even today. In fact, recent events emphasise a need to do some hard thinking in the direction of devising ways and means for further strengthening the hands of the centre to protect integrity of the nation.

As regards appeals to the Supreme Court, the Supreme Court in our Constitution performs a multiple role; and its jurisdiction is much wider than that of any other apex court in any country. It is not only a federal court, but it is the highest court in the land deciding all types of legal question. It is the protector of Fundamental rights as Court of original jurisdiction and it is the final court on matters involving important questions of civil or criminal law. It is nobody's case that the Supreme Court has not discharged its responsibilities adequately. The only complaint is about arrears. It does not appear necessary that the Supreme Court should take up only constitutional matters. This Government does not favour any such proposition. However, this Government is of the view that there is much to be desired in the working of the Supreme Court. Experience of the last 35 years shows that the institutions are outpacing disposal resulting in treme[illegible]us arrears. Reform, both in the nature of [illegible] approach to Supreme Court to cases [illegible] important questions of Law and procedural innovations like shorter hearings, shorter arguments and shorter judgments is called for.

1.3 A federal constitution involves a distribution of legislative powers between the Union and the States, each being supreme and sovereign in its own sphere. This distribution is made on the principle of granting powers to the Union in matters

of national concern, or in matters where informity of laws throughout the Union is considered desirable, and of granting powers to the States in matters which concern the States or can be described as principally of local interest. The distribution generally takes one or two forms; enumerated powers are given to the Union, residuary powers being retained by the States, as in the United States and Australia, or enumerated powers are given to the States, residuary powers being given to the Union as in Canada. India has followed the latter model.

The Constitution has made an exhaustive enumeration of heads of legislative subjects and distributed them in three legislative lists : List I being the Union, List II being the State, and List III being the Concurrent Legislative List. The State has been given exclusive power to legislate in respect of matters in List II. The subjects included in List I can be described as of national importance, the subjects included in List III can be described as having an important national aspect in which local variations or experiments might be desirable and were not necessarily injurious to the national interest; the subjects included in List II can be described as matters which were considered to be principally of local and State interest.

The Administrative Reforms Commission in its report in Chapter VIII has dealt with general scheme regarding the distribution of powers between the Centre and the States. The crux of the recommendation is that power should be delegated to the maximum extent to the States with regard to their work on Projects in which the Centre is directly interested or which are carried out by them as agents of the Centre. This State generally agrees with the views expressed and the recommendations made by Administrative Reforms Commission and would admit that if these recommendations are implemented it would bring about a substantial amount of decentralisation and at the same time remove a cause of friction if any, that may arise in the relations between the Centre and the States. It will be noticed that the suggestion made by the A.R.C. and endorsed by the State may not call for any amendment of the Constitution as such but it would involve certain changes in the administrative arrangements to be brought about by the Centre in relation to the working of various schemes on subjects in both the State List as well as concurrent list over which the Centre has control on account of the financial implication involved therein.

Of course, it goes without saying that whenever a subject of national importance arises or any emergency requires the execution of a certain policy, Central Government should be in a position to use the State Government machinery for the implementation but barring such exceptions, the State Government should be left to operate on their own as recommended by the A.R.C. This Government agrees with the view of the A.R.C. that in the State field a Centre's role should be confined to that of a pioneer, guide, disseminator of information, overall planner and evaluator and so far as the Projects in which the Centre is directly interested or which are carried out by the States as the Agents of the Centre, it is necessary in the interest of speedy completion of work that the Centre's role should be reduced to the minimum and power should be delegated to the State Officers to the maximum extent.

1.4 We are not aware of the country where the Federation of traditional type exists as a functional entity.

However, in the U.S.A. the Centre, designed to be weak because of its limited powers, has turned out to be strong to meet the serious challenges of wars, depression and economic growth in the country. The Centre has become strong not so much through the formal amendments of the Constitution but through the process of judicial interpretation. The judiciary has helped the Centre, thereby giving an expansive interpretation to its enumerated powers, that is commerce power, defence and war power, taxing power etc. in response to the demands of time.

Even in Australia, the Federal Principle has given way during war.

Strictly speaking as per the Constitutional theory. in a federal Government the Central and Regional Governments are in their own spheres independent of each other, but constitutional reality is today far removed from the abstract principle. This principle of federalism i.e. two Governments functioning at their respective levels separately and independently, can be adhered to only when the functions of Government are extremely limited.

Further, there is a general tendency in the older federations that there should be a strong Government at Centre. It has been said that "nationalism of sentiment" and a will to work together in solving the problems posed by independence is responsible for the changing structure of federalism. The distribution of power between the units and the Centre is sometimes called "Co-perative federalism". Co-operative federalism is the search for a middle ground between the either or attitude typified by discussion of National Government versus the States or the advantages of Centralisation versus Decentralisation. Joint action of Federal and State Governments, it is hoped, will gradually produce the advantages of a unitary state without destroying the essential values of federalism. It appears that this spirit might have animated the U.S.A. to adopt in a highly non-theoretical fashion her relationship between the Centre and States built around the operating principles of *de-jure* national supremacy and *de-facto* local autonomy. Thus, the above history of federation will show that there is no truly Federal State.

1.5 Fortunately for this State, there never were any problems with the Centre in any sphere, either legislative, executive or judicial and therefore it is difficult for this Government to make any concrete suggesctions on problems which it was never required to face.

This Government is of the view that the provisions of the Constitution governing the Centre-State relations are adequate for the purpose of meet-

ing any situation or resolving any problem that may arise in this field and no constitutional amendments appear necessary for ensuring proper relations between the Centre and the State. It may however by mentioned that there is scope for improvement in the process of according assent of the president to legislative proposals. in the Concurrent List made by the States by expediting the consideration within certain time limit imposed administratively. Suitable administrative machinery should be devised to resolve the difficulties and problems that may arise in Union-State relations.

1.6 The Constitution that was so framed was neither purely 'unitary' nor purely 'federal'. The word 'federation' is nowhere found in the Constitution. To meet the requirements of the situation, the Constituent Assembly described India as a Union of States. This was deliberately done in order to discountenance fissiparous tendencies and centrifugal forces. Residuary power was conferred on the Union and not on the States, and the right to secede from the Union was not recognised.

Single citizenship, Governor's power to reserve a bill for the consideration of the president (Art. 200), exercise of executive power by States so as to ensure compliance with Laws made by the Parliament and existing Laws with power to Union to give directions to ensure such compliance (Art. 256), exercise of executive power by State in such a way that it does not impede or prejudice the exercise of executive power of the Union and power to Union to give such direction to States as are necessary (Art. 257), entrustment of executive functions by Union to States and by States to Union (Articles 258 and 258-A), provision for All India Services (Art. 312), a single judiciary with Supreme Court at its apex, uniformity in Fundamental Laws, Civil and Criminal, emergency powers (Articles 352, 356, 360), these are some of the important provisions in the Constitution which the founding fathers designed to achieve the objective of the protection of independence and ensurance of the unity and integrity of the country.

It is our firm view that the basic Constitutional fabric of ours is quite sound and must remain intact.

1.7 The design of our Constitution is such that the Central Government has been given vast powers and enumerated powers are given to the States. However, the relationship of the Union with the States is not that of domination but of co-ordination for common subjects. In normal times both the Government, the Union and the State Governments, are to function as co-ordinates; but in certain circumstances the Union reserves the right to give directions if it is found necessary in the national interest. Under Article 256 of the Constitution of India it is the duty of the State to make such laws which should be in conformity with the laws made by the Union Government. Under Article 257 of the Constitution the Union Government has got right to give directions to the States in certain circumstances. The sanction behind this power to give directions is provided by Article 365, which empowers the president to hold that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, when it fails to comply with or give effect to any such directions. So far as entrustment of executive functions is concerned Articles 258 and 258A provide for entrustment of functions by Union and State with consent of the other.

Article 355 takes care of a situation where there is external aggression or internal disturbance in a State by casting a duty on the Union to protect such a State in such a contingency. Articles 356 and 357 of the Constitution provide for the case of failure of Constitutional machinery in the State. These emergency powers are special powers and are reserved with the Union. The Union can under the emergency situation take over the administration of a State, make legislation for it and spend from its consolidated fund.

Our Constitutional has recognised the principle of responsibility of the Union to grant financial assistance to needy States and particularly for promoting welfare of the Scheduled Tribes or raising the level of administration in Scheduled Areas to that of the administration of the rest of the areas of that State. Subject to this, by and large the Constitutional provisions regarding the obligations of the Centre and the States in respect of the country as a whole and to one another appear to be reasonable and do not call for any drastic changes.

1.8 Article 3 is important from the point of view of the federal nature of the Constitution. For parliament exercising its legislative powers under this article may even wipe out a State from the map of India even against the wishes of the people of the State concerned. Theoretically, this is a serious flaw in the federal structure of the Constitution. However, experience shows that parliament has always respected and never flouted the wishes of the people of any particular State.

In the Australian Constitution, the parliament of the Commonwealth has to take the consent of parliament of a State and the approval of the majority of electors of the State voting upon the question of diminishing, increasing or altering the limits of a State. In the United States of America, the consent of the legislature of the States affected by alteration of boundaries is essential. Article IV, Section 3(i) lays down: "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States without the consent of the legislatures of the States concerned as well as of the Congress." Under Indian Constitution, no consent of the concerned State is necessary, although an opportunity to express the views is given. However, one has to look to the history and culture of a country before adopting a particular principle incorporated in the Constitution of another country having different historical and cultural background. So far as India is concerned, it is inhabited by people professing different religions and speaking diverse languages. Looking to the historical and cultural background of our country, this power to alter, change or even wipe out a State appears

to have been given to Parliament as an arbiter not interested in any particular State or Community, constituted as it is of representatives of the whole people of India, with an expectation that it will discharge this duty without fear or favour and by keeping in view only the ultimate welfare of the country which was implicit in the welfare of the citizens of a reorganised State. By and large, this expectation has proved to be true.

Therefore, Article 3 though it may appear to be against the Federal principle and undemocratic, the background on which it came to be incorporated and the manner in which it has been put to operation so far, demand that it be better left alone as it is without tinkering with it, which will probably create problems rather than provide solution.

PART II

LEGISLATIVE RELATIONS

2.1 There does not appear to be any concrete instance where it can be contended that the Union has under the cover of a declaration of 'national interest' or 'public interest', encroached on the State legislative field. Article 249 of the Constitution of India empowers Parliament to legislate with respect to a matter in the State List in the national interest. It may be seen that even this power of Parliament is limited and any law passed in exercise of these powers can remain in force for a maximum period of two years. Therefore, there does not appear to be any ground to make a grievance as regards the power of Parliament to pass any law covering the field of State legislation, in the national interest. Moreover, even if such laws are passed by the Parliament they are administered through the State Governments in their respective States.

If the State Government is of the opinion that the law passed by Parliament is not sufficient for their requirements looking to the local conditions in the State, it is always open to the State Legislature to pass any law which will meet its requirements. Although the Parliament has passed the National Security Act, 1980 (LXIII of 1980), this State Government has passed the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981 (Mah. LV of 1981), to provide for preventive detention of the anti-social elements for prevention of their dangerous activities prejudicial to the maintenance of public order.

The State is unable to subscribe to the view that the Centre has been encroaching on the State Legislature field under the cover of national or public interest.

2.2 Overall national interest and particularly the unity and integrity of the country demand that no change is called for in the basic scheme of distribution of subjects in the three lists of the Seventh Schedule. But in practice, while examining legislative proposals on subjects like labour, rural and urban area development programmes, technical and medical education, it is necessary to have a more liberal approach in giving assent to State proposals which are progressive in nature and ultimately are going to prove beneficial to the national interest.

2.3 The suggestion made in this paragraph should be welcome and it would be desirable in the interest of better relations between the Union and the States that the Central Government consults beforehand while undertaking legislation of a Concurrent subject. Although there is no provision in the Constitution of India, the Government of India many a time consults the State Governments by inviting its views on any particular subject relating to which it proposed to undertake legislation. Moreover, whenever a bill is referred to Joint Committee or a Select Committee of the Parliament, such Committee visits several State Governments with a view to assess the views of the State Governments and the people on the proposed provisions of the Bill. A recent instance is the Dowry Prohibition Bill. It would, therefore, be desirable in the interest of better relations between the Union and the State to have a specific provision in the Constitution of India requiring the Centre to consult the State Governments beforehand whenever any legislation is proposed to be undertaken on a Concurrent legislative subject, except where on account of urgency it is considered expedient to dispense with prior consultation.

2.4 It would not be desirable to empower the Parliament to legislate on any subjects within the exclusive competence of the States in "national interest" or "public interest" on a permanent basis. The present power of the Parliament, as referred to in question 2.1 of Part II under Article 249 to legislate for a limited period appears to be proper.

2.5 Subject to the observations made in replies to questions 2.1 to 2.4 of Part II, there are no further suggestions to be made relating to any change or reform with regard to Union-State relations to the legislative sphere.

PART III

ROLE OF THE GOVERNOR

3.1 A Governor of a State is appointed by the President. The Governor so appointed, in the context of Centre-State relations, has to perform three important functions among others. Under Article 167, Governor is entitled to seek information from the Chief Ministers and also ask certain matter to be considered by the Council of Ministers which has not been considered by the Council. A Governor is expected to send periodical reports to the President with copy to the Chief Minister. This is useful in that it keeps the President duly informed about the state of affairs in the State and at the same time enables the Chief Minister and his colleagues to know the views of the Governor on such matters. Such reports are bound to keep the Chief Minister on occasions informed about the wrong policies persued to enable him to take corrective action to avoid any action on the part of the President under Article 356.

The second such function is reservation of a Bill for the consideration of the President under Article 200. Such occasion may arise when Governor feels that a particular bill is of such importance that he should reserve it for the consideration of the President instead of taking the responsibility on himself by giving his assent. This he may do on his own or sometimes on the advice of the Chief Minister. This is an important function assigned to Governor which enables him to maintain a proper understanding between the Centre and the State to keep harmonious relations between them in the larger interests of the Country.

The last and important role assigned to the Governor is under Article 356 to report to the President on the point whether the Government of particular State is carried on in accordance with the provisions of the Constitution. This is also interlinked with the question whether the State Government exercises its executive power in accordance with the Central Laws and consistent with the executive power of the Centre as contemplated by Articles 256 and 257 which attracts Article 356 read with Article 365.

A great deal has been discussed, a lot of literature has been produced on this aspect but it must be admitted that the practice followed by various Governors during the last 34 years has not been uniform. Much depends upon the personality of the Governor. There have been allegations that the Governors have abused their power to favour the party in power in the Central Government to whom he owes his appointment. Of course, there have been cases where the Governors have acted with utmost impartiality. There are other cases where the Governors have acted according to their own Rights. So far as the experience of this State goes, the role of the Governor in the context of its relations with the Centre has been by and large congenial and useful.

3.2 In our opinion, the Governor should play the role assigned to him under the Constitution in the context of Centre-State relations, namely, to be a powerful link between the Centre and the State helpful in maintaining harmonious relations between the two by constantly keeping in touch with the Centre as well as the Chief Minister of the State and as a Counsellor and elderly statesman who would after giving his counsel, act on the aid and advice of the Council of Ministers as postulated by the Constitution. Whenever occasion demands, he must exercise his discretionary functions in an upright manner, true to his position as the Constitutional Head of the State. He may, if he so needs, seek guidance from the Centre but the ultimate decision in discretionery matter must be his own in accordance with the provisions of the Constitution.

3.3 (a) While making report under Article 356(1) of the Constitution our expectation is that the Governor will be objective in making such a report and act according to his own independent judgment. This is a matter of vital importance to the State and therefore, ordinarily it is expected of the Governor that he would warn the Chief Minister and give opportunity for correction before he submits his report to the President under Article 356.

(b) The principal consideration governing the choice of the Chief Minister should be that he shall be a person most likely to command a majority in that Legislative Assembly.

Where at an election a party gets a clear majority, the Governor constitutionally, is bound to call the leader of that party to form the Government. It is for the leader who is asked to form the Government to advise the Governor on the appointment of other ministers, in other words, it is the Chief Minister appointed by the Governor who has to suggest the names of other Ministers, and the Governor is bound to accept the advice of Chief Minister in the matter of appointment of Council of Ministers. However, where there is no clear majority at the elections in favour of a particular party, and intimations are sent to the Governor singly by a party or a group of parties that they are in a position to command the majority in the Legislature and able to form a Government, in such a case, it becomes his duty to form a judgment as to which of the various parties or groups who have sent their intimations, are able to form a Government which would really command a majority. In such situations complete impartiality of Governor becomes important. His sole purpose ought to be to give the State as stable a Government as he can under the circumstances and all his moves have to be directed to that purpose.

(c) Prorogation of House.—According to Article 164(1) of the Constitution, the Ministry remains in the office during the pleasure of the Governor. In normal circumstances pleasure of the Governor means that the ministry remains in the office as long as it retains the confidence of the Legislative Assembly. But the problem arises when the Chief Minister becomes aware of the fact that he is no longer in a majority and advices the Governor to prorogue the Session of the Legislative Assembly. In such circumstances, the Governor is justified in compelling the Chief Minister to face the Legislature to demonstrate his majority. However, there cannot be any hard and fast rules in this behalf and the Governor must be left to exercise his best judgment to the best of his ability and conscience. Stability of Government being the ultimate goal.

Dissolution of the Assembly.—In India, the power to dissolve the Assembly has been given by Article 174(2)(b). The Constitution of India, as it stands in the present shape, gives this power to the Governor. There are two articles pertaining to this power. Under Article 172, the Assembly stands dissolved after the expiry of five years though the dissolution is formally announced by the Governor. According to Article 174, the Assembly may be dissolved at an earlier date.

Normally, the Governor should accept the advice of the Chief Minister for the simple reason that this is not a discretionary power. But in certain cases it is not desirable and constitutionally sound. For instance, if a Chief Minister, who happens to be in the office without majority support in the house, advises the Governor to dissolve the

Assembly, it seems that the same is not in consonance with the principles of Parliamentary democracy.

Above all, since the Governor is supposed to go by the advice of the Council of Ministers and not the "Chief Ministers" in view of the phraseology used in Article 163 of the Constitution, he should, before he concedes the demand, direct the Cheif Minister to place any such sweeping step before the colleagues in the Ministry. Though it is not important legally, politically it would be in consonance with the principles of collective responsibility.

3.4 After a careful reading of Article 200 of the Constitution it appears that the Governor has four options before him. He shall either declare his assent to the Bill or he shall withhold his assent or he may return the Bill for reconsideration if it is not a money Bill or he may reserve it for the consideration of the President.

The powers vested in the Governor under Article 200 are discretionary powers. It is for him to decide whether as a part of legislature he would assent to the Bill. If he feels some doubt about the validity or the advisability of the course of action outlined in the Bill, he can ask the legislature to reconsider it. Whenever the matter is of such importance that he feels that he should not take responsibility of assenting the Bill, he can reserve the same for the consideration of President. All these indicate that the powers vested in the Governor require him to exercise his own judgment. The obvious purpose in making this provision was to provide an outlet to take out the steam behind a measure brought before the State Legislature due to popular pressure but without considering its consequences. In order to study the impact of such a measure in a dispassionate manner, the reservation of the Bill for President's consideration acts as a safety valve.

3.5 Experience of this Government in getting President's assent is quite encouraging. During the last 8 years (1976—83) 110 Bills were reserved for President's assent: but in only 4 cases the assent was withheld. By and large, it is the experience of this Government that when any objection is raised, the matter can be explained to the Government of India and the assent can be expedited. This Government would however, suggest that except in urgent or time bound Bills which are required to be dealt with speedily, there should be a time limit of any three months within which the process of consideration and assent ought to be completed.

3.6 This Government agrees with this view. The experience of this State has been that in practice the Governors appointed to this State, have generally acted impartially and fairly in accordance with the Constitution and healthy conventions in discharging their dual responsibility.

3.7 This Government does not agree with the suggestion. The present position should continue.

3.8 It is difficult to agree with this suggestion. Power to summon the Legislative Assembly of a State by virtue of the provision of Article 174(1) has been accepted as one to be exercised on the advice of the Council of Ministers. In a given case, if the Governor happens to have formed a view that the ruling party has lost its majority in the legislature, the proper course for him would be to informally ask the Chief Minister to satisfy him whether the Chief Minister still has a majority in the legislature. If the Chief Minister is not able to satisfy the Governor by this method, it would be open to the Governor to ask the Chief Minister to give advice to summon the legislature as early as possible and if the Chief Minister fails to give such advice, the Governor would be perfectly justified in withdrawing his pleasure from the Ministry and dismiss the same by virtue of Article 164(1). This course on practical grounds is preferable than giving the Governor a power to summon the Legislature on his own and get involved in the politics of number.

3.9 The necessary implication of Article 67 of the Constitution of the Federal Republic of Germany, is that so long as the Bundestag (Federal Legislature) is not in a position to elect the successor, the Federal Chancellor who has lost confidence of the Bundestag, would continue to be the Chancellor. This would be against the basic principle of democratic Government that the Chancellor must have the confidence of the legislature. It may not be desirable also from practical point of view. It is true that the Governor of a State may be required to face this problem occasionally and in order to avoid any criticism, charge of unfairness and allegation of acting in a manner calculated to advance the interest of a particularly party, the Governor must act independently on his own judgement. This will be possible only when the Governor is an independent, respected capable and impartial man. If this is observed while selecting a Governor by the President scrupulously, there may not arise any occasions for making any imputations against the Governor. Ultimately, the success of our democracy will largely depend how enlightened our popular representatives are and how they behave with full responsibility. Any change in the Constitution laying down convention are norms of behaviour for a Governor, are not going to solve the problem unless the representatives of the people choose to behave in a responsible way and elect the new leader of the house quickly. This will surely avoid any possible friction between the Governor and the elected representatives provided the Governor himself maintains the standard of independence and impartiality required for his office. The chances of situations giving rise to such frictions have been practically reduced to nil on account of the Constitution (52nd Amendment) Act, 1985 introducing provisions as to disqualification on ground of defection in the Constitution.

3.10 It is doubtful whether the manner in which discretionary powers should be exercised by the Governors under the Constitution could be a subject of enquiry by an Inter-State Council for the purpose of formulating certain guidelines which could be issued in the name of the President after acceptance by Union. Under Article 163(2), it is the Governor's decision whether any matter in respect of which he is required to act in his discretion has

been made final and therefore, constitutionally any guidelines which encroach upon the power of the Governor, would violate the said provision. Apart from that looking to the different situations arising in different States, such guidelines which may not prove adequate to meet every situation, may be of little pragmatic utility. Political propriety also demands that the Governor of a State should be left to himself while discharging his discretionary function. This will be appreciated if one has a look at the discretionary function of the Governor under the Constitution, namely :—

(1) Appointment of the Chief Ministers ;

(2) Dismissal of the Ministry ;

(3) Dissolution of the Assembly ;

(4) Right to advise, warn and suggest :

(5) Withholding assent to a Bill ;

(6) Statutory Functions ; and

(7) Discretionary powers of the Governor of Assam.

Each one of these discretionary functions is highly political except at Sr. No. 6, involving different situations at different times on different background, which may call for different solutions in different circumstances. It may not be fair to the Governor to put his discretionary functions in a straight jacket of guidelines and ask him to deal with each and every situation on the basis of these guidelines. To put it bluntly the very idea of the Governor's discretionary functions becoming the subject of a formula is contradiction in terms for the simple reason that a discretion will cease to be a discretion if it is substituted by a formula.

The last and most important aspect that has to be taken into consideration is that by providing guidelines for exercise of the discretionary function of the Governor we will be adding to the already wide field of judicial review because every action of the Governor will be liable to be tested whether it is in accordance with the guidelines or not, thereby subjecting it to judicial review, which as per present state of the Constitution is not open to judicial review. It is common knowledge how statutory actions of the Governor as Chancellor under various university Acts are frequently challenged in a Court of Law.

PART IV

ADMINISTRATIVE RELATIONS

4.1 The Constitution envisages a federal polity with some strong unitary characteristics. The Constitutional sanction for the role of the Union Government in such a set up has been provided by Articles 256, 257 and 365. The provisions of these Articles are clearly in the largest interest of the unity and integrity of the nation. Having said this, it needs to be emphasised that resort to these provisions should be taken very sparingly and after exhausting other means, such as consultations, discussions and persuation, for achieving the object. There appears to be little scope for having any built-in safeguards against any misuse of these powers by the Union Government and the best safeguard against any possible misuse would appear to be public opinion and, to some extent, conventions to be built up over a period of time.

We cannot recall any case in which directions were issued under Article 256 or 257 to this State or any case where the State was compelled to carry out any such directions under threat of invoking Article 365.

4.2 Article 365 provides a sanction behind the powers of the Union Government to issue directions, for failure to obey them would entail President's rule. Without such sanction, orders of the Central Government would be flouted with impunity. Therefore, the existing of Article 365 is absolutely necessary though it has never actually been operated so far.

4.3 The Government of Maharashtra agrees with the A. R. C. The Union Government should evolve a practice or convention to explore the possibilities of settling points of conflict by all other available means before issue of directions to a State under Article 256.

4.4 Sufficient material for examining the above question is not available with this Government. However, in Dr. Chandra Pal's Book on "Centre-State Relations and Co-operative Federalism" on pages 107 to 110, a table describing the immediate causes of President's Rule in various States has been given.

From the said table, it appears that barring about 8 to 10 cases, where reasons for use of the power are not available, it appears that the Governor was justified in using his discretion to recommend to the President the imposition of President's Rule.

This Government is of the opinion that the Governors ordinarily should not recommend the imposition of the President's rule so long as the Chief Minister has a majority in the Assembly and is prepared to demonstrate it by facing the Assembly at a very short notice, unless the Governor is otherwise convinced that the Government of the State is not being carried on in accordance with the provisions of the Constitution.

4.5 It is true that sub-clauses (a) and (b) of clause (5) of Article 356 prescribe the conditions, namely, a proclamation of emergency under Article 352 and Certificate of the Election Commission regarding difficulties in holding elections, on the satisfaction of which alone the period of proclamation could be extended beyond one year and upto three years. These conditions are stringent. Recently, in relation to the State of Punjab, a proviso was required to be added to clause (5) of Article 356 by the Constitution (Forty-eighth Amendment) Act when it was found that although the situation demanded continuance of the proclamation under Article 356 beyond the period of one year, it could not be done for want of satis-/

faction of the conditions mentioned in clause (5) thereof. In order to avoid such situations in future, it is desirable that Article 356 is restored to the pre-44th Amendment position.

4.6 The present arrangements are working stable economy and a uniform economic and functions performed directly by the Union Administration in view of the very large number of personnel required to be deployed throughout the length and breadth of the country at one and the same time.

4.7 The various Central agencies were created in pursuance of a national policy to ensure a suitable economy and a uniform economic and social balance in the country. There is no doubt that in various matters it is necessary to have an All-India perspective and there is therefore need for these Central agencies to continue. While we would not say that through these agencies the Union Government has made undue inroads into the autonomy of the State, we feel that several times the views of the State Government are not given adequate consideration by these Agencies. By way of an example we may cite cases concerning the Agricultural Costs and Prices Commission (formerly called the Agricultural Prices Commission). In Maharashtra, the per unit cost of production of foodgrains is much higher than in some other more fortunate States in view of its agro-climatic conditions, nature of the soil, extremely limited facilities for irrigation and almost total dependence on rains etc. It cannot be disputed that the purpose of fixing support prices is to adequately safeguard the interests of the farmers and the State has always taken the view that agriculture has to be treated as an industry and the actual cost of production, expenditure on transport, managerial expenses, as well as an assured reasonable return on investment must be taken into account while recommending support prices. It is, however, our experience that the Commission recommends the support prices mainly on the basis of facts obtaining in more fortunate States like Punjab where the irrigation facilities are excellent, the yield much higher and the cost of production much lower. This approach adversely affects the interest of the farmers in our State. Our plea that different prices should be fixed for different regions in the country has also not received due consideration by the Commission.

The same approach is adversely affecting the cotton growers in the State. The practice of the Agricultural Cost and Prices Commission is to recommend the support price of raw cotton primarily on the basis of the cost of cultivation for Punjab Variety 320-F, which works out very unfavourable for the farmers in Maharashtra who cultivate different varieties, mostly under unirrigated conditions. Of late, the Commission has been recommending support price for the variety H-4 also. But even now such prices are not being fixed in respect of major varieties grown in our State. The State Government feels that separate calculation of cost of cultivation should be undertaken for different varieties of cotton which can be broadly categorised as Long, Medium and Short Staple varieties. Our pleas in this regard have not been given adequate consideration by the Commission.

While growers of cotton and foodgrains in Maharashtra are being adversely affected as mentioned above, on account of the policy to fix a uniform support price for the country as a whole, a departure from this policy has been made in respect of sugarcane which has also adversely affected sugarcane growers in Maharashtra. Maharashtra is one of the major producers of sugarcane in the country and has different agro-climatic tracts having different sugarcane yields as well as sugar recovery. The yields as well as sugar recovery in areas like Marathwada, Vidarbha and Khandesh are much lower than south Maharashtra. But even so, the entire State is being treated as a single zone for the purposes of fixing levy price of sugar. The sugarcane factories in these areas are, therefore, unable to run profitably thereby creating an imbalance in the development of the State. Some States like UP and Bihar have been divided into more than one zone for fixation of levy prices. But Maharashtra has been receiving differential treatment on this account. Difference in sugar recovery in Southern Maharashtra and Marathwada/Vidarbha/Khandesh is much more than the corresponding difference in different zones in either U.P. or Bihar. Despite these facts, our request to divide Maharashtra into three different zones based on agro-climatic considerations has not received sympathetic consideration with the result that interests of sugarcane growers have been adversely affected.

We also feel that in respect of certain agencies there is an over centralisation of powers which results in impeding the pace of development in the State. Under the present dispensation, the State Government is required to submit all power projects costing more than Rs. 5 crores to the Central Electricity Authority for their clearance. We feel that the clearance of the CEA should be dispensed with in respect of projects costing upto Rs. 10 crores. It is also our experience that the need for clearance by the Central Water Commission in respect of Irrigation and Hydro-Power Projects also delays the execution of projects in ordinately and it would be advisable if the CWC restricts its scrutiny mainly to the overall planning aspects, giving importance to the core concept of the project and its inter-State aspects only.

In short, there is a great need for a more realistic appreciation of the situation obtaining in the States on the part of the Central Agencies. Similarly, there is need for vesting more authority, which presently vests with some of the Agencies, in the State Government.

4.8 By and large, the All India Services have fulfilled the expectations of the Constitution makers. The present arrangements for the control of the All India Services are calculated to preserve the All India character of such services without detracting from the amenability to the control of the States when the officers work in connection with the affairs of the State, and thus appear to provide a reasonable and practical balance between the Union and the States.

4.9 As a matter of general policy, deployment of a Central Force in a State should be done with the consent of the State Government concerned. But keeping in view that Article 355 imposes a duty on the Union Government to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution, the view taken by the Administrative Reforms Commission appears to be correct. In the matter of external aggression, in particular, the Union Government is in the best position to make a proper assessment.

4.10 The State Government does not agree with the suggestion to transfer the subject from the Union List to the Coucurrent List. While the subject should continue in the Union List, there is clearly a need for effective consultations between the Union and the States to ensure that adequate time is devoted to programmes in the local Language as also to programmes concerning local culture and problems.

4.11 The Zonal Councils have not been meeting either frequently or regularly so far. The State Government is of the view that the Zonal Councils should meet regularly and more often, and that items on which there is broad agreement in the meetings of the Zonal Councils should be actively followed up by all concerned, and in particular by the Union Government, to ensure expeditious implementation.

4.12 It is true that the Central Council of Health and the Central Council of Local Self Government are functioning satisfactorily and have proved to be successful in achieving co-ordination and co-operation between the Union and the States. However, it is doubtful whether establishing such Councils in respect of every subject of common interest would prove useful. This Government is of the view that any problem between Centre and State or State and State, should be resolved by mutual discussion and if necessary, with the mediation of the Centre in respect of a dispute between two States and it is only as a last resort and dire necessity that such a Council be established in respect of a particular issue. There is no need for a permanent Council as such.

PART V

FINANCIAL RELATIONS

5.1 The state Government is of the view that the Constitution-makers could not visualise the socio-economic changes that would occur, the growth in population and consequent strain on the finance of the State Governments, inflation, and the insufficiency of finance of the State Governments to fulfil the responsibilities cast on them under the directive principles. On the other hand, they must have thought that the sources of finance of the States would be sufficient. That is why only Income Tax was made compulsorily shareable whereas in the case of Union Excise Duties sharing of the proceeds is merely permissible. The Constitution makers evidently provided adequate sources of revenue for the Centre so that there should be a strong Centre and also to enable the Centre to give grants-in-aid to States needing assistance. At the time of framing the Constitution there was no idea of plan schemes. Thus, what the Constitution-makers aimed at was making available resources to the States primarily through distribution of income-tax and union excise duties, and secondarily through grants-in-aid to the States needing assistance. This implied that even the advanced States were eligible for grants-in-aid for particular schemes or problems.

Increasingly, the successive Finance Commissions have tended to give greater weightage to different factors of backwardness in their horizontal distribution of resources among the States, to the progressive detriment of the so-called richer or well-off States. While this is unexceptionable in principle, larger assistance to the relatively weaker States should not be at the cost of the so-called well-off States and through gradual diminution in their shares. For, these States also have their own peculiar problems which too require considerable expenditures and outlays. For instance, Bombay is the premier agglomeration in the country and attracts people from all over the country in search of employment. This places a heavy strain on the civic, transport and other services of the City which are already stretched beyond their capacities. The order of investment required in the City of Bombay is beyond the scope of the State Government and hence the problems of Bombay should be viewed as national issues. Besides, even the supposedly advanced States have large parts of the State which are comparable in backwardness to those of financially weaker States.

Secondly, the Finance Commissions have as a matter of course denied grants-in-aid to States which, in their assessment, have revenues surpluses even before devolution of funds recommended by them. A normative approach in the estimation of resources by the Finance Commissions reveal misleadingly large surpluses for State like Maharashtra which do not really exist. To deny them any grants-in-aid, therefore, is doubly unfair.

There is, therefore need for change in the attitude of the Finance Commissions and the Centre towards the so-called richer States. A deceleration in the pace of development of these States is not in the national interest, for even a modicum of investment in these States will generate substantially larger resources for the nation, which would ultimately enlarge the share of the weaker States.

5.2 There is no denying that the dependence of the States on the Centre is on the increase. The remedy does not merely be, is bringing more Central taxes under the scheme of devolution. What is more important is financial discipline both on the part of the Central Government and the State Governments. The State Governments should also adopt national policies like population control and strive for optimal utilization of resources and adequate returns on investments. Factors like natural calamities including drought, inflation, and

the large burden on account of servicing of central loans cast a great strain on the State Governments resources. Upward revisions in administered prices by the Centre and persistent inflationary trends in the economy also place considerable strain on States' resources. While the resources of the Centre are sufficiently elastic to absorb these effects, the impact of these on States' resources is very adverse. It is thus necessary to take all steps to contain inflation as otherwise it creates a vicious circle, and the State Governments have to bear the burden of additional dearness allowance instalments in addition to increase in expenditure on the items required by it. The State Government therefore feels that it is necessary to bring into the divisible pool the Corporation tax as it is not different from Income-tax but which has shown greater elasticity. Customs duty which is the second largest source of revenue for the Centre also needs to be shared with the States. Combined with sharing these elastic sources of revenue with the States, there is pressing need for greater fiscal discipline both by the Centre and the States.

5.3 While the need for a strong Centre cannot be overemphasized, regional imbalances cannot be reduced through Central intervention alone. The States should also make effective contributions in this direction through better administrative procedures, greater financial discipline and optimising the use of resources. Larger transfer of resources from the Centre to the relatively underdeveloped States without a proper monitoring mechanism to ensure that the funds have indeed been used for the intended purposes will not meet the objective of reducing desparities. Reserving more resources for the Centre to enable larger discretionary grants or transfers to the poorer States at the cost of reduced allocations to the supposedly well-off States will only dampen the growth of States with well developed infrastructures capable of making significant and substantial contribution to national income. Reduction of disparities should not be achieved by a levelling down. Assistance to weaker States should aim at better exploitation and optimal utilisation of their resources without reducing the legitimate flow of funds to the comparatively developed States, which will only put a brake on their growth. National interest does not merely imply giving support to the poorer States; it is necessary that all States endeavour to make progress and the funds should be really used for developmental purposes and there should be strict financial discipline. The Centre should even consider giving bonuses or incentives to States whose finances are well-managed. The State Government is not in favour of giving more discretionary powers to the Centre to use the funds available with it for the development of the poor States. It will have an adverse impact on the richer States in their developmental activities which will not be conducive to generating more revenues for the Centre.

In this connection, it is also worth recalling that regional disparities exist not only between different States, but also within different regions of a State. Central intervention alone will not, therefore, result in reduction of regional disparities, without a conscious effort by the States themselves towards this end.

5.4 We are not in favour of subventions from the richer States to the Central pool under some principles. Already the shares of the so-called richer States in the devolution of funds recommended by the Finance Commission have been progressively coming down. To make subventions from the richer States into a central pool for distribution among the poorer States would, therefore, place the so-called richer States double at a disadvantage.

There can be no two opinions about the desirability for better control over expenditure, both by the Centre and the States. It may not however be correct to attribute the large budgetary deficits of the Centre in recent years to the devolutions of the Finance Commission or transfer of resources by the Planning Commission. Both the Finance and Planning Commission assess the resources of the Centre and take care to see that the transfers recommended by them do not leave the Centre with a deficit.

Deficit financing on a large scale in order to transfer resources to the poorer States for reducing inequalities may not be desirable. Deficit financing for obvious reasons, has to be kept within acceptable limits; otherwise it will only accentuate the already persistent inflationary trends in the economy.

5.5 First, our State is of the opinion that it is neither the function nor the objective of either the Finance Commission or the Planning Commission to bridge the gap in resources between the poorer and the richer States. No doubt it is the function of the Finance Commission to assess the resources and requirements of funds on the non-plan side and to recommend adequate devolutions so as not to leave the requirement of funds uncovered. While doing so it may keep the national policies and objectives in view and the need for reducing regional imbalances. The Planning Commission is concerned with assessing the developmental needs of State and to provide adequately for these within the overall constraint of resources and the desirability of reducing regional disparities. But it is not the function of either of these bodies to reduce the gap in resources between the poorer and richer States.

The tax efforts made by the States as well as efficiency and economy in management is the basic need for all the States. Mere giving more grants-in-aid to the poor States, may not solve the problem. It is necessary that State should optimise returns by proper implementation of developmental and non-developmental schemes.

As regards share of taxes, the States which yield more revenue should also get a reasonable share. Even the so-called richer States have their own obligations and liabilities to fulfil. They generate more resources for the Central Government, particularly by way of Income Tax, Union Excise Duty and Corporation Tax.

It is difficult to formulate any objective criteria that should be used for determining the share of taxes, plan assistance and non-plan assistance for each State. Corporation Tax and the Custom Duty may be brought in the divisible pool. Further 50 per cent of Income Tax, Union Excise Duty, Corporation Tax and Custom Duty may be earmarked as the share of the States.

As regards the distribution of Income Tax among the States, a weightage of 45 per cent be given to the factor of contribution as measured by Income Tax collection while the balance of 55 per cent be distributed in proprtion of States population.

As regards Union Excise Duties, the distribution of the States share should be on the following basis :—

(i) 60 per cent should be given on the basis of the population fact or with weightage of 30 per cent for urban population and 70 per cent for rural population.

(ii) 20 per cent weightage should be given to the economic backwardness of the States as measured by the product of distance of per capita income of the State from that of the State with the highest per capita income and the population of the State as per formula of the Sixth Finance Commission.

(iii) A weightage of 10 per cent each should be given to the factors of performance in regard to the population control programme and the mobilisation of small savings.

As regards plan assistance, this may be determined by the Planning Commission. Giving of more funds by way of devolution will create larger surplus. Some States will, therefore, have need for lesser plan assistance. However, the debt burden on the States should be reduced by altering the existing proportions of the grant and loan components to include more of grant. This may be more liberal in the case of the special category States. The Small Savings loans should be treated as loans in perpetuity.

The revised Gadgil formula for Plan Assistance operates to the disadvantage of States like Maharashtra and we feel that there is justification for reverting to the original Gadgil formula. Our replies to question No. 6.8 and 6.9 may be referred to in this connection.

Our State is of the opinion that the Centrally sponsored schemes should be wholly assisted by the Centre and that whenever such a scheme is abolished or transferred to the State as non-plan, an amount of equal to the level of committed expenditure reached at that time, should be transferred to the States till the scheme is continued.

We are also of the view that non-plan assistance, particularly discretionary grants by the Centre should be the absolute minimum. If more of the elastic source of revenue of the Centre are brought within the divisible pool and these are equitably distributed among the States the need for non-plan assistance through grants-in-aid and discretionary assistance by the Centre would be minimal.

5.6 We do not see any special merits in the creation of a special federal fund. For, even if such a fund were created there should be a machinery for deciding the allocations from the fund. In devising the principles of distribution from the fund the agency administering the fund will be confronted with the same problems and compulsions that are today faced by the Finance Commission and Planning Commission. In our opinion the existing institutional framework should be adequate.

5.7 Our country has a federal structure with the federating States forming an organic whole. Much thought has gone into the allocation of taxing powers of the Centre and States while framing the Constitution having regard to the respective roles and responsibilities of the Centre and the States. We would not advocate any structural change in the taxing powers as it may undermine the effective functioning of the Centre and the States.

5.8 The State Government is of the view that the existing arrangements need not be changed. Any surrender of more taxes to the Central Government will adversely affect the federal system. It is also necessary that the States should have powers in respect of certain taxes. Otherwise, the position will be that the States will have no major source for mobilising additional resources. It will also mean that there will be complete dependence of the States on the Centre in respect of major sources of revenue. The experience of the States in respect of additional duties of the excise imposed by the Government of India on the surrendering of the power of the States in respect of Sales Tax on sugar, tobacco and textiles has not been very happy. The view that there should be a control of Council of Central and States' Ministers does not seem to be a practicable proposition. There could be differences of opinion and this will lead to dead-lock and indecisions. Besides, it may be difficult to maintain secrecy.

5.9 The State Government does not agree with the approach suggested in the question. The Finance Commission and Planning Commission will necessarily have to be two separate bodies. The Finance Commission has to play an important role in respect of devolution and grants-in-aid. The functions of the Finance Commission are of a statutory nature while those of the Planning Commission are of a non-statutory nature and there is no need for any change in the existing system. It is not clear what is meant by a permanent Finance Commission and whether there should be one body for an indefinite period. It is also not clear how the members of the Permanent Finance Commission will be constituted. As has been the experience, the various Finance Commissions have held different views over the same matters and from this point of view, it is not desirable that there should be a Permanent Finance Commission. In any case, the role of the Finance Commission will have to be limited as at present. The role of the Planning Commission is altogether of different nature. Whatever practicable difficulties are experienced the remedy is to try to find acceptable solutions. The Finance Commission and Planning Commissions have complementary roles to play which will have to take note of the changing

circumstances. Having a permanent Finance Commission will introduce unnecessary rigidity into the system.

5.10 It is difficult to make a definite statement as to how far transfers both statutory and discretionary from the Union to the States, on the advice of successive Finance Commissions or otherwise, have promoted efficiency and economy in expenditure. It, however, appears that there is still much scope for economy in expenditure and as regards efficiency there can be varied levels of achievement. There can be no doubt that there is scope for more efficiency. However, as regards narrowing down the disparities in public expenditure among the States, it can be said that the transfers have narrowed down the disparities. In particular Grants-in-aid and the discretionary grants have to a greater extent contributed to the narrowing down of the disparities in public expenditure among the States. In this connection, it may be recalled that the last two Finance Commissions have recommended grants-in-aid to States for upgradation of standards of administration.

5.11 The State Government agrees with the view expressed in the above question. Strict financial discipline is required both at the Centre as well as in the States. The Government of India should be very strict in the matter of financial discipline and incurring of expenditure unmatched by the available resources and in respect of adoption of populist measures resulting in revenue deficits. There is possibility of laxity by some States in not adhering to financial discipline and in implementing progressive polices on the assumption that they will get grants-in-aid from the Finance Commission to fill the revenue gap as well as for upgradation of standards. The Government of India should keep a watch on the financial discipline by the States. In fact, our State strongly favours the grant of some incentive or bonus to the States which manage their finance prudently. It is also necessary for States to take progressive measures including measures which ultimately bring in more revenue. Otherwise, it will mean that the States which take progressive measures and do their best for increasing the revenue are penalised in that they do not get any grants-in-aid and the poor States get money by way of grants-in-aid etc. even though they do not adopt financial discipline and progressive measures but take up populist schemes. Finance Commissions and the Planning Commission should keep this aspect in mind while deciding on transfers of resources to States.

5.12 We agree with this view. In fact, we would go a step further and say that the maximum possible transfer of resources should be through tax-sharing thus minimising the need for even a supplementary rule for grants-in-aid.

5.13 The Government agrees with the principles enunciated by the Seventh Finance Commission relating to Grants-in-aid under Article 275. This implies that any category of States is eligible for Grants-in-aid and this is what the present provision indicates on a plain reading. The Seventh Finance Commission has, however, observed that in regard to Grants-in-aid to cover fiscal gap, consideration should be given to the tax efforts made by the individual States in relation to the targets for the Plan, to economies in expenditure, consistent with efficiency and the prudent management of public sector enterprises. The State Government views that these observations of the Seventh Finance Commission should be adopted.

In this connection, we would reiterate our observations in replies given elsewhere in the questionnaire that even the so-called well-off States should be eligible for grants-in-aid. For, as pointed out elsewhere, State like Maharashtra have their own peculiar problems because of urbanisation and the choking congestion in the city of Bombay, whose civic services and amenities have already been stretched to the limit. Unless the Government of India views this as a national problem and grants special funds it would be beyond the means of the State Government to tackle this issue.

5.14 The State Government is satisfied about the logic of claiming that the yield from Special Bearer Bond Scheme and the revenue accruing from raising administered prices of items like petroleum, coal, etc., should properly come under the divisible pool of taxation.

As regards Special Bearer Bond Scheme, in order to map up part of black money circulating in the economy, the Government of India issued Special Bearer Bonds which were on sale from 2nd February 1981 to 30th April 1981 and again from 1st December 1981 to 9th January 1982. The total sale of the bonds amounted to Rs. 964 crores. normally these incomes would have been subject to income tax and the net proceeds shared with the States in the ratios prescribed by the Finance Commission. In view of this, the State Government is of the view that the yield from the Special Bearer Bond Schemes should come under the divisible pool.

The Centre is raising the administered prices of excisable goods instead of raising the excise duties on commodities like petroleum products, coal, cement, etc. This has been done to mobilise more resources for the Union. In the case of petroleum products the last major increase in excise duties was made in the Budget of 1979-80. Thereafter, the Union Government has only increased their prices in June, 1980, January 1981 and July 1981. The total annual yield due to those increases is estimated at over Rs. 4,000 the benefit of which has not accrued to the States. Had this revenue been mobilised by way of excise duties the States would have received a larger amount as their share in excise. Not only are the States losers on this account but they are also adversely affected as the burden on account of increase in the prices also falls on them. Therefore, any measures adopted by the Centre need to be considered carefully from the point of view of the States also and the Centre should not look after its interests alone to the detriment of the interests of the States.

5.15 The savings of the community are mopped up by the public sector mainly through small savings, provident funds, market borrowings (including bonds and debentures) and through

nationalised banks and financial institutions including nationalised insurance companies. But except in the matter of small savings and provident funds the share of the States in the savings so mobilised are not related to the performance of the States in mobilising the savings or the collections made from a State. We feel that there should be rational criteria in distributing among the States the market borrowings and also for distributing the savings mobilised through institutional agencies and nationalised banks and in deciding on their investments in developmental activities in the different States.

In our opinion there is scope for increasing the States' share in small savings collections from 2/3 of the net collections at present to say 3/4 of the net collections. Since the loan assistance to States is on net collections the repayment liability by the Centre is already taken care of.

Distribution of market borrowings among States could be related among other things to the repaying capacity of States. There is also a case for need-related distribution of funds invested in developmental activities by the nationalised insurance companies.

5.16 The Finance Commission also look to the requirements of the Centre before making their recommendations about devolution of funds from the Centre to the States. The responsibilities of the Centre are less though they are of an important nature. It is the States which have to shoulder major responsibilities for the development and welfare functions like irrigation, power, agriculture, education, health, social welfare, etc. The States responsibilities are ever on the increase. The States, resources are inelastic and the taxation measures by the Centre from time to time create conditions which make it difficult for the States to take recourse to additional resources mobilisation. All the developmental plan schemes of the States do not yield additional revenue and at the end of the plan period the State Government have to bear the committed expenditure also. Maharashtra State has mainly to depend on rains and several of the districts are drought prone. During drought the State has to incur large expenditure and further the irrigation and power position also are adversely affected. State revenues are also affected. All these put considerable strain on the resources of the State. Repayment of the Central loans also casts a great burden on the State. The debt relief given by the Finance Commission to this State is very meagre. On the other hand, the Centre is better placed than the States with its elastic revenue. It is extremely difficult for the the States to contain their expenditures within their resources under uncertain conditions on account of inflation, natural calamities, etc.

5.17 The State Government agrees that periodical review of the problem of growing indebtedness of the States is necessary. No doubt the Finance Commissions, recommend debt relief but these recommendations do not go far enough in the case of many States. Thus periodical recommendations regarding debt relief alone are not sufficient. A more fundamental approach is necessary. The loan component in the transfer of resources to States should be minimal. There is hence need for altering the proportions of loan and grant components in the plan assistance to States. Further the Centre should pass on a greater share of the external assistance received by it for the externally aided projects of the States. The additional plan assistance given to the States on this account should also reflect the highly concessional terms at which the Centre receives the external aid. Small savings loans should also be treated as loans in perpetuity as recommended by the Seventh Finance Commission. Unless the problem is tackled at the root, mere periodical reviews will not relieve the increasing burden of debt servicing cast on the States.

5.18 Yes, we agree with the view that the States' capacity and freedom to borrowing has been unduly restricted because in the allocation of open market borrowings the States' capacity or needs have not been taken into account. The following paragraphs explain the view more vividly.

The figures of open market borrowings and Plan Outlays since the Third Plan have been as follows:—

Plan period	Market borrowings (Plan Outlays in brackets); (Rs. in crores)		Percentage of OMB to Plan Outlay		Percentage share of Centre and State Governments in borrowings	
	Centre	States	Centre	States	Centre	States
Third Plan .	307 (4,412)	516 (4,165)	7	12	37	63
Fourth Plan .	1,567 (8,783)	773 (7,367)	18	14	60	40
Fifth Plan .	3,746 (20,586)	2,135 (18,717)	18	11	64	36
Sixth Plan .	15,000 (48,900)	4,500 (48,600)	31	9	77	23

It would be observed from the above table that the percentage share of States in the market borrowings which was 63 per cent in the Third Plan had come down to as low as 23 per cent in the Sixth Plan even though there had been no substantial difference in the Plan sizes of the Centre and States during these periods. Similarly, the percentage share of OMB to the Plan Outlays in respect of States had come down from 12 per cent in the Third Plan to 9 per cent in the Sixth Plan whereas in respect of the Centre, the same has gone up from 7 per cent in the Third Plan to 31 per cent in the Sixth Plan. It would thus be seen that *ad-hoc* methods had been adopted in allocation of the open market borrowings between the Centre and States. The Eighth Finance Commission also was satisfied that the States are being given smaller share in the total market borrowings and has, therefore, suggested in Chapter II, para 2.11 of its report that the existing pattern of distribution of total market borrowings needs correction and share of States ought to be raised.

As regards the distribution of open market borrowings amongst States, the capacity of each State has not been taken into account. Upto the

Fourth Plan, the allocation of market borrowing for each State was *ad-hoc*.. From the Fifth Plan onwards, the only change made was stepping up each State's quota by 10 per cent per annum over the borrowing quota of the previous plan.

It would thus be observed from the above account that there have been no rational principles adopted for allocation of open market borrowing between the Centre and States and also in the *inter se* distribution amongst States. We, therefore, suggest the following rational principles in this respect.

(i) The allocation of open market borrowings between the Centre and States should be made in the proportion of Plan sizes of the Centre and States.

(ii) The *inter se* distribution of open market borrowings amongst States should be in the proportion of mobilisation of savings made by different agencies in each State.

5.19 We are of the view that in respect of externally aided projects, the entire external aid which is project-tied should be passed on fully to the State Government instead of only 70 per cent as is being, done at present. The said assistance may also be passed on at the same rate of interest as is being charged by the external agencies plus a nominal service charge. The period of repayment may also be decided keeping in view that fixed by the external agency. For example, in the case of IDA assistance, the assistance carries no interest but only a service change varying between ½ per cent and 1½ per cent repayable in 50 years. Other external assistance is also received on generous terms (though not as liberal as IDA assistance) whereas the States are required to repay the plan assistance in 15 years. We feel that there is ample justification for Centre to liberalise the terms of assistance to the States.

5.20 The Constitution of the Australian Loan Council or details of its functioning are not available. In the book "World Constitutions" by Vishnoo Bhagwan and Vidya Bhushan, there is a passing reference to Australian Loans Councils. The information regarding Australian Loans Councils given in this book is as under:—

"Government borrowings became an important Source of revenue in Australia. In view of this, a federal agreement was concluded in 1927 between the States and the Federal Government and an Australian Loan Council was created. Though the States have voting majority on the Council, the federal authorities can, veto a loan Council decision and thereby influence public finances of the States."

Thus it is clear that because of veto power, the loan Council if set up on Australian pattern will not serve any useful purpose.

The purpose of the Council as mentioned in the question is, however, limited viz. fixing the borrowing limits of principles approved by the National Development Council. This means that the Council will have no say in deciding the principles of distribution. It is felt that such council with a limited purpose will not serve any useful purpose. It is necessary to lay down certain principles for distribution of total O. M. B. between States and the Centre and also in regard to *inter se* distribution among the States and thus to stop the present practice of *ad-hoc* distribution. This Government is of the view that instead of Loan Council, a Committee consisting of officers of the Centre and Finance Secretaries of all or some major States may be set up for formulating the principles for distribution of O. M .B. The recommendation of the committee may be placed before N. D. C. for approval.

As regards the suggestion about improving the working of R. B. I. in the context. of borrowing by States and the Centre, at present R. B. I. does not play any role in the matter of deciding allocation as the limit of *net* borrowings of each State is fixed in the meeting between Deputy Chairman, Planning Commission and State's Chief Minister for finalising the size of the plan. Normally 10 per cent or 20 per cent step up is allowed over the net borrowings of the previous year. Once the State's net borrowings and determined, the States intimate to Government of India its internal distribution between State Government and various autonomous bodies. The distribution of net borrowings made by each State is communicated by Government of India to R. B. I. which in turn works out the amounts of Gross borrowings after adding to net borrowings the amount of repayment due in the year and indicates the amount to be notified. The R. B. I. thus plays a limited role of co-ordination and this Government may not have any suggestion about improving of the working of R. B. I. in this context.

5.21 The ways and means limits of States with the R. B. I. are intended to provide a cushion against temporary imbalances between the flow of receipts into the State coffers. and the pace of expenditure. Persistent drawals on the ways and means limits and even continuing overdrafts arise when the imbalance between receipts and expenditure is not a temporary one but is more pronounced.

There could be several reasons for this. To give a few, first States could be taking on more ambitious outlays than the resources permit and in this process even treating the ways and means limits and overdrafts on the R. B. I. as a resource rather than a temporary accommodation. Secondly, a large number of unbudgeted expenditure may be allowed during the course of the year, including additional instalments of D.A. for which adequate provisions may not have been made but which become necessary as a result of persisting inflationary trends in the economy. Thirdly, there may be emergent expenditures required to be incurred because of severe drought or heavy floods or some other emergency. Even if Central assistance is received for this purpose it often falls considerably short of the expenditures incurred by States. Moreover, the expenditure has to be first incurred on an emergency basis, whereas the Central assistance comes later. Fourthly, there is sometimes a time-lag of few months between the flow of funds on

centrally sponsored schemes and the incurring of expenditure. Fifthly, there is no denying a certain laxity in financial discipline among the departments and State undertakings and enterprises which do not give the expected returns. Sixthly, quarterly payments by States to the Centre on payment of interest and repayment of Central loans puts a heavy pressure on the ways and means position during certain months as the receipts may not show a corresponding spurt during those months. This is more so in the month of April when the receipts are at a low ebb. The ways and means cushion may not therefore be adequate during those months.

No doubt the normal ways and means limits were doubled in July 1982. But this by itself will not eliminate the occurrence of overdrafts or persistent and continuing drawals on the ways and means limits as long as the fundamental reasons mentioned above continue to exist. Besides, the ways and means limits were determined with reference to the revenue expenditure of States in a particular year. But the revenue expenditures as also the total expenditures rise steadily from year to year, while the ways and means limits continues to be the same. For instance, the total expenditure of Maharashtra when the normal ways and means limits were doubled in 1982 was Rs. 8,799.40 crores whereas the estimated expenditure for 1985-86 is Rs. 10,178.64 crores. There is thus need for periodic revision of the ways and means limits.

5.22 It is difficult to pass any general remark that the States are not exploiting adequately their own sources of revenue. The sources of revenue of the State Governments are not elastic and it becomes difficult every year to take recourse to additional resources mobilisation. In fact, it is extremely difficult now to impose additional taxation. Whether or not the States are not fully exploiting their own resources of revenue may be left to the Finance Commissions to decide through the Finance Commission Division set up in the Finance Ministry of the Government of India.

Sales Tax is the only major source of the revenue of State Governments. The State Governments have surrendered their right to the Centre in respect of Sales Tax on textiles, tobacco and sugar. The Central Government has, however, not fulfilled its commitments in this respect. The sources of revenue of the States as provided under Articles 268 and 269 are at the hands of the Government of India. Taxation in respect of some of the items mentioned in Article 269 have not been levied by the Central Government. The State Governments with their inelastic resources are in a difficult position to raise more revenue by way of taxation.

5.23 It will be difficult for the State Government to make any observation on the view that the Centre is not assessing and collecting all revenues that it can and should do. We leave it to the Central Government to do its best in this direction.

It is necessary that the public sector undertakings should be run in a proper way and periodical reviews about their performance should be undertaken. Unless this is done the expected returns may not be achieved.

As regards leakage in Central taxation, the State Government has no comments to make in the absence of material to substantiate that there is leakage in Central taxation. It is for the Central Government to take adequate precautions to see that there is no leakage in Central taxation.

5.24 The State Government agrees that it will be a healthy convention if the Union Government ascertains the views of the State Governments and gives them due consideration, before moving a bill to levy or vary the rate-structure or abolish any of the duties and taxes enumerated in Articles 268 and 269. However, it will not be possible to state whether the said procedure will be conducive to the stability of the State Finances as such.

5.25 The State Government is of the view that Article 269 of the Constitution should be better exploited to augment the resources of the States. The State Government is of the view that the steps indicated below may be undertaken :—

(1) Tax on railway freight may be levied.

(2) Terminal Tax on passengers carried by air at the rate of 1 per cent of the air fare on internal and international flights and also a terminal tax on air-cargo at the same rate may be levied.

(3) If the grant at present being paid in lieu of tax on Railway Passenger Fares is not periodically raised adequately to compensate the loss of revenue to the States, then the tax on Railway Passenger Fares may be reimposed at an appropriate rate.

(4) The luggage and different varieties of parcels carried by railways may be suitably classified based on the principle of cost of service and value of service broadly on the lines suggested by the Railway Tariff Enquiry Committee (1980) and the tax be levied on freights at suitable rates.

(5) A tax on advertisements published in the newspapers and journals may be introduced. The Eighth Finance Commission has observed that there is scope for raising revenue through such a tax.

(6) The rate of Central Sales Tax which is at present 4 per cent may be raised to 5 per cent.

5.26 The State Government is of the view that a grant based on 10.7 p.c. of the total non-suburban passenger earnings, which would have been the tax component had the tax not been repealed should be given, and this should be worked out on the basis of prospective earnings. The State Government's estimate on this basis is that the States would be eligible for a grant of Rs. 125 crores per year. The 8th Finance Commission has accepted the principle that grant should be given at 10.7 p.c. of the non-suburban passenger earnings. This recommendation should be accepted by the future Finance Commissions. The Eighth Finance Commission has recommended a grant of Rs. 95 crores per year for each of the year 1984-85 to 1988-89 based on the figures of

the non-suburban passenger earnings which were available upto and for the year 1981-82. The Commission has not suggested an annual increase in the quantum of the grant in view of the difficult financial position of the Railways. The Government of India has accepted the recommendation of the 8th Finance Commission and has observed that the matter will need to be referred to the Railway Convention Committee. The recommendation of the 8th Finance Commission will be implemented if accepted by the Railway Convention Committee. The State Government is, however, of the view that the grant recommended by the 8th Finance Commission should be paid without the condition of the recommendation being accepted by the Railway Convention Committee.

5.27 No comments.

5.28 Natural calamities generally fall into two categories *viz.* (1) situation caused by damage to crops by excessive rains, damages caused by floods, hail-storm, earthquake and fire, and (2) situation caused by drought.

As regards the natural calamities referred to at (1) above, the State Government is of the view that the present system is adequate.

As regards drought, the matter needs to be viewed from a realistic point of view. Maharashtra has several districts which are drought-prone. So also, when there is failure of the monsoon several other districts are also affected. 70 p.c. of the gross cropped area in Maharashtra is under rain-fed farming. 98 talukas of this State accounting for 1/3 of the gross cropped area have been identified as chronically drought-prone. Therefore, as compared to other natural calamities Maharashtra is more severely affected by drought and this situation has become a special problem for Maharashtra particularly when there is drought during successive years.

The Seventh Finance Commission recognised the undesirable effects of dislocation of finance of a State on account of relief expenditure. It also noted that during periods of drought, the State Budgets lose some of their normal revenue and the State economy suffers a set back. A large part of the Maharashtra State Plan is pre-empted by the irrigation and power sectors because of basic compulsions, and a substantial part of the remaining plan is committed to the provision of social infrastructure of an on going nature which lead to creation of services un-related to the type of employment works required for mitigating drought situation. Even in normal, seasons, in the drought-prone districts, the Employment Guarantee Scheme expenditure is higher owing to a larger turn out of labour and hence a substantial part of the Plan is absorbed by the Employment Guarantee Scheme. This becomes more pronouned when these districts are affected by drought. The main constraint, so far as drought relief is concerned, is that the plan programme relating to water supply is limited in its implementation to "difficult villages" identified some years ago, and it does not take into account the fact that in a year of drought when precipitation may be very low, even the so-called non-difficult villages become difficult. The provision of drinking water being of the highest priority the State Government cannot shirk its responsibility in this regard.

Under the present formula only advance plan assistance is available upto the extent of 5 p.c. of the Annual Plan outlay and there is no additionality from the Centre. Additional Central assistance becomes available only if the total relief expenditure during the particular year is expected to go beyond the 5 p.c. limit. In the event of expenditure spilling over the 5 p.c. limit, the Central assistance is in the form of 50 p.c. grant and 50 p.c. loan, While this formula covers expenditure on employment generating works and such other works of a plan nature, as permanent measures for drinking water supply, and measures to recoup the loss of, or augmentation of agricultural production by intensifying some of the on-going schemes or starting new schemes, it does not cover non-plan schemes. The expenditure on non-plan items like emergency water supply by tankers and bullock-carts and supply of fodder, medical care, doles, etc. has to be borne by the State Government itself.

The State Government is of the view that the linkage between expenditure and advance plan assistance should be done away with and the additional expenditure occasioned by scarcity relief which cannot be met by the existing plan programmes and margin money, should be financed through Central assistance by way of grant to the extent of 75 p.c., the remaining 25 p.c. being borne by the State Government. Further, drought relief assistance should also cover non-plan expenditure like emergency drinking water supply, fodder, doles, medical care etc. So also, while providing assistance for relief, the entire expenditure on relief works including the expenditure on machinery, skilled labour, materials, transport, etc., should be taken into account along with wages of non-skilled labour. Unless substantial assistance is given by the Centre in respect of situation caused by drought, the State economy will suffer and this will be more so if the drought situation continues for successive years.

As regards second part of the question, it is necessary to ensure that relief assistance is put to optimum use. The Government of India, may call for returns from the State Governments and the Government of India officers may also visit the States for verification.

5.29 Regarding the setting up of National Loan Corporation (NLC) supported by a consortium of nationalised banks for the purpose of loan raising and loan utilisation for productive and economically viable projects, the creation of such an independent situation in the context of the general control on the nationalised banks directly by the Government of India or through the Reserve Bank of India does not seem to be called for. The Reserve Bank of India indirectly controls the loan raising and the loan utilisation by the nationalised banks. The banks should have the requisite freedom/autonomy to appraise the projects referred to them for assistance and should not be fettered with controls from Corporations like N.L.C.

In principle, there seems no objection to setting up a National Credit Council (N.C.C.) for assessing credit resources and growth possibilities. The Council should not however determine once for all the share of the States as a whole. This should be left to be determined with reference to the needs of development of each State particularly after taking into account the benefits or otherwise they have derived in the form of revenue gap grants from the Union. The repaying capacity of the States should also be considered as one of the factors for inter-state allocation.

In principle, the State Government has no objection to the setting up of National Economic Council with proper and adequate representation to each State thereon. Apparently, such an Economic Council will consider the resources of the State, infrastructural facilities and the existing natural facilities like international ports, Airport, etc.

5.30 The aspect who collects the fund and how the collected funds should be distributed are also very relevant even though all funds flow from the public. The State Government agrees that it is very important that the funds are spent prudently and the benefits should go back largely to the people.

5.31 (a) The State Government agrees that periodical assessment as regards the expenditure of the Union should be undertaken. This will satisfy the States and the public.

(b) The State Government is in general agreement that the States which complain of meagre developmental resources should not indulge in expenditure which is not strictly justifiable on economic grounds. This will make available some resources for developmental purposes. Strict financial discipline is called for so that there will not be any criticism against these States in the matter of grants-in-aid to them by the Finance Commissions.

(c) The State Government is of the view that it is not necessary to have a permanent National Expenditure Commission to assess the nature and quality of the expenditure and the need for revenue resources for both the Centre and the States. It will not be a practicable proposition to have such a Commission as it might lead to controversies and arguments about the decision on the expenditures involved. There should, however, be a national consensus on the need for optimal utilisation of resources consistent with the national policies and objectives and for maximising returns on investments.

5.32 The State Government is of the view that the present system should continue.

5.33 Voucher audit is absolutely necessary as it acts as a check on malpractices. Evaluation audit may also be introduced selectively and in respect of important schemes, as it will be conducive to proper and efficient implementation of the schemes. However, this will evidently necessitate creation of suitable additional staff. A beginning can be made in this respect and the results evaluated with reference to the expenditure on the additional staff.

5.34 The State Government is of the view that the Parliament has conferred sufficient powers and enjoined adequate duties on the Comptroller and Auditor General in the matter of maintenance of accounts and conducting audit of expenditure.

5.35 The State Government is satisfied that the reports of the Comptroller and Auditor General are comprehensive enough and reasonably accurate.

5.36 We are of the opinion that it is not the function of the Public Accounts Committee of the Parliament or of the State Legislatures to exercise control over expenditure. Their function is primarily to see that the monies sanctioned by the Parliament or by the State Legislatures as the case may be for different purposes have been properly utilised. Their control is therefore, more in regard to the proper utilisation of the funds sanctioned rather than over the expenditure of the Government.

5.37 It is to be stated that the Estimates Committee of this Government acts as a watch-dog to give useful legislative and administrative advice to the administration.

5.38 In reply to Question No. 5.31 the State Government has expressed the view that an Expenditure Commission is not needed.

5.39 It is necessary that there should be proper monitoring of utilisation of grants-in-aid given by the Government of India for implementation of specific schemes. A few States had represented before the 8th Finance Commission that the need for clearance of plan of action by the Central Government in respect of schemes for upgradation for which grants-in-aid is given by the Commission to certain States is a source of avoidable delay. The Commission considered the matter and viewed that simplicity in monitoring should be the guiding principle. The Commission suggested that at the Government of India level there should be an inter-ministerial Empowered Committee for monitoring the progress of utilisation of grants. The Committee should be empowered to alter the physical targets contained in the upgradation grants within the amounts specified by the Commisssion. The Committee would be competent to transfer the grants from one scheme to another. The Commission also suggested that members of the Committee should visit the States and make random inspection of the works under construction and the offices set up out of the upgradation grants. The Commission also proposed that at the State level a similar State Level Empowered Committee under the Chairmanship of the Chief Secretary or a very senior officer should be constituted. The Commission recommended release of the amount of grants-in-aid in phases.

The State Government is of the view that the approach recommended by the 8th Finance Commission may be adopted in respect of major amounts of grants-in-aid of financial assistance given by the Government of India to the States in respect of other schemes also.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 In the economic and social planning the Centre and the States will have to play roles which are complimentary to each other. The Centre may have to continue to lay down the national priorities and objectives for various sectors of development. However, it is felt the State Governments should be given full freedom and autonomy to formulate their own plans suited to the local conditions in the State within the overall national policy frame.

To overcome the present shortcomings in planning relationship, it is suggested that—

(a) the State Governments may be actively involved while finalising the approach for the Five Year Plan. They may invariably be consulted before any policy decision about the plan programmes are taken by the Central Government,

(b) A meeting of the National Development Council should be held at least once every year,

(c) The National Development Council meetings may be preceded and followed by the meetings at the official level. The meetings at official level may be held as frequently as necessary.

(d) A Group consisting of representatives of Central and State Governments may be set up to ensure follow up action on the decision of N.D.C.

(e) The Planning Commission should lay down national targets only in vital sectors like Power, Major Irrigation etc.

(f) While scrutinizing the State Plan proposals, the Working Groups of the Planning Commission need not go into details of various programmes falling mainly within the State jurisdiction and may restrict themselves only to the important sectors like Power and Major Irrigation etc.

6.2 The Constitution of National Development Council on statutory basis may run counter to the principle of decentralised planning. A non-statutory advisory body will do equally well if it involves the States more meaningfully in plan formulation in its broad perspectives and then leaves it to the States to formulate their plans within the broad framework. Such an approach is more likely to be accepted by the States than a 'straight jacket' treatment by a statutory apex body. In the ultimate analysis, acceptance is of the essence which can be ensured with the help of a non-statutory body also.

6.3 The present composition of the Commission does not ensure adequate representation of the State Government in the matter of formulation of goals and objectives. The procedure followed by the Planning Commission for finalising the State's Plan is also unsatisfactory since it involves unnecessary detailed scrutiny of each and every scheme under each sector/sub-sector of development. It is the State Government's view, that after the plan priorities and goals are finalised in consultation with the States, they should be left to formulate their own plans within the broad framework.

6.4 The Second alternative suggested above appears reasonable. However, Administrators, representatives of the Central and State Governments should also be included in the Planning Commission. A suitable methodology may be evolved by the Planning Commission to ensure representation of at least major States on the Commission so that the State Governments' point of view will always be available to the Planning Commission, on issues of policy, objectives, goals etc.

6.5 The Planning Commission need not be an autonomous body but it may continue to be an advisory body assisting the Central and the State Governments in the formulation, and monitoring of the State Plans finalised within the broad framework indicated by the National Development Council.

6.6 Yes, there is a need to consider and incorporate national priorities in the State Plans. However by doing that it does not mean that the State autonomy has been compromised. States can prepare their own plans, keeping the broad national objectives in view but suited to their own peculiar conditions and requirements. The scrutiny of the State Plan proposals by the Planning Commission should be more directed to objectives and results than to the specific schemes. Within the broad sectoral outlays, the State should be free to formulate the schemes and incorporate them in the State Plan.

6.7 The Government of India provides the block Central assistance and also the Central assistance on account of externally aided projects. The entire assistance is passed on to the State Government in the form of 70 per cent loan and 30 per cent grant. This places an unduly large burden on the States. It is, therefore, suggested that the terms of assistance may be revised and the entire assistance should be provided as grant.

As regards assistance in respect of externally aided projects, it is suggested that the entire external aid which is project-tied should be passed on fully to the State Government, instead of only 70 per cent which is being passed on to the State Government as at present. The said assistance may also be passed on at the interest charged by the external agencies plus a nominal service charge. The period of repayment may also be decided keeping in view that fixed by the external agency. For example, in the case of IDA assistance, the assistance carries no interest but only a service charge varying between ½ per cent and 1½ per cent and is repayable in 50 years. Other external assistance is also received on generous terms (though not as liberal as the IDA assistance) whereas the States are to repay the plan assistance in 15 years. We feel that there is ample justification for the Centre to liberalise the terms of assistance to the States.

6.8 & 6.9 1. Under the present formula adopted by the planning Commission the central assistance for the plan is distributed to the States on an

agreed formula approved by the NDB. Of the total plan assistance, central assistance is given in four components, the first three relate to the (1) special category states, (2) to the hill and tribal areas and NEC scheme and (3) for Externally Aided projects. The fourth relates to the central assistance distributed to the 14 major states under which Maharashtra gets its share of central plan assistance.

2. In the allocation of the central assistance to the 14 states (1) 60 per cent is given according to population of 1971 census, (2) 20 per cent is given according to the per capita income only to those states which have their per capita incomes below the average of the 14 states, (3) 10 per cent according to tax effort and (4) 10 per cent for special problems to cover gaps in resources for financing inescapable outlays.

3. The method of allocation of central assistance thus takes into account the four factors of (1) population, (2) backwardness of the State adjudged by per capita income, (3) the tax effort and (4) the special problems of the State. We do not recommend any change in these four factors nor in the percentage allocation that is presently made by the planning Commission. However, the method adopted by the planning Commission in respect of the component distributed according to the backwardness of the State and tax effort requires a revision.

4. Under the present formula which governs the distribution of 20 per cent of central assistance according to per capita income, only the states which have per capita income below the average of the 14 States qualify for assistance. This does not appear to be fair as a State which is even marginally above the average is denied assistance under this component treating it as if it were a developed State. While the formula has to be such that more assistance should be given under it to more backward states, it should not deny assistance to States which are considered developed only in relation to the average. Perhaps from this point of view under the original Gadgil formula the distance of the State was measured from twice the average and not the average as at present and the amount of assistance was made proportional to this distance and the population of the State. In our view the present formula requires a review and a detailed examination made in the accompanying note would show that measuring distance from twice the average has certain technical merits which the present formula does not possess. We therefore recommend reversion to the original Gadgil formula in this respect.

5. In respect of the component of 10 per cent which is distributed according to tax effort, the present formula adopted by the Planning Commission is not arithmetically correct as it does not take into account the size of the State. In a separate note attached, this point has been thoroughly examined and it has been shown that in order to rectify this error it is necessary to give a weightage to the tax effort by the population of the State. Since this is a technical flaw in the present formula adopted by the Planning Commission it requires immediate rectification.

6. After this correction is carried out it would be seen that three of the four components would involve the population of the States for the purposes of determination of the size of their allocation. Since the containment of the population growth is a national policy, the present practice of using the 1971 population figures both for the purposes of distribution of the 60 per cent component as well as for assignment of the weights under the second and the third component should continue. However, where the calculation of the indicators like per capita State income or per capita tax effort is to be made on the basis of uptodate figures (of tax calculation and State income), this should be done using the population figures for the specific years that are considered.

6.10 There is no doubt that Central Programmes and the Centrally Sponsored Schemes such as family welfare, control of communicable diseases, removal of adult illiteracy etc. are necessary to attain effectively the desired goals. However, the States should be actively associated in the formulation of Centrally Sponsored Schemes so that the varying conditions from State to State can be taken into account and the schemes designed accordingly so that they could be effectively implemented. Similarly, there should be more flexibility in implementation of the centrally sponsored scheme and latitude is given to the States to make variation in the different components of the scheme considering the conditions prevailing in the State. New schemes may be introduced preferably at the beginning of a new plan. Any Central programme or Centrally Sponsored Scheme should be run at least for a period of 10 years and wholly assisted by the Centre. A review of every centrally sponsored scheme may be undertaken to determine impact of the scheme before the decision regarding its continuance or otherwise is taken. Whenever a centrally sponsored scheme is abolished or transferred to the State Non-Plan, an amount equal to the level of committed expenditure reached at that time on implementation of the programme scheme should be transferred to the States as long as the scheme is continued.

6.11 It is true that the system of monitoring and evaluation has not been effective. It is necessary that a proper system of monitoring and evaluation including concurrent evaluation is built up by the State Government and the Planning Commission to ensure proper and effective implementation of the plan programmes so as to achieve the desired goals within the specified period. A suitable machinery may be evolved for this purpose. The Central Government may provide the necessary guidance and also the financial assistance to the State Governments for this purpose.

6.12 Yes, the concept of decentralised planning is laudable, as an effort to involve peoples' participation and reduce regional imbalance, but the process of decentralisation should start from the State level itself before we go to the sub-state level. If the State themselves are not given reasonable amount of freedom in formulating their own plan, it is difficult to expect a further effective decentralisation below the State level. The present time schedule for finalising the State resources for

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the plan also precludes any effective decentralisation below State level because, there is hardly any time left for the Districts to prepare their plans before they are incorporated into the State Plan for submission to the Planning Commission.

6.13 The State Government is of the view that the State Planning Boards, consisting of experts, specialists etc. should have an advisory role in the matter of important issues of policy having a bearing on planning and development of the State. Its advice on such matters should be constantly available to the State Government on such matters for formulating the State Annual and Five Year Plans.

NOTE I

(Vide Answer 6.8 & 6.9; para 4)

Notation

1. Let x denote the per capita SDP of a State and $\bar{x}$ its all-State average and V(x) and S(x) the variance and standard deviation of x.

2. Let y denote the per capita allocation to a State and $\bar{y}$ its all-State average and V(y) and S(y) the variance and standard deviation of y.

The Measure of Variation

3. The reason for seeking to make the allocation progressive is the observed disparities or variation in the per capita SDPs. It is, however, necessary to note that the variation is understood as relative to the values of the x, *i.e.* the per capita SDPs, themselves. For example, if all x values increase by a constant amount, the variation as measured by V(x) or S(x) or range or any other measure will remain the same, but its importance will be a little less than before as the values have increased. To give an example if the x values are 100, 125, 150, 175 and 200 before, and they become 200, 225, 250, 275 and 300; the absolute measure of variation remains the same in both cases, but in relation to the values themselves — and that is important — variation is less in the letter series than before. Our appropriate measure of variation should be therefore the coefficient of variation *i.e.* CV(x) given by $CV(x) = S(x)\sqrt{\bar{x}}$.

The Requirements from the Formula

4. The objective of the use of the formula is to make the allocation 'progressive', the term progressive is to mean that y should be larger for smaller x and *vice versa*. This can be done in different ways and the degree of progressivity can also be varied.

5. The objective can be now translated into mathematical terms. Since y is to be related to x in the above manner

$$y = A - Bx \quad \ldots\ldots\ldots(1)$$

Where A and B, both positive are to be suitably determined and the correct extent of progressivity is given by

$$CV(y) = CV(x) \quad \ldots\ldots\ldots(2)$$

This ensures that for larger x, y will be smaller and *vice versa*. Secondly, the relative variation in y is made to depend upon that in x, so that the former remains always in step with the letter and any changes in the letter are automatically reflected in the former.

6. It is now easy to determine A and B. Squaring both sides of equation (2) and using simple statistical results we get

$$\therefore \left\{ CV(y) \right\}^2 = \left\{ CV(x) \right\}^2$$

$$\therefore \frac{V(A - Bx)}{(A - B\bar{x})^2} = \frac{V(x)}{\bar{x}^2}$$

$$\therefore \frac{B^2V(x)}{(A - B\bar{x})^2} = \frac{V(x)}{\bar{x}^2}$$

$$\therefore 2B\bar{x} = A \quad \ldots\ldots\ldots\ldots(3)$$

Equation (3) gives the relationship between A and B and substituting it in (1) we get

$$y = 2B\bar{x} - Bx$$

$$= B(2\bar{x} - x) \quad \ldots\ldots\ldots(4)$$

Thus, with any positive value of B, if y is determined by (4) it will meet out objective. We should note that y has to be positive for any State; therefore, the equation (4) will give us the values of per capita allocation so long as the *maximum* of the per capita SDPs is less than or equal to twice of their average.

7. Let us now denote by y_i and x_i the corresponding values for the i^{th} state and let P_i be its population. Let Y be the total amount of resource to be allocated, then from (4) we get

$Y = \Sigma Y_i = B\Sigma P_i\ (2\bar{x} - x_i)$, where Y_i = allocation to the i^{th} state giving

$B = Y/\Sigma P_i\ (2\bar{x} - x_i)$ and

$$Y_i = \frac{YoP_i\ (2\bar{x} - x_i)}{\Sigma P_i\ (2\bar{x} - x_i)} \quad \ldots\ldots\ldots\ldots(5)$$

The expression (5) gives us our desirable formula for allocation so long as the maximum of the x is less than $2\bar{x}$ The formula states that the allocation to a particular state is proportional to its population multiplied by its 'distance', where its distance is equal to the difference of its per capita SDP from twice the average per capita SDP of all States.

8. If in the formula (5) the distance of a state is measured from multiple of the average other than 2, there will be an unduly large progressivity in the per capita allocations if the multiple is less than 2. Conversly, if the multiple is greater than 2, the per capita allocations will be less progressive.

9. If the 'distance' is measured from the maximum of the per capita SDP, as the Finance Commission do, the progressivity in the per capita allocations has no relationship with the observed disparity in the per capita SDP of the States. The formula based on such a measurement of 'distance' therefore becomes inconsistent. Further the maximum is a relatively unstable statistic and it is not desirable to base decision on one single value like the maximum. If for some reasons the per capita SDP of the maximum valued state changes, it brings about a considerable variation in the allocations of all States especially of those States which are nearer to the maximum. It is, therefore, a sound statistical judgement to employ a more stable statistic such as the one based on the average which uses the per capita SDP values of all States, so that the result of the allocation exercise is not swayed by the circumstances in one particular State, and measure distances from it. Taking twice the average as the point from which distances are measured, has this advantage over the maximum value.

10. In the formula with distances taken from twice the average, the relative variation in the per capita allocations becomes exactly equal to the relative variation of the per capita SDPs. The smaller per capita SDP valued States get more and *vice versa*. Thus, the progressivity of allocations is kept in tact. Further if there is any change in the relative variations among the per capita SDPs, the relative variation in the per capita allocations follows suit and always maintains its equality with the former. While the formula based on distances measured from the maximum lacks this consistency, both progressivity and consistency are achieved by the formula based on twice the average. It is for this reason that the formula based on distances measured from twice the average is considered superior.

NOTE II

Note on the Formula for Allocation of Central Assistance to States for the Five-Year Plans

(Vide Answers 6.8 and 6.9; para 5)

Background

1. Under the present formula adopted by the Planning Commission, the central assistance for plan is distributed to the States on an agreed formula approved by the NDC. Of the total plan assistance, central assistance is given in four components; the first three relate to the (1) special category States, (2) to the hill and tribal areas and NEC scheme and (3) for IDA assisted projects. The fourth relates to the central assistance distributed to the 14 major States under which alone, Maharashtra gets its share of central plan assistance.

2. In the allocation of the central assistance to the 14 States (1) 60 per cent is given according to population of 1971 census, (2) 20 per cent is given according to the per capita income only to those states which have their per capita incomes below the average of the 14 States, (3) 10 per cent according to tax effort, (4) 10 per cent for special problems to cover gaps in resources for financing inescapable outlets. Maharashtra does not get share in the component based on per capita income. During the Sixth Five-Year Plan it got assistance only in the two components based on population and tax effort. The State Government has been promised assistance in the components of "special problems" in addition to the components of population and tax effort during the Seventh Five-Year Plan. It is the component based on tax effort which is the subject of study in the present note.

Allocation according to Tax Effort

3. The methodology followed by the Planning Commission in distributing the component is shown in Table No. 1. For the fourteen States, the receipts from state taxes are shown in Column (2), their population in column (3); the per capita tax receipts in column (4) after dividing the figures in column (2) by column (3). the per capita State income in column (5). The tax effort, is defined by the Planning Commission. as the ratio of per capita tax receipts divided by per capita state income and is expressed as a percentage and shown in column (6). The total of column 6 is 89.19. The amount of Rs. 430 crore, to be distributed among the 14 States on the basis of tax-effort, is distributed among them in proportion to the values in column (6), and the Statewise allocations are shown in column (7). To illustrate, the allocation against Maharashtra is equal to $\frac{(9\cdot01)\times(43)}{89\cdot19}$ i.e. Rs. 43·44 crore.

Defects of the formula

4. The first point to be noted is that though the ratio of per capita tax receipt to per capita State income is calculated, since both the numerator and the denominator are calculated on per capita basis, the population factor cancels out and what is obtained as an indicator of tax effort in column (6) is nothing other than the percentage of State's tax receipts to total State income. It is simple arithmetic that a percentage of a larger quantity and a percentage of a smaller quantity cannot be added. Since the figures in column (6) are percentages with different bases, it is an arithmetical error to add them to obtain their total (89.19) and calculate the relative share of every State using this total by the formula given above. This is what has made the methodology adopted by the Planning Commission incorrect.

5. It is not difficult to see the oddities which the procedure adopted by the Planning Commission logically leads to. In an extreme case if one imagines a one person state, the allocation under the present formula of the Planning Commission for such a state would be independent of the fact that it is a one person state. For if its tax effort ratio is 9 per cent, the allocation to this one person state will be about Rs. 43 crores; the same as that for Maharashtra. In other words, the allocation has no relationship with the 'size' of the State in terms of population.

6. To see that the oddity demonstrated by this example is actually at work in the allocation by the Planning Commission formula, as an illustration, the allocations to Haryana and Punjab may be seen. The population of Haryana is about 1/5th of Maharashtra (19.92%) and the tax effort is 6.97 per cent as compared with 9.01 per cent of Maharashtra; but the allocation to Haryana is Rs. 33.60 crore as against Rs. 43.44 crore for Maharashtra *i.e.* 77.35 per cent of that of Maharashtra. Similarly for Punjab whose population is about 1/4th of Maharashtra (26.70%) and the tax effort is 7.87 per cent, its allocation is Rs. 37.94 crore which is 87.34 per cent that to Maharashtra.

7. Another illogical conclusion the formula of the Planning Commission leads to is that, if a State splits into two, everything else—*i.e.* the per capita income and the per capita State tax collection—remaining the same, the aggregate allocation to the two constituents *increases* as compared with the original. For example, if U.P., splits into two states, the allocation, under the Planning Commission formula, to the two new States would be Rs. 20.87 crore each aggregating to Rs. 41.74 crore for the two taken together. In other words, the allocation to the original U.P. is nearly doubled at the cost of other States.

Suggestions for corrections

8. The present methodology adopted by the Planning Commission is thus obviously wrong, arithmetically and therefore, logically. To correct it, what is needed is to 'weight' the percentages, which reflect the tax effort by the 'size' of the State. The Planning Commission has done this in respect of its allocation of that component which it distributed to the States, with less than average per capita income, by weighting the distance of the State from twice the average, by the population of the State. It did not do so, in respect of the allocation of the component relating to tax effort. It is necessary that the Planning Commission rectified this error, which has already penalised 'larger' States.

9. Thus to set matters right, the allocation to two States has to be proportional to tax effort, only if their 'size' is the same. Conversely, the allocation should be proportional to the sizes of the States only if their tax effort is same. Elementary algebra requires that if x is proportional to y if z is constant, and proportional to z if y is constant, then x should be proportional to the product of y and z. Putting x as the allocation to a State, y its tax effort indicator and z its size, the formula to maintain logical consistency, should be that x *the allocation should be proportional to the product of the indicator of tax effort and the 'size' of the State.* The question that would remain to be settled is the choice of a measure to represent the 'size' of a State.

10. If total State income is taken as the 'size' of a State the percentages are in effect 'weighted' by the total income and the resultant arithmetics would mean that the distribution of the component based on tax effort will have to be proportional to the receipts from the State taxes. The allocation worked out on this basis are given in Table No. 2.

11. The other alternative is to take population as the 'size' of the State *i.e.* to 'eight' the tax effort percentages by the population of the States. The resulting calculations are shown in Table No. 3.

12. It would be seen from both these tables that because of the incorrect methodology followed by the Planning Commission, Maharashtra had been a leser in this component of central assistance to the tune of at least Rs. 18.22 crore in the Fifth Plan. The same defective methodology has been followed in the Sixth Plan. The correction in this defective methodology is now long overdue and should be immediately carried out.

TABLE No. 1.

Fifth five-year Plan—States

Allocation of Central Assistance

Tax effort— 10 per cent

(Rs. crore)

State	Receipts from State Taxes 1973-74 Actuals	Mid-year population 1973 (lakhs)	Per capita Tax Effort (Rs.)	Per capita State Income (Rs.)	Tax Effort as percentage of per capita income	Distribution of Rs. 430 crores
1	2	3	4	5	6	7
Andhra Pradesh	201.45	454.3	44	645	6.82	32.88
Bihar	115.19	587.0	20	439	4.56	21.98
Gujarat	155.36	282.3	55	808	6.81	32.83
Haryana	76.14	105.5	72	974	7.39	35.63
Karnataka	150.59	306.5	49	703	6.97	33.60
Kerala	95.46	224.7	43	646	6.66	32.11
Madhya Pradesh	128.36	440·1	29	532	5.45	26.27
Maharashtra	382.38	529.5	72	799	9.01	43.44
Orissa	34.84	229.9	15	566	2.65	12.78
Punjab	123.16	141.4	87	1,106	7.87	37.94
Rajasthan	90.67	271.5	33	589	5.60	27.00
Tamil Nadu	279.55	430.3	65	675	9.63	46.43
Uttar Pradesh	225.60	917.3	25	550	4.55	21.94
West Bengal	191.18	465.8	41	787	5.22	25.17
TOTAL	2249.53	5386.1	42	..	89.19	430.00

Average per capita State NIP at current prices for the period 1970-73 as furnished by C.S.O.

TABLE No. 2

Fifth Five-Year Plan—States

Allocation of Central Assistance : Tax effort

Alternative I : Tax effort weighted by State Income

State	Tax effort as percentage of per capita income	Tax effort weighted by State income percentage	Distribution of Rs. 430 crores
1	2	3	4
Andhra Pradesh	6.82	8.95	38.46
Bihar	4.56	5.12	22.02
Gujarat	6.81	6.91	29.70
Haryana	7.39	3.38	14.55
Karnataka	6.97	6.69	28.79
Kerala	6.66	4.24	18.25
Madhya Pradesh	5.45	5.71	24.54
Maharashtra	9.01	17.00	73.08
Orissa	2.65	1.55	6.66
Punjab	7·87	5·47	24.54
Rajasthan	5·60	4·03	17·33
Tamil Nadu	9·63	12·43	53·43
Uttar Pradesh	4·55	10·03	43·11
West Bengal	5·22	8·50	36·54
TOTAL		100·00	430·00

Column (3) shows the percentages based on column (2) of Table No. 1.

TABLE No. 3

Fifth Five -Year Plan—States

Allocation of Central Assistance : Tax effort

Alternative II : Tax effort weighted by Population

State	Tax effort as percentage of per capita income	Tax effort weighted by population	Percentage in col. (3)	Distribution of Rs. 430 crores
1	2	3	4	5
Andhra Pradesh	6·82	3,098·33	9·31	40·03
Bihar	4·56	2,676·72	8·05	34·62
Gujarat	6·81	1,922·46	5·79	24·90
Haryana	7·39	779·65	2·34	10·06
Karnataka	6·97	2,136·30	6·42	27·61
Kerala	6·66	1,496.50	4.50	19·35
Madhya Pradesh	5·45	2,398·55	7·21	31·00
Maharashtra	9·01	4,770·80	14·34	61·66
Orissa	2·65	609·24	1·83	7·87
Punjab	7·87	1,112·82	3·34	14·36
Rajasthan	5.60	1,520·40	4·57	19·65
Tamil Nadu	9·63	4,143·79	12·45	53·54
Uttar Pradesh	4·55	4,173·72	12·54	53·92
West Bengal	5·22	2,431·48	7·31	31·43
TOTAL	..	3,3270.76	100·00	430·00

Col. (3)=Col. (6)×Col. (3) of Table No. 1.

PART VII

MISCELLANEOUS

Industries

7.1 We agree that extension of the First Schedule to cover a very high proportion of industries in terms of value of their output has resulted in converting industries into virtually a Union Subject, "Industries" is on the concurrent list and the State Government is expected to operate so as to ensure balanced growth of industries, utilising the available resources gainfully in all areas of the State. With the addition to the first schedule the scope for operating by the State has been curtailed. For example, items like sewing machinery, cutlery, pressure cookers, footwear, household appliances and tools, typewriters, chinawares, pottery, oil stoves, etc. are basically consumer goods and production of these goods to meet the local demand should be left to the discretion of the State. The inclusion of these items in the first schedule read with the Government of India's latest policy decision regarding restricting the issue of licences to "No Industry District" or particularly to A, B, and C areas of the country in fact amount to denying to the State Government its privilege of promoting industries in certain areas to ensure balanced development. The experience of the past three years has indicated that the State of Maharashtra has been consistently losing its share of the total licences letters of intent issued by the Government of India. For example, in 1981 against total 916 letters of intent, the State of Maharashtra received 144 letters of intent while the figures in 1982 and 1983 are 148 out of 1043 and 155 out of 1055. Simi-

larly in respect of industrial licences in 1981 the State of Maharashtra had 114 industrial licences out of total 476 while in 1982 and 1983 the figures are 95 out of 432 and 171 out of 1075.

While in respect of core industries Government of India's authority to allocate capacities may be justifiable, in respect of non-core industries however (the industries mentioned in the Questionnaire are all non-core industries) there is no justification for retaining the authority with the Government of India. For example, the State was denied setting up of a project like match sticks, in one of the backward areas of Marathwada. We also feel that the provisions in the I (D. & R.) Act, 1951 for the take over a such units should be amended suitably to enable State Governments to take over sick units if they feel that sufficient grounds for doing so exist,

7.2 (i) We feel that some norms to define or describe what is "national public interest" in the context of national control over an industry, when Parliament alone can legislate, need to be defined. The following norms are suggested :—

(1) The Parliament may legislate in respect of core industry and defence industry.

(2) In respect of subsidiary and ancillary industries of core industry and defence industry, Parliament need not legislate.

(3) Except in case of core industry where the natural resources are available in a State it should be for the State to legislate. For example, Chinaware pottery or all silica based industries could be decided by the State Government itself.

(4) In industries like agricultural implements, after the national capacities and requirements are determined, the State Government should have a free play for creation of capacities in the State itself.

In transport industry (excepting the 4 wheelers and commercial vehicles) as the transport requirements would be to meet the needs of people at large from the rural areas the State Government should have the privilege to determine the capacities. Those items would be bicycles and two and three wheelers.

(ii) A list of items in the first schedule to the Industries (Development and Regulation) Act, 1951 which could be deleted on the ground that they are really not crucial to the national public interest to justify control by the Union Government is indicated hereinafter.

1. **Metallurgical Industries :**

A. Ferrous :

(i) Iron and Steel structurals.

(ii) Iron and steel pipes.

(iii) Other products of iron and steel.

B. Non ferrous :

(i) Semi-manufactures and manufactures.

2. **Electrical Equipment :**

(i) Electrical motors.

(ii) Electrical fans.

(iii) Electrical lamps.

(iv) X-ray equipment.

(v) Electronic equipment.

(vi) Household appliances such as electric irons, heaters and the like.

(vii) Storage batteries.

(viii) Dry cells.

3. **Telecommunications :**

(i) Radio receivers, including amplifying and public address equipment.

(ii) Television sets.

4. **Transportation :**

(i) motor cycles, scooters and the like.

(ii) Bicycles.

(iii) Others such as fork lift trucks and the like.

5. **Agricultural Machinery :**

(i) Agricultural implements.

6. **Miscellaneous Mechanical and Engineering Industries :**

(i) Plastic moulded goods.

(ii) Hand tools, small tools and the like.

(iii) Razor blades.

(iv) Pressure Cookers.

(v) Cutlery.

(vi) Steel furniture.

7. **Commercial, Office and Household Equipment :**

(i) Typewriters.

(ii) Calculating machines.

(iii) Vacuum cleaners.

(iv) Sewing and knitting machines.

(v) Hurricane lanterns.

8. **Medical and Surgical Appliances :**

(i) Surgical instruments—sterilisers, incubators and the like.

9. **Mathematical, Surveying and Drawing Instruments :**

(i) Mathematical, surveying and drawing instrument.

10. **Fertilisers :**

(i) Mixed fertilisers.

11. **Chemicals (other than Fertilisers) :**

(i) Paints, varnishes and enamels.

12. **Paper and pulp including paper products :**

(i) Paper for packaging (corrugated paper, craft paper, paper bags, paper containers and the like).

(ii) Pulp-wood pulp, mechanical, chemical, including dissolving pulp.

13. **Soaps, Cosmetics and Toilet Preparations :**

(i) Soaps.

(ii) Cosmetics.

(iii) Perfumery.

(iv) Toilet preparations.

14. **Rubber Goods :**

(i) Footwear.

(ii) Other rubber goods.

15. **Leather, Leather Goods and Pickers :**

(i) Leather, Leather goods and pickers.

16. **Glass :**

(i) Hollow ware.

(ii) Sheet and plate glass.

(iii) Optical glass.

(iv) Glass wool.

(v) Laboratory ware.

(vi) Miscellaneous ware.

17. **Timber Products :**

(i) Plywood.

(ii) Hardboard, including fibre-board, chip board and the like.

(iii) Matches.

(iv) Miscellaneous (furniture components, bobins, shuttles and the like).

7.3 (1) **Procedure for Industrial Licence.**—Clearance in principle, regarding the capacity and availability for a particular project may be given by the Government of India. Thereafter issues relating to capital issues, import of capital goods, allocation of raw materials, and foreign collaboration need not become part of the total licencing procedure but these should be available automatically once the basic clearance is given.

(2) **Capital Issues.**—In respect of projects approved by the Licensing Committee, clearance for capital issue should be automatic.

7.4 The States have got an organisational structure to service the Small Scale Sector, but there are still linkages with the macro or national level on critical issues such as allocation of raw materials and lack of statutory powers which vest with the Centre. Unless raw material supply is planned for appropriately, shortages would continue and the Centre is compelled to ration cut its cake to the States. We feel that there could be an improvement in the States treatment of their sector through—(i) better and more coordinated approach between institutions; (ii) ensuring adequate marketing support for the goods from this sector as well as raw material supply; and (iii) financial support through adequate supply of term and working loans.

7.5, 7.6 & 7.7 The decisions of the Central Government in regard to its direct investment in heavy industries on the basis of allocation of projects to 'No Industry District' and to State where no public sector projects have so far been allocated affect us. Maharashtra, however, faces a peculiar position with reference to number of public sector projects it has already received and areas in Maharashtra which have not received any benefit whatsoever from location of such public sector projects. Because of the development which has already taken place in and around Bombay, a few public sector projects were located in Maharashtra. This should not come in the way of Maharashtra getting legitimate quota of public sector projects for a balanced development of areas like Vidarbha, Marathwada and Konkan. We also feel that where a project has been cleared by the Government of India for a licence, the financial institutions should not again sit in judgement over the putting up of the project. We also feel that within the State the view of the State Government on the location of public sector projects should be taken into account.

7.8 In our opinion, the incentives for promotion of industries provided by the Government of India have succeeded in accelerating the pace of industrialisation in the backward areas. Implementation of these schemes for last 10 years has thrown up new growth centres for industrialisation in these industrially backward areas such as Aurangabad, Chandrapur, etc.

2. The present methodology for identification of backward areas adopts the district as a unit for identification. District is too large an entity for identification of a backward area. Existence of few industries concentrated in few pockets of a district does not make perceptible impact on the remaining part of the district where the industries have not been sufficiently developed. Further, indicators of industrial backwardness based on district level statistical data also distort intradistrict disparities in development. On account of diseconomies of locating unit in backward area, prospective entrepreneurs have come to rely heavily on fiscal and other incentives for establishing their projects in such areas. If a district is disqualified for such incentives because of such areas. If a district is disqualified or distortions, fears that the backward parts of districts may be permanently deprived of the benefits of industrialisations may become real. Therefore, instead of treating district as a unit for identification of backward areas, talukas would be an appropriate unit for identification as it is a more compact administrative unit than a district. Further in identifying industrially backward talukas following factors may have to be considered :—

(1) While considering the level of development, investments in public sector project in an area may not be taken into account.

(2) Resource based industries may also be excluded in assessing the stage of development, as they do not necessarily contribute to the development of the areas.

(3) The scale of incentives may be linked up with employment potential.

Trade and Commerce

8.1 We feel that no such authority needs to be appointed and there should not be any restrictions on inter-State trade or commerce.

Agriculture

9.1 The position mentioned in the Question has not substantially changed since 1967. It is felt that the Central Government should also have some responsibility for substantial activity in the field of agriculture. Though agriculture is a State subject, it cannot be the concern of only the States, because often an all-India view has to be taken in many matters and for this Central involvement in the area of agriculture development would be unavoidable. The Central Government through its policies relating to inter-State trade in commodities, control of production and supplies of vital agricultural inputs, like fertilisers, pesticides, etc., research activities in the field of agriculture, through institutions like ICAR, IARI and various Central research institutes, plays an important role and these have a great deal of relevance to the agricultural activities in the State. It is felt that the Central Government should continue to play its role at the national level and help the States in their activities.

9.2 We do not fully agree with the view that Central and centrally sponsored schemes being implemented through the State agencies should ultimately form part of the State sector and, further, that their number should be kept to a minimum. However, in the formulation of Central and centrally sponsored schemes, the Central Government should actively associate the State Governments and the role of the Central Government should be confined to giving broad guidelines to the State Government and assisting by way of supplementing Plan resources for implementation of different schemes to improve agricultural production. In recent years, the Government of India have also veered round to the view that, in the formulation of Central and centrally sponsored schemes, that Government should only indicate broad guidelines and expect the States to come up with detailed project formulations. That is, once the goals and broad methodologies are determined, each State should have the flexibility regarding the manner in which the Central and centrally sponsored schemes will be implemented. It is also felt that the Government of India should continue to bear the expenditure on the implementation of such schemes for a period of 10 years at least.

9.3 There has been effective co-operation between the Central and State Governments till now and we have not experienced any serious problems. Once the goals are specified in relation to undertaking of schemes for improving agricultural production, the States should have considerable voice in the manner in which the schemes will be implemented.

9.4 The Government of India have been fixing uniform minimum support prices for different commodities for the country as a whole. It is felt that taking into account the fact that the cost of production varies considerably from one area to another, there ought to be greater flexibility in fixing minimum support prices for different areas of the country, considering the local agro-climatic conditions, productivity levels, cost of production, market prices, etc. In this connection our reply to Q. 4.7 may be referred to.

We feel that the initiative of the Central Government in these matters is of importance to the State because strategic inputs, like fertilizers, pesticides, etc., show a great deal of inter-State movement. There is also a great deal of inter-State commerce of agricultural commodities. In so far as credit is concerned, where the Government of India can direct various financial institutions to provide credit for various agricultural programmes, the policies will have to be extremely flexible so that a State, within its own jurisdiction, is able to lay down definite policies for the flow of credit.

In case of Irrigation, we feel that the Central Government or their agencies should confine their scrutiny only to the overall planning aspects, giving importance to the core aspects of the project and its inter-State implications, if any, and that prior clearance in respect of projects costing upto Rs. 10 crores should be dispensed with. In this connection, our answer to Q. 4.7 may be referred to.

Forestry policy and administration was formerly a State subject but of late the Central Government has stepped in a big way with the transfer of the subject to the Concurrent List and enactment of the Forest Conservation Law. The State Governments are therefore, required to refer even small matters pertaining to forest clearance to the Central Government, which delays implementation of projects considerably. This needs to be reviewed and we feel that wide latitude should be given to the State Governments in administration of forests, subject to national goals in regard to conservations of forests being followed, guidelines for which could be clearly laid down.

9.5 There have been no serious problems between Centre and State in respect of agricultural research or education. However, in exercising certain amount of leverage, derived from supplementing funds available with the Agricultural Universities in the State, the Central Government should take note of the specific circumstances prevailing in the State and there ought to be much higher concern for the views of the State, and any attempt to universalise the problems can at best be avoided. As far as institutions, like NABARD, are concerned, except for very broad policy guidelines, the Centre should not attempt to frame too rigid a set of instructions in the working of financial institutions. The State's policies should have greater weightage in the working of financial institutions, such as, the Apex Co-operative Bank etc. We would like to make the following suggestions :—

(1) **Credit Authorisation.**—RBI, NABARD has placed condition on the Maharashtra State Co-operative Bank to seek prior approval of it before Medium Term Loans are sanctioned to Credit Authorisation Scheme Units. These restrictions need to be removed.

(2) **Pre-seasonal Loans.**—The Co-operative Sugar Factories are sanctioned Pre-seasonal

Loans every year under Credit Authorisation Scheme. In the past M.S.C. Bank was permitted to sanction such clean loans not exceeding Rs. 10 lakhs without prior credit authorisation. This facility has been withdrawn and needs to be restored.

(3) **Sanction of bridge loans to newly Licenced Co-operative Sugar Factories.**—NABARD should remove restriction imposed by it in respect of bridge loan to newly licenced Co-operative Sugar Factories in respect of bridge loan. Such loans should be cleared under Credit Authorisation Scheme as a matter of routine after assessing the overall surplus resource position of the M.S.C. Bank.

(4) **Financing of non-agro-industries.**—NABARD should permit the Maharashtra State Co-operative Bank to lend its surplus funds to Co-operative Units even outside the agro-industries sector.

(5) **Seasonality discipline.**—Seasonality discipline imposed by NABARD needs to be relaxed so as to enable D.C.C. Banks to get refinance from it for seasonal agricultural Operations.

(6) **Concessional rate of interest.**—The State Government's proposal to give short, medium and long term loans to small farmers at 6% has not been approved by R.B.I./NABARD and Government of India. Since the State Government proposes to bear full financial liability in this behalf, it should be allowed to implement the scheme.

(7) **Financing by M.S.C.L.D. Bank.**—At present Land Development Bank cannot lend beyond the lending limit fixed for the sub-branch. It is necessary that NABARD should at least in the case of Land Development Banks which are not banks under the Banking Regulation Act, take a more flexible attitude and evolve norms of lending which are flexible in character so that they do not come in the way of balanced orderly growth of agriculture and allied activities.

NABARD should adequately strengthen the technical wings in their regional offices so that there is a quicker clearance of schemes by the regional offices. NABARD should also delegate powers to release refinance under schemes sanctioned by the Regional Offices.

There may be two representatives each on behalf of State Land Development Banks, State Co-operative Banks on the Board of Directors of NABARD.

Food and Civil Supplies

10.1 It is felt that consultation with State Governments should precede formulation of policies regarding pricing, storage, movement and distribution of food-grains as well as other essential commodities. Unless absolutely necessary in the national interest, unilateral directives should be avoided.

10.2 Yes, Periodical review will be useful and is necessary. At present, prior concurrence of the Central Government under the Essential Commodities Act is necessary in respect of several enforcements and regulatory orders. Such prior approval needs to be dispensed with. The specific areas where this could be done may be decided by the Central Government in consultation with the State Governments.

Education

11.1 It would not be correct to say that there is unnecessary centralisation and standardisation in the field of education. The subject "Education" figures in the concurrent list and the State Government is at liberty to implement its own schemes on the basis of decisions taken at the State level. The State is required to abide by the instructions given by the Government of India from time to time only so far as Centrally sponsored programmes are concerned. Central interference in the initiative and authority of the State Government is not borne out by the experience of our State.

11.2 We have had no instances where U.G.C. has interfered with University Education in the State. The Commission has been extending financial assistance to the Universities in the State as well as non-Government Colleges within the framework of the U.G.C. Act.

11.3 We feel that there is considerable scope to evolve a consensus among the States as well as between Centre and States in the field of education through discussion and consultation. The process of discussion, consultation and persuation is already being followed in respect of matter of importance. In fact, the Government of India have presented a document entitled 'Challenge of Education : A Policy Perspective' to the Lok Sabha very recently on which views of the State Government have been sought for by the Central Government. The new Education Policy will be finalised in consultation with the State Governments.

11.4 No difficulty has been experienced by the Maharashtra State in the operation of the constitutional provisions under Articles 29 and 30 which guarantee the rights of the minorities in regard to the establishment and management of denominational educational institutions. We have a number of minority educational institutions in the State permitted by the State Government and they are being run without difficulty.

11.5 There are no specific instances of conflicts on issues between the Centre and State so far as education is concerned. Should such instances arise in future, it is felt that they can be resolved by discussion, consultation and persuation.

Inter-Governmental Coordination

12.1 We have no experience of any serious irritants in the Centre-State relations and therefore we do not consider it necessary to set up a permanent institution as existing in U.S.A.

Maharashtra

MEMORANDUM

Introductory

We extend a warm welcome to the Commission on Centre-State Relations on its visit to Maharashtra and we are grateful for the opportunity given to us to place before it our views on a subject of great national importance. While we have already submitted detailed replies to the questionnaire issued by the Commission, in this Memorandum we shall confine ourselves only to the more significant aspects of Centre-State Relations.

Terms of Reference

2. The terms of reference for the Commission on Centre-State Relations have specifically provided that the Commission, while examining and reviewing the working of the existing arrangements between the Union and the States and making recommendations as to the changes and measures needed, will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and frame work of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country, which is of paramount importance for promoting the welfare of the people. These are, therefore, the parameters within which examination and review as well as recommendations for change, if any, in the Centre-State Relations, will have to be conceived.

A Brief Historical Review

3. A brief review of the political conditions that prevailed before achieving independence will be necessary to appreciate the scheme and the framework of the Constitution. Till the enactment of the Government of India Act, 1919, the Indian subcontinent had for centuries been under a unitary form of Government. It was by the Act of 1919 that diarchy was introduced in the provinces, which was the beginning of some sort of a quasi-federal structure. The pre-Independence history between the 1919 and 1947 shows how the freedom movement for complete independence passed through different phases. On the failure of the Cabinet Mission Plan there remained no purpose in providing a Constitution for a loose federation. In fact, the acceptance of the partition and the merger of the Princely States left no choice before the founding fathers but to provide for a strong Centre with enumerated powers to the States, leaving residuary legislative powers with the Union. The history, thus, had taught a lesson that in order to maintain the unity and integrity of the remaining sub-continent after partition, a strong Centre with powers to convert federal Government into a unitary Government was a felt necessity of the time.

4. Theoretically, on a broad perspective it can be said that in our Constitution the unique features tending to make the polity unitary are ordinarily dorment giving full scope for the federal principle to play its role but when the national interest is at stake, it is placed above everything till the occasion lasts.

Rajamannar Committee

5. It is difficult to subscribe to the recommendation of the Rajamannar Committee appointed by the then Tamil Nadu Government, urging for greater autonomy for the States by a redistribution of legislative powers of the three lists in the Seventh Schedule, deletion, revision or substantial modification of the relevant provisions of the Constitution which give the Union supervisory role over the States and allotment of more tax resources in the List 2 to the States. A careful study of the three Lists of the Seventh Schedule shows that, by and large, subjects of national importance are included in the Union List, subjects of local or regional importance are included in the States List and subjects with which States are primarily concerned but which are likely to assume national importance or which require uniform policy throughout the country are included in the concurrent List. The provisions of Articles 251, 256, 257, 348, 349, 355, 356, 357 and 365 of our Constitution, which give the Union a supervisory role over the States are necessary in national interst to protect the integrity of the nation and to avoid failure of constitutional machinery in the States. It is perhaps the sanction provided by Article 355 that has prevented the States from going wayward against the spirit of the Constitution.

6. It is also difficult to agree with the Rajamannar Committee in its recommendation to abolish appeals to the Supreme Court except in constitutional matters. The Supreme Court performs multiple roles including that of the highest appeal court in the land. The Supreme Court has discharged its responsibilities satisfactorily. The only complaint is about arrears. The experience of the past 35 years shows that institutions are outpacing disposal resulting in tremendous arrears and reform, both in the nature of restricting approach to Supreme Court to cases involving important questions of law and procedural innovations like shorter hearings, shorter arguments and shorter judgments are called for.

7. As already stated, the general scheme regarding the distribution of powers between the Centre and the States as depicted in the Three Lists in the Seventh Schedule does not require any interference. However, it is necessary to see if there is scope for change in the administrative arrangements in relation to the working of various Centrally sponsored schemes on subjects in both the State List as well as the Concurrent List. It would be worthwhile to delegate to the States powers to the maximum extent with regard to the work on projects in which the Centre is directly interested or which are carried out by the States as agents of the Centre. This will help in speedy completion of work.

President's assent

8. The provisions of the Constitution governing the Centre-State relations are adequate for the purpose of meeting any situation or resolving

any problem that may arise in the State and no constitutional amendment appears necessary for ensuring proper relations between the Centre and the State. The only suggestion that could be made is for improvement of the process of according assent of the President to States' legislative proposals in the Concurrent List, by prescribing certain time limit.

Article 3 of the Constitution

9. One unique feature that has been enshrined in our Constitution and which is against the federal principle in its strict sense, pertains to the provision in Article 3 regarding formation of new States by increasing, diminishing, altering the boundaries as well as the name of any State. This article came to be incorporated in the Constitution in the context of the peculiar historical and cultural background of our country and the experience of the last 35 years shows that the confidence reposed in the Parliament by the founding fathers has been amply justified. The Parliament has never used this power except in deference to the wishes of the particular State. It can therefore safely be said that though Article 3 appears to be against federal principle, it does not call for any change. In sum, one can confidently say that the federal principle is predominant in our Constitution during normal times and it is only during emergency of any kind contemplated by the Constitution that the polity becomes unitary so long as the emergency lasts. The unitary character ceases as soon as the emergency is over and polity reverts back to its normal federal character.

Legislative Relations

10. Overall national interest and particularly the unity and integrity of the country demand that no change is called for in the basic scheme of distribution of subjects in the three Lists of the Seventh Schedule. There is no ground for making any complaint that the Union under the cover of a declaration of national interest or public interest has encroached upon the State Legislative field. The existing provision of Article 249 is sufficiently elastic for the State to pass any law which will meet its requirements, having regard to the local conditions prevailing in a State, even if there is a Parliamentary Legislation on a particular subject. From practical point of view it could be suggested that while examining legislative proposals on subjects like labour, rural and urban area development programmes, technical and medical education Centre should have a more liberal approach in giving assent to State proposals which are progressive in nature and beneficial to national interest. In this context, it would be desirable, in the interest of better relations between the Union and the State, to have a specific provisions in the Constitution of India requiring the Centre to consult the State Governments beforehand whenever any legislation is proposed to be undertaken on a concurrent legislative subject, except where on account of urgency it is considered expedient to disperse with prior consultation.

Role of the Governor

11. The office of the Governor has an important place in the context of Union-State relations. He is a powerful link between the Centre and the State, helpful in maintaining harmonious relations between the two. He should act as a Counseller and an elder Statesman who would, after giving his counsel, act on the aid and advice of the Council of Ministers as postulated by the Constitution. In the discharge of his discretionary functions the Governor is expected to act in an upright manner. He may, if an occasion demands, seek guidance from the Centre, but the ultimate decision in discretionary matters must be his own in accordance with the provisions of the Constitution.

12. In the context of Centre-State relations, the Governor has to perform three important functions, amongst others. Under Article 167 he is entitled to seek information from the Chief Minister and also ask certain matter to be considered by the Council of Ministers which has not been considered by the Council. He is expected to send periodical reports to the President. This is useful in keeping the President duly informed about the state of affairs in the State. Under Article 200, the Governor is entitled to reserve a Bill for the consideration of the President if he feels that a particular Bill is of sufficient importance which should be so reserved. Under Article 356 the Governor is expected to report to the President on the point whether the Government of a particular State is carried on in accordance with the provisions of the constitution. This is also inter-linked with the question whether the State Government exercises its executive power in accordance with the Central Laws and consistent with the executive power of the Centre as contemplated by Articles 256 and 257 which attract Article 356 read with Article 365 of the Constitution.

13. It is expected of a Governor that while making the report under Article 356(1) he will be objective and act according to his own independent judgement. Selecting a Chief Minister, when a party has a clear majority in a State Assembly, presents no problem, it is only when there is no clear majority in favour of a particular party that the Governor has to form a judgement as to which of the parties or group or groups of parties are able to form Government which would really command a majority. In such a situation, complete impartiality of the Governor becomes important. His sole purpose ought to be to give to the State as stable a Government as he can under the circumstances and all his moves have to be directed to that purpose.

14. So long as the Ministry in office retains the confidence of the Legislative Assembly, the pleasure of the Governor continues under Article 164(1) of the Constitution. Problem arises when the party in power does not command a majority and advises prorogation of the Assembly. In such circumstances the Governor is justified in compelling the Chief Minister to face the Legislature to demonstrate his majority. Same is the position regarding the power of the Governor to dissolve the Assembly under Article 172(2)(b). Normally,

the Governor has to accept the advice of the Chief Minister, but in certain cases he may advise the Chief Minister to place the matter before the Council of Ministers as contemplated by Article 163 of the Constitution, which would be in consonance with the principles of a collective responsibility.

15. Having regard to the role expected to be performed by the Governor, particularly in the context of Centre-State relations, the present position namely that he continues to hold the office during the pleasure of the President deserves to be continued and no change is called for.

16. A view has been expressed that in making choice of the Chief Minister when there is unstable party position after a Ministry in the State resigns on account of a non-confidence motion passed against it in the State Legislature, the Governor does not act fairly but in a manner calculated to advance the interest of a particular political party or group and therefore some provision should be made to guard against instability of the Ministries resulting in such situations. By and large, experience shows that if the Governor is an independent, respected and impartial person, there arises no occasion for making any such imputation. However, the success of democracy will depend on how they behave with full responsibility. The chances of situations giving rise to such frictions have been practically reduced to nil on account of the Constitution (Fifty-Second Amendment) Act, 1985 introducing provisions as to disqualification on ground of defection in the Constitution.

17. The suggestion that guidelines on the manner in which the discretionary powers should be exercised by the Governors should be formulated does not deserve any consideration. Different situations may arise in different States and no guidelines can prove adequate to meet every situation. That apart, legally the very idea of the Governor's discretionary functions becoming a subject of guidelines is contradiction in terms. Prescription of guidelines may subject the actions of the Governor to judicial review, which as at present is totally excluded. In view of this position, it would be better that the Governor is left to himself while discharging his discretionary functions.

Administrative Relations

18. So far as assumption of Government by the President under Article 356(1) is concerned, it is felt that the Governor ordinarily should not recommend the imposition of the President's rule so long as the Chief Minister has majority in the Assembly and is prepared to demonstrate it by facing the Assembly at a very short notice unless the Governor is otherwise convinced that the Government of the State is not being carried on in accordance with the provisions of the Constitution. In this behalf it is suggested that before taking the drastic step of recommending the assumption of Government by the President, the Governor should give sufficient warning to the Chief Minister concerned to give him an opportunity to take corrective measures if he is so inclined. Recent experience shows that Clause (5) of Article 356 deserves to be restored to the pre-forty-fourth amendment position since in a given situation it may be difficult to meet the stringent conditions mentioned in the said clause, though the circumstances warrant the continuance of the proclamation under Article 356(1) beyond the period of one year.

Central Agencies

19. The various Central agencies were created in pursuance of a national policy to ensure a stable economy and a uniform economic and social balance in the country. There is no doubt that in various matters it is necessary to have an All India perspective and there is therefore, need for these agencies to continue. While we would not say that through these agencies the Union Government has made undue inroads into the autonomy of the State, we feel that there is a great need for a more realistic appreciation of the situation obtaining in the State on part of the Central agencies. We could cite the Agricultural Costs and Prices Commission as an example. We also feel that in respect of certain agencies, like the Central Electricity Authority and the Central Water Commission, there is an over centralisation of powers which results in impeding the pace of development in the State. There is, therefore, need for vesting more authority, which presently vests with some of the agencies, in the State Government.

Zonal Councils

20. The Zonal Council set up under the States' Reorganisation Act, 1956, have generally not been meeting either frequently or regularly. It is necessary that Zonal Council should meet regularly and more often and items, on which broad agreement is arrived at in the meetings of the Zonal Council should be actively followed up by all concerned and in particular by the Union Government, to ensure expenditious implementation.

All India Services

21. The All India Services have, by and large, fulfilled the expectations of the Constitution makers. The present arrangements for the control of the All India Services are calculated to preserve the All India character of those services without detracting from their amenability to the control of the State, when the officers work in connection with the State and thus appear to provide a reasonable and practical balance between the Union and the State.

Deployment of Central Forces in a State

22. Under Article 355 of the Constitution a duty is imposed on the Centre to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. It is, therefore, necessary that the matter of assessment should be left to the Union Government. It is, however, felt that as a matter of general policy the deployment of the Central forces in a State should be done with the consent of the State Government concerned.

Broadcasting and Television

23. There is no need to transfer the subject of broadcasting and television to the concurrent list. The present position should be continued. There is, however, a need for effective consultation between the Union and States to ensure that adequate time is devoted to programmes in local languages as well as to programmes concerning the local culture and problems.

Inter-State Councils

24. It is difficult to agree with the recommendation of the Administrative Reforms Commission to establish Inter-State Councils under Article 263 of the Constitution. We feel that any problem between Centre and State or State and State should be resolved by mutual discussion and if necessary, with the mediation of the Centre in respect of a dispute between two States and that it is only as a last resort and dire necessity that such a Council be established in respect of a particular issue. We feel that there is no need for a permanent Council as such.

Financial Relations

25. The provisions of the Constitution provide for making available resources to the States primarily through the distribution of income-tax and Union excise duty and secondarily through the grants-in-aid to the States needing assistance. This implies that even the advanced States are eligible for grant-in-aid for particular schemes or problems. However, successive Finance Commissions have given greater weightage to different factors of backwardness in their distribution of resources among the States to the progressive detriment of the so-called richer or well-off States. While no exception can be taken to larger assistance to the relatively weaker States, it should not be at the cost of the so-called well-off States. It is also necessary to bear in mind that large parts of such well-off States are comparable in backwardness to those of financially weaker States. Besides, richer States also have their own peculiar problems which too require considerable expenditure and outlay. For instance, problems of Bombay, which should be viewed as national issues. We also find that while assessing the resources of a State like Maharashtra, large revenue surpluses have been assumed which do not really exist. There is, therefore, need for change in the attitude of the Finance Commissions and the Centre towards the so-called richer States.

Sharing of Corporation Tax and Customs Duty

26. While the resources of the Centre are sufficiently elastic to absorb the effects of inflation, the State Governments are not in a position to bear its adverse effects. It is, therefore, necessary that Corporation tax, which is in no way different from Income-Tax, should be brought into the divisible pool. Similarly, the Customs Duty also needs to be shared with the States. Alongwith this, there is a pressing need for greater fiscal discipline at all levels. It is necessary for the States to make effective contribution to reduce imbalances by adopting better administrative procedures, rigorous financial discipline and optimising the use of resources. The Centre should also consider giving incentives to States whose finances are well managed. Deficit financing on large scale in order to transfer the resources to the poorer States with a view to reducing inequality may not be desirable. It is necessary to keep deficit financing within acceptable limits: otherwise it will accentuate the already persistent inflationary trends in the economy.

Criteria for determining State's shares

27. It is the function of the Finance Commission to assess the resources and requirements of funds on the non-plan side and to recommend adequate devolutions so as not to leave the requirement of funds uncovered. It is, however, not their objective to bridge the gap in resources between the poorer and the richer States. The tax efforts made by the States as well as efficiency and economy in management is the basic need for all the States. Merely giving more grants-in-aids to the poorer States will not solve the problem. It is necessary that the States should optimise returns by proper implementation of developmental and non-developmental schemes.

As regards the share of taxes, we feel that the States which yield more revenue ought to get reasonable share. Even the so-called richer States have their own obligations and liabilities to fulfil and they generate more resources for the Central Government, particularly by way of Income Tax, Union Excise Duty and Corporation Tax.

While it is difficult to formulate any objective criteria that should be used for determining the share of taxes, Plan assistance and Non-Plan assistance for each State, we feel that 50 per cent of the Income Tax, Union Excise Duty, Corporation Tax and Custom Duty should be earmarked as the share of the States.

As regards the distribution of Income Tax amongst the States, a weightage of 45 per cent may be given to the factor of contribution as measured by Income Tax collection while the balance of 55 per cent may be distributed in proportion of the States population. As regards Union Excise Duties, the distribution of the States share should be on the following basis :—

(1) 60 per cent should be given on the basis of population factor with weightage of 30 per cent for urban population and 70 per cent on rural population.

(2) 20 per cent weightage should be given to economic backwardness of the States measured by the product of distance of per capita income of the State from that of the State with higher per capita income and the population of the States as per formula of the Sixth Finance Commission.

(3) A weightage of 10 per cent each should be given to the factors of performance in regard to the population control programme and mobilisation of small savings.

Plan Assistance

28. It is necessary to revert to the original Gadgil formula in relation to the plan assistance, since the present one operates to the disadvantage of States like Maharashtra. It is suggested that the debt burden of the States should be reduced by enhancing the proportion of grants. The Centre should pass on greater share of external assistance received by it for the externally aided projects of the States.

Small Savings

29. There is scope for increasing the States' share in Small Savings collection from two-third of the net collection as at present to three-fourth of net collection. Moreover, the Small Savings loans should be treated as loans in perpetuity.

Open Market borrowings

30. In the context of the open market borrowings it needs to be pointed out that the pattern of distribution of total market borrowings needs correction and share of States ought to be raised. It is suggested in this behalf that the allocation of open market borrowing between the Centre and the States should be made in the proportion of plan size of the Centre and the States and the *inter se* distribution, of open market borrowings amongst the States should be in the proportion of mobilisation of savings made by different agencies in each State. It should also be related to the repaying capacity of the State.

Centrally Sponsored Schemes

31. It is suggested that Centrally Sponsored Schemes should be wholly assisted by the Centre and that whenever such scheme is abolished or transferred to State as non-plan, the amount equal to the level of committed expenditure reached at that time should be transferred to the States till the scheme is continued. It is felt that if more elastic sources of revenue of the Centre are brought within the divisible pool and they are equitably distributed among the States, the need for non-plan assistance through grants-in-aid discretionary assistance by the Centre would be minimal.

Central Assistance for Relief of Natural Calamities

32. So far as the Central assistance to States for dealing with natural calamities is concerned it is pointed out that although in relation to damages caused due to excessive rains, floods, storms, etc., the present arrangement is satisfactory, the assistance rendered in drought situation requires to be reviewed. It is suggested that linkage between the expenditure and advance plan assistance should be done away with and additional expenditure occasioned by scarcity relief which cannot be met by the existing plan programmes and margin money should be financed through Central assistance by way of grants to the extent of 75 per cent, the remaining 25 per cent being borne by the State Government.

Special Problems

33. Even the so-called well-off State like Maharashtra has its own peculiar problems such as choking conditions in the City of Bombay and therefore, unless the Government of India views this as a national problem and grants special funds it will be beyond the means of the State Government to tackle this issue.

Ways and Means Limits

34. So far as ways and means limits of State Governments with Reserve Bank of India are concerned we feel that there is a need for periodical revision of such limits in view of the various factors that necessitate such a change.

Augmenting States' Resources

35. It is felt that resources from Special Bearer Bonds Scheme and revenue accrued from raising prices of items like petrol and coal etc., should come under the divisible pool. This is income which otherwise would have been subject to income-tax. It has, however, been invested in Special Bearer Bonds with the result that it has gone out of the tax sharing. Similarly, if petroleum products and coal were made subject to higher excise duties instead of raising their prices, States' share to that extent would have been augmented. It is suggested that the Union Government should undertake steps to exploit certain items mentioned in Articles 268 and 269 which have not so far been exploited by the Centre.

Comptroller and Auditor General

36. The present arrangements under the Constitution regarding the Comptroller and Auditor General are reasonable and satisfactory and no change as such is called for. Parliament has also conferred adequate powers on the Comptroller and Auditor General in the matter of maintenance of accounts and auditing of expenditure.

Monitoring Utilisation of Grants

37. It is necessary that there should be proper monitoring of utilization of grant-in-aid given by the Government of India for implementation of specific schemes. The suggestion of the Eighth Finance Commission to have Inter-Ministerial High Power Committee for monitoring programmes and use of grants deserves to be considered.

Economic and Social Planning

38. In the sphere of Economic and Social Planning, the Centre and the States will have to play roles which are complementary to each other. The Centre may have to continue to lay down national priorities and objectives of various sectors of development. However, the State Government should be given full freedom to formulate their own plan suited to the local conditions in the State, within the over-all national policy frame. To overcome the present short-comings it is suggested that (a) the State Governments may be actively involved while finalising the approach for the Five Year Plan. They may invariably be consulted before

any policy decisions about the plan programmes are taken by the Central Government; (b) a meeting of the National Development Council should be held at least once every year; (c) the National Development Council meetings may be preceded and followed by the meetings at the official level. The meetings at official level may be held as frequently as necessary; (d) a group consisting of representatives of Central and State Governments may be set up to ensure follow up action on the decisions of the N. D. C.; (e) the Planning Commission should lay down national targets only in vital sectors like power, major irrigation etc.; (f) while scrutinising the State Plan proposals the working groups of the Planning Commission need not go into the details of various programmes falling mainly within the State jurisdiction and may restrict themselves only to the important sectors like power and major irrigation etc.

National Development Council

39. Constitution of National Development Council on statutory basis may run counter to the principle of decentralised planning. Non-statutory advisory body will do equally well if it involves the States more meaningfully in the plan formulation in its broad perspective and then leaves it to the States to formulate their plans within the broad policy frame work.

Composition of Planning Commission — Representation of States

40. So far as the composition of Planning Commission is concerned, it requires a second look. Adequate representation of the State Governments in the formulation of goals and objectives is necessary. After the Plan priorities and goals are finalised in consultation with the States, they should be left to formulate their own plan within the broad frame work. So far as the composition of the Planning Commission is concerned, it should be a high grade advisory body of Economists, Technologists and management experts with a representation of administrators, representatives of the Central Government and State Governments, at least of the major States. This will ensure the State Government's point of view being available to the Planning Commission on issues of policy, objectives, goals etc. It is not necessary that the Planning Commission should be an autonomous body. It may continue to be an advisory body as at present.

It is true that there is a need to consider and incorporate the national priorities in the State Plan but the scrutiny of the State Plan proposal by the Planning Commission should be more directed to objectives and results than to specific schemes. Within broad sectoral outlays, the State should be free to formulate schemes and incorporate them in the State Plan.

Central Assistance

41. At present the entire assistance is passed on to the State Government in the form of 70 per cent loan and 30 per cent grant. This places unduly large burden on the States. It is suggested that the terms of assistance may be revised and the entire assistance should be provided as grant. As regards assistance in respect of externally aided projects, it is suggested that the entire external aid which is project-tied should be passed on fully to the State Government instead of only 70 per cent, which is being passed on to the State Government as at present. The said assistance should also be passed on at the same rate of interest charged by the external agencies plus a nominal service charge. The period of repayment should also be decided keeping in view that fixed by the external agency. We feel that there is ample justification for the Centre to liberalise the terms of assistance to the States.

Allocation of Central Assistance

42. The present method of allocation of Central assistance takes into account the four factors of (1) Population; (2) Backwardness of the State adjudged by per capita income; (3) the tax efforts and (4) the special problems of the State. We do not recommend any change in these four factors nor in the percentage allocation that is presently made by the Planning Commission. However, the method adopted by the Planning Commission in respect of the component distributed according to the backwardness of the State and tax effort requires a revision. Under the present formula which governs the distribution of 20 per cent Central assistance according to the per capita income, only the States which had per capita income below the average of the 14 States qualified for assistance. This does not appear to be fair as a State, which is even marginally above the average, is denied assistance under this component treating it as if it were a developed State. While the formula has to be such that more assistance should be given under this to the more Backward States, it should not deny the assistance to the States which are considered developed only in relation to the average. From this point of view the original Gadgil formula was more just and equitable and we therefore recommend reversion to it. In respect of the component of 10 per cent, which is distributed according to the tax effort, the present formula adopted by the Planning Commission is not arithmetically correct as it does not take into account the size of the State. In order to rectify this error it is necessary to give a weightage to the tax effort by the population of the State. We would like to mention that since containment of population growth is a national policy, the present practice of using the 1971 figures both for the purposes of distribution of the 60 per cent component as well as for assignment of the weights under the second and third components should continue. However, where the calculation of the indicators like per capita State income or per capita tax effort is to be made on the basis of up-to-date figures of tax calculation and State income, this should be done using the population figures for the specific years that are considered.

Centrally Sponsored Schemes

43. We feel that while formulating the Centrally sponsored schemes such as Family Welfare, Control of Communicable Diseases, etc., the State should be actively associated so that the varying

conditions from State to State can be taken into account and the schemes designed accordingly so that they could be effectively implemented. Similarly, enough latitude needs to be given to the States to make variation in the different components of the scheme considering the conditions prevailing in the State. It is suggested that any Centrally assisted programme or Centrally Sponsored Scheme should be run atleast for a period of 10 years and wholly assisted by the Centre. Whenever a Centrally Sponsored Scheme is abolished or transferred to the State non-plan, an amount equal to the level of committed expenditure reached at that time on implementation of the programme/scheme should be transferred to the States as long as the scheme is continued.

Monitoring and Evaluation

44. It is necessary that a proper system of Monitoring and Evaluation including a concurrent evaluation is built up by the State Government and the Planning Commission to ensure proper and effective implementation of the plan programmes so as to achieve the desired goals within the specified period. A suitable machinery may be evolved for this purpose.

Need for Effective Decentralisation

45. The present time schedule for finalising the State resources for the Plan precludes any effective decentralisation below the State level because there is hardly any time left for the districts to prepare their plans before they are incorporated into the State Plan for submission to the Planning Commission. It is, therefore, necessary that the States themselves are given reasonable amount of freedom in formulating their own plans with sufficient time schedule for effective decentralisation below the State level.

Miscellaneous

Industries

46. The extension of the First Schedule to the Industries (Development and Regulation) Act, 1951 has resulted in converting the subject 'Industries' into a virtually Union subject. There are a large number of items in this Schedule which deserve to be deleted. We have listed them in reply to Q. 7.2 of the Commission's Questionnaire. In this context, it is suggested that the phrase "national public interest" in the context of national control over an industry when Parliament alone can legislate, needs to be defined. The following norms are suggested :—

(1) The Parliament may legislate in respect of Core Industries and Defence Industries.

(2) In respect of subsidiary and ancillary industries of the Core Industry and Defence Industry, Parliament need not legislate.

(3) Except in case of Core Industry where the natural resources are available in a State it should be for the State to legislate.

(4) In industries like agricultural implements, after the national capacities and requirements are determined, the State Government should have a free play for creation of capacities in the State itself. In transport industry, excepting the four-wheelers and commercial vehicles, the State Government should have the privilege to determine the capacities. These items would be bicycles and two and three-wheelers.

Procedure for Industrial Licence

47. Clearance in principle regarding the capacity and availability for a particular project may be given by the Government of India. Thereafter, matters relating to capital issues, import of capital goods, location of raw materials and foreign collaboration need not become part of the total licencing procedure but these should be available automatically once the basic clearance is given.

48. The States have got an organisational structure to service the Small Scale Sector, but there are still linkages with the macro or national level on critical issues such as allocation of raw materials and lack of statutory powers which vest with the Centre. Unless raw material supply is planned for appropriately, shortages would continue and the Centre is compelled to ration out its cake to the States. We feel that there could be an improvement in the States treatment of their sector through (i) better and more co-ordinated approach between institutions; (ii) ensuring adequate marketing support for the goods from this sector as well as raw material supply; and (iii) financial support through adequate supply of term and working loans.

49. The decisions of the Central Government in regard to its direct investment in heavy industries on the basis of allocation of projects to "No Industry District" and to State where no public sector projects have so far been allocated, have affected us adversely. Because of the development which has already taken place in and around Bombay, a few public sector proejcts were located in Maharashtra and we feel that it should not come in the way of our State getting legitimate quota of such projects for a balanced development of areas like Vidarbha, Marathwada and Konkan. We also feel that views of the State Government on the location of Public Sector projects within the State should be taken into account. It may be pointed out that the present methodology for identification of backward areas for location of industries has adopted the district as a unit for identification. We feel that a district is too large an entity for such identification and that the appropriate unit for identification of backward areas would be the Taluka. We further feel that in identifying industrially backward Talukas, the following factors need to be considered :

(i) While considering the level of development, investments in public sector project in an area may not be taken into account.

(ii) Resource based industries may also be excluded in assessing the stage of development, as they do not necessarily contribute to the development of the area; and

(iii) The scale of incentives may be linked up with employment potential.

Trade and Commerce

50. There is no need to appoint any authority as contemplated by Articles 307 and there should be no restrictions on Inter-State Trade and Commerce.

Agriculture

51. Though agriculture is a State subject, it cannot be the concern of only the States, because often an all-India view has to be taken in many matters and for this Central involvement in the area of agricultural development would be unavoidable. We, however, feel that the State Governments should be more actively associated in the formulation of Central and Centrally Sponsored Schemes in the agricultural sectors. We also feel that while formulating such schemes the Central Government should confine itself only to indicating the broad guidelines and expect the States to come up with detailed project formulation. In other words, once the goals and broad methodologies are determined, each State should have the flexibility regarding the manner in which the Central and Centrally Sponsored Schemes will be implemented.

52. The Government of India have been fixing uniform minimum support prices for different commodities for the country as a whole. It is felt that taking into account the fact that the cost of production varies considerably from one area to another, there ought to be greater flexibility in fixing minimum support prices for different areas of the country, considering the local agro-climatic conditions, productivity levels, cost of production, market prices etc.

53. Forestry policy and its administration was formerly a State subject but now Central Government has stepped in a big way with the transfer of the subject to the Concurrent list and enactment of Forest Conservation Law. The State Governments are, therefore, required to refer even small matters pertaining to forest clearance to the Central Government, which delays implementation of projects considerably. This needs to be reviewed and we feel that wide latitude should be given to the State Governments in administration of forests, subject to national goals in regard to conservation of forests being followed, guidelines for which could be clearly laid down.

54. Regarding financial institutions, like NABARD we feel that except for very broad policy guidelines, the Centre should not attempt to frame too rigid a set of instructions in the working of such financial institutions. The State's policies should have greater weightage in the working of financial institutions such as the Apex Cooperative Bank etc.

Food and Civil Supplies

55. It is felt that consultation with State Governments should precede formulation of policies regarding pricing, storage, movement and distribution of foodgrains as well as other essential commodities. A periodical review of the arrangements for administering the Essential Commodities Act and other regulatory Central Acts would be useful. Prior approval of the Central Government which at present is necessary in respect of several enforcement and regulatory orders under the Essential Commodities Act, needs to be dispensed with. The specific areas where this could be done may be decided by the Central Government in consultation with the State Governments.

Education

56. There is considerable scope to evolve a consensus among the States as well as between the Centre and the States in the field of education through discussions and consultation.

Inter-Government Co-ordination

57. It is not necessary to set up a permanent Advisory Commission on Inter-Governmental relations as existing in U.S.A. as no serious irritants in the Centre-State relations have so far been experienced.

GOVERNMENT OF MANIPUR

Replies to the Questionnaire

925 ISCS/98—24A

925 ISCS/98—24B

Government of Manipur

REPLIES TO QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 Ours is a limited federalism unlike in the U.S.A.

1.2 We agree to limited federalism and not to the extent of the recommendation of the Rajamanner Committee. The States like Manipur which are backward in all respects in comparison with other States should be allowed some concession in the allotment of overall national resources by making a temporary statutory provision in that behalf.

1.3 Substantial decentralisation may lead to disintegration. Our efforts should be towards achieving a homogenous country or nation in all respects except for retaining distinct and different cultures. What is necessary in times of emergency shall also be a necessity in normal times with a difference in the degree of efforts. Otherwise, maximum efficiency in times of emergency will only be an exercise in futility.

1.4 American system of federalism is a reality in the present day world. However, the population in India is not yet prepared for that degree of federalism.

1.5 We agree with the views. The Constitution, as it is, is the answer for all our needs. We should at all times make maximum effort to resolve our difficulties, problems and issues within the framework of the Constitution and should avoid temptations to introduce amendments in the Constitution. The more the Constitution is amended the more it shall become defined and less in flexibility.

1.6 The distribution of legislative powers under the provisions of the Constitution and the separation of judiciary are the basic foundations for the protection of independence and ensurance of unity and integrity.

1.7 The Constitutional provisions under reference are not only reasonable but also necessary.

1.8 No comment.

PART II

LEGISLATIVE RELATIONS

2.1 We have not come across of any such instance.

2.2 No suggestion.

2.3 Yes.

2.4 Where there is necessity for the uniformity of law the enabling provision should be perpetual.

2.5 No.

PART III

ROLE OF THE GOVERNOR

3.1 The role of the Governor as envisaged in the Constitution and established by convention is ideal and suitable for the Indian conditions.

3.2 The role of the Governor should be that of a friend, philosopher and guide even in the discharge of the discretionary functions. The Governor should consult the concerned State Ministry though the opinion given by such State Ministry may not be binding either on the Governor or on the Union Government.

3.3 While making report to the President suggesting action under Article 356(I), the Governor is to make the report in his discretion. Since the provision is intended to be used only in emergency, the desirability thereof is beyond doubt; but there should be cerain additional safeguards. The exercise of such power for purposes other than constitutional should be prevented.

In regard to the appointment of Chief Minister, the role of the Governor should be akin to that of the President of India.

In regard to the prorogation or dissolution of the Legislative Assembly, the Governor should act in accordance with the advise tendered by the Council of Ministers.

3.4 Articles 200 and 201 give general power of reservation of the bills for consideration by the President. It will be adviseable to have an Instrument of Instructions to the Governor giving them certain guidelines in this matter, the power, though discretionary in nature, cannot be exercised in an arbitrary manner.

3.5 No comment.

3.6 The Governor is not an agent of the Centre and may not exactly be described as an ornamental head of the State. He is undoubtedly "a close link" between the Centre and the States. But the position of the Governor is not an independent one. Alike the President of India, he should also act in accordance with the advice tendered by the State Council of Ministers except in the sphere where he is required to function in a discretionary manner. There should be a clear demarcation between the functions where the Governor is expected to work in his discretion

and the functions where the Governor is expected to work in his discretion and the functions where he is expected to work in accordance with aid and advice of the Council of Ministers.

The more precise this demarcation is made, the less will be the chances of confusion and ambiguity. Sphere of discretionary powers should be kept limited to the cases covered by Articles 356 and 365, and in the matter of selection of the Chief Minister under Article 164. In regard to other functions, the Governor should be bound to act in accordance with the advice of the Council of Ministers, after his selection.

3.7 The functions of the Governor are different than that of the High Court Judges and as such, the tenure of his office and the manner of his appointment or removal cannot be the same as prescribed in the case of a Judge of Supreme Court or of High Court.

3.8 The position of the Governor is that of the Constitutional Head of the State. The framework of the Indian Constitution is such that question of empowering him in this manner cannot be recommended. The position of the Governor in this regard is not in any way different from that of the President of India except only in the cases where he is to discharge his duties in his discretion. Even though some amount of discretion is inevitable in the matter of appointments of the Chief Minister under Article 164, the same power for the purposes of checking and verifying the loss of majority in the legislature cannot be given to a Governor who might elect to act as an agent of the Union Government. Such power if given would be contrary to the principles of federalism.

3.9 The system introduced in the Republic of Germany by article 67 of the Basic Laws may not be suitable under the Indian Constitution where there is shifting of allegiance amongst the political leaders and Members of Legislative Assemblies and Parliament. Even though the solution offered by the Republic of Germany appears to be idealistic in nature, it cannot be treated as practical in the Indian context.

3.10 The guidance regarding the manner in which discretionary powers of the Governors are to be exercised should be formulated in consultation with the States by the Union and these guidelines could be contained in an Instrument of Instructions in a similar manner as they were adopted under the Government of India Act, 1935.

Part IV

ADMINISTRATIVE RELATIONS

4.1 The purpose of Article 256, 257 and 365 of the Constitution is to define the scope and areas of Centre and State relation and also the extent of control of the Centre over the State. In matters where the authority and power of the Centre and necessary to exercise in relation to a State the said provisions are invoked. Article 365 of the Constitution is only a definitive provision which can be relied on when the defined situation arises for the purpose of invoking emergency provisions. There was never any cause or decision for extending threat of exercising such a power.

4.2 The directions of the Centre to the States in exercise of its Constitutional powers is to be complied with when flouted it will amount to violation of Constitutional directives resulting to failure of constitutional machinery. To avoid controversy, such a situation is defined in Article 365. This is, therefore a necessary provision.

4.3 We agree with the recommendation. Because the Centre should always prefer willing obedience without the show of authority.

4.4 We have had no occasion to question the past actions in this behalf.

4.5 We cannot agree with the view expressed. The interference of the Centre is not for the purpose of bringing about total normalcy. If only the immediate dangers are removed by invoking the emergency provisions, the rest of the problems for restoring normalcy should be left at the hands of the State Governments, for that purpose limitation of time to a shorter period is more than justified.

4.5 Satisfactory except that the State Governments shall be involved and consulted wherever possible.

4.7 Where the subjects are in the concurrent list the central agencies should confine their activities to only advisory in areas where expert and special knowledge is necessary.

4.8 The members of the All India Services who are in State services mostly appear to have more resistance to political pressure at the State level as their careers were not always at the mercy of the State politicians. This restraint had been a major factor for preventing arbitrary an drash acts at the State level. Hence, to give greater control to the State Governments is not desirable.

4.9 Article 355 is to be invoked only at the time of and during emergency. Hence, there is no cause for apprehension.

4.10 We agree that the State should be given room to share access to the mass communication medias.

4.11 The zonal councils have become superfluous in view of the existence of the North Eastern Council in the North Eastern Region.

4.12 We agree that such an agency should have a permanent setup. with the functioning as proposed.

PART V

FINANCIAL RELATIONS

5.1 The Constitution allocated to the States subjects such as agriculture, medical, public health, law and order etc. that touch intimately the lives of the people. Such subjects can be efficiently

administered only by the states who are closer to the people and are more keenly alive to their problems and needs. With the advent of planning there has been a shift in strategy and national priorities. The fiscal burden of the newly devised development strategy and the reordering of plan priorities has fallen relatively heavily on the States compared to any time in the past. The gradual shift towards emphasis on social justice calls for a realignment of resources in favour of the States because services and programmes that favour more equitable social order come within the purview of the States. There can be no doubt that having regard to the growing responsibilities of the States, the distribution of taxes and revenues is very unfair to the States. This has resulted in a chronic and widening gap between the States' own resources and their expenditure necessitating dependence on the Centre for financial assistance to meet growing obligations. Of late, this has generated a persistent demand from the states for larger transfer of funds from the Centre.

The existing scheme of fiscal transfer from the Centre to States is marked by the prevalance of of a parallel assessment of needs of the States by the Finance Commission and the Planning Commission. This new element in fiscal transfer was not envisaged by the framers of the Constitution. To a certain extent there might be overlapping of efforts if two independent agencies are simultaneously responsible for recommending assistance to the States. The overlapping situation is sought to be corrected by a distinction between plan and Non-Plan expenditure on revenue account. While the Finance Commission confines itself to tax sharing and grants-in-aid covering non-plan revenue account of the States, Plan assistance is channelised through the Planning Commission in the shape of both loans and grants. The tax sharing is regarded as a matter of right and can leave the States with surpluses which they are free to spend. The grants under Art. 275 are generally unconditional and not on a matching basis. They have also never exceeded the Non-Plan deficits of the States though the terms of reference do not seem to prevent the Finance Commission from recommending grants to poorer States in excess of their non-plan deficits. On the other hand the scheme of tax sharing leaves some States with large non-plan surpluses. Since the States contribution for plan should generate from non-plan surpluses and additional resource mobilisation undertaken by the States, the poorer States find themselves in a weak bargaining position in the matter of plan finalisation. In this context the Finance Commission might accord a developmental orientation to the flow of funds recommended by them considering the existing disparities in the provision of State Services as between advanced States and others. There seems to be no need for a change in the present system or the establishment of a single body to recommend all financial assistance from the Centre. The Planning Commission may recommend assistance for plan projects. This will divest the Commission of the responsibility of finding resources and enable them to discharge planning functions in a better way.

5.2 The observations of the A.R.C. Study team are not only valid even now but by and large financial dependence on the Centre has been growing over the years. This process cannot be halted or reversed by a more redistribution of taxing powers in favour of the States. There can be no controversy on the need to enlarge the size of the national kitty in terms of tax resources. Nor can the advantage of a vast all India Market with free mobility of capital and skill be lost sight of. Having regard to all these aspects the present division of tax resources given in the Constitution appears to be by and large well conceived and needs no radical change.

Another matter which needs attention is the provision of Article 276 of the Constitution under which the total amount of tax payable in respect of any one person to the State or any one Municipality, District Board or other Local authority in the State by way of tax on professions, trades callings and employments shall not exceed Rs. 250 per annum. While this provision might have been reasonable at the time of framing the Constitution the ceiling imposed by this provision constitutes an unreasonable restraint on the powers of the States to levy and realise tax from this source. With the escalation in the general price level and the inflation that has taken place in the country since the early sixties a change in this limit has become necessary so as to enable the States to augment their resources. It is felt that the ceiling should be suitably raised from Rs. 250.

It is also necessary to bring about changes in the distribution of nationally collected taxes, inclusion of the proceeds of new items like Corporation tax, Surcharge on I.T. Custom Duty etc. In the divisible pool, full implementation of the tax powers given to the Union for exclusive distribution to the States. Apart from devolution of taxes, grant-in-aid on the basis of the principle of equalisation will serve to restore the financial imbalance of the States particularly of the backward areas. That apart. huge financial resources at the command of the Centre through its control over the nationalised banks, financial institutions, domestic loans foreign aid and deficit financing need to be shared with the State with a view to reducing growing dependence on the Centre.

5.3 While the need for a strong Centre is not denied, a strong Centre is in no way inconsistent with strong States. On the contrary, a strong Union can only be a Union of strong States. The Indian Constitution provides the Centre with much greater powers than the States in the legislative, administrative and financial spheres. The Constitution provides for the levy and administration of taxes with wider economic base such as Income tax, Corporation Tax, Union Excise Duties and Customs Duties by the Union Government, whereas the resources allocated to the States are comparatively meagre and have only limited growth potential. Apart from elastic sources of tax revenues the Centre has at its command all resources mobilised through nationalised banks, financial institutions domestic and foreign loans and deficit financing. While the present division of resources provided in the Constitution is not sought to be

disturbed, the pattern of transfer should be such that the resources are applied at points where they are most needed with a view to reducing regional disparities and attaining social and economic justice.

5.4 In order to attain the objectives, the Centre may take recourse to better administraion of existing taxes as well as implementing the tax powers given to the Union for exclusive distribution to the States which has had hitherto remained unexploited. Secondly, there need to be proper vigilance over the magnitude, propriety and efficiency of Union expenditure. Better administration of public undertaknigs is one of the many measures that can be taken for achievement of better control over expenditure. Deficit financing to a limited extent may be adopted as a last resort. So long as it boost up effective demand there may not be adverse effect on the economy. The Indian economy is marked by high rate of unemployment combined with inflation. In such a situation inflation tends to get aggravated if massive dose of deficit financing is pursued.

5.5 The objective criteria that should be used for determining the share of taxes may be as follows :—

(a) **Share of taxes**

Income Tax : The divisible pool of income tax should be stepped up from the existing 85 p.c. to 90 p.c. The distribution of the net proceeds of income tax may be on the basis of 90 p.c. population and 10 p.c. backwardness.

Surcharge on Income Tax : Surcharge on income tax has been levied year after year and raised from 10 p.c. to 15 p.c. but its proceeds have been retained exclusively by the Centre. The estimated yield from surcharge is Rs. 219 crores in the budget for 1984-85. A surcharge is levied for meeting the requirements of some unexpected events and it should remain for the limited period of such requirements. But a surcharge continued indefinitely could well be regarded as an additional income tax sharable with the rest of the proceeds of income tax. It should be merged with the basic rates and made sharable with the States.

Corporation Tax : The growth of Corporation tax over the years has been phenomenal. In 1952-53, the income tax realisation was Rs. 143 crores and that of Corporation tax about Rs. 44 crores. The position has considerably changed since then.

In the budget for 1984-85 the Income tax revenue is estimated at Rs. 1801 crores and the Corporation tax revenue at Rs. 2588 crores. Thus in the past 32 years while income tax has grown by 1159 p.c., Corporation tax has grown by 5702 p.c. The exclusion of Corporation tax from the divisional pool has deprived the States of a source of revenue that is more buoyant than income tax. It is suggested that 50 p.c. of the Corporation tax which is only a form of income tax, should be brought into the divisible pool by appropriate amendment of the Constitution and distributed among the States in the same manner as income tax.

Union Excise Duty : That States' share in the net proceeds of Union Excise Duties should be raised to 50 p.c. in place of the existing 40 p.c. *Inter se* distribution among the States may be on the existing basis.

Additional Duties of Excise : The incidence of additional excise duties as a percentage of the value of clearance should be raised to 10.8 p.c. and should not be allowed to fall below this level in future and a ratio of 2:1 should be maintained between the yield from the basis and the additional duties Distribution of net proceeds among the States may be on the basis of 70 p.c. weightage for population, 20 p.c. for State domestic product and 10 p.c. for production.

Estate Duty in respect of property other than agricultural land : Distribution of net proceeds should be on the basis of location of property in respect of immovable property and on the basis of population in respect of property other than immovable.

(b) **Plan Assistance**

Prior to Fourth Plan, Plan assistance was mainly schematic being tied to particular projects or schemes and thereby assumed a character of conditional grants. The Gadgil Formula made it more general through its recommendation of block loans and grants. To a large extent such assistance was freed from the string attached to it. The whole plan assistance, however depends on approval by the Planning Commission of the plan as a whole. Even now on some items the assistance is tied to some ear-marked sectors and a spending shortage in such sectors could invite a proportionate cut in assistance. The pattern of assistance under the present system is 70 p.c. loan and 30 p.c. grant. For the purpose of distribution of Central Assistance eight States are kept outside the purview of Gadgil formula and termed as special category States. These are Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Nagaland, Sikkim and Tripura. Central assistance to special category states is determined in terms of their actual need and past performance. The pattern of assistance is 70 p.c. loan and 30 p.c. grants for general areas and 10 p.c. loan and 90 p.c. grants for hill areas. The present system and procedure of channelising Central assistance through the planning Commission may continue. Manipur may be allowed to retain its special status outside the Gadgil formula.

(c) **Non-Plan Assistance**

The States are receiving statutory assistance under the provision of Art. 275(I) as per recommendations of the successive Finance Commissions. Besides, Assam is receiving a small sum under clause (a) of the second proviso to Art. 275(I) for administration of the Trible Areas. Apart from the statutory assistance, the States are also receiving from the Centre non-plan assistance channelised

through respective Ministries for other purposes, the more important being (i) relief and rehabilitation of displaced persons, (ii) relief necessitated by hostilities, (iii) construction and maintenance of border roads, roads of strategic importance and national highway, (iv) modernisation of police force, (v) labour and employment, (vi) Education, (vii) Social Welfare and (viii) C.R.F.

So far assistance under the provisions of Art. 275(I) is concerned the non-plan revenue gap should be ascertained having regard to backwardness, special problems and matters of national concern. The non-plan grants should not only cover the gap so assessed but should leave the backward States with sufficient surplus on revenue account which can be ploughed back for fresh development.

Most other non-statutory assistance takes the form of reimbursement of expenditure on a limited number of specific items combined with advance assistance for which provision is made in the State budget. Though there is no complaint with regard to the procedure adopted for this purpose, it is increasingly being felt that some more items of expenditure should be fully reimbursable for instance of late, the State Government has received a substantial amount for relief necessitated by hostilities but the pattern of assistance adopted by the Centre is 70 p.c. loan and 30 p.c. grant. The nature of such assistance calls for a revision of the pattern of assistance by treating the entire amount as outright grant. So far, expendiure on outside SWS is concerned, the States do not receive any non-plan assistance. The MHA charges Rs. 24 lakhs per annum per Bn. of CRPF/BSF plus actual cost of transportation, movement, accommodation, water supply etc. Though maintenance of law and order is a State subject yet in abnormal situations large scale deployment of Central bns. becomes necessary in addition to full deployment of State forces. If the Centre insists on payment for such services this will have disastrous effects on State finances particularly considering the abnormal that calls for such deployment. In this context the observation of the Sixth Finance Commission is of special relevance. That Commission urged the Government of India to waive payment altogether for the services of CRPF made available to the State for maintenances of law and order. They further observed that the Government of India would continue to have a decisive voice in determining whether or not the law and order situation in a State warrants supplementary support in the form of CRPF and there is no reason to apprehend that the State Government may invoke assistance of the CRPF on a large scale if payment for the same is waived. After all the Government of India have an equal stake with the State Governments in the maintenance of law and order throughout the Country. This aspect needs consideration.

5.6 The existence of inter-regional and inter-State disparities in the rates of economic growth even after sustained efforts of over three decades by FC and PC clearly shows the inadequacy of measures taken in this regard. With a view, to reducing inter-State disparities and ensuring social justice a part of the share of taxes may be set apart and credited to a special fund exclusively for distribution among the backward States. The Fund so created may be financed out of any increase in States' share of taxes and suggested incorporation of Corporation Tax and surcharge in the divisible pool. This would narrow down inter-State disparities and the backward States will be left with adequate surplus for investment in development activities.

5.7 & 5.8 The framers of the Indian Constitution have adopted the principle of separation and clearly demarcated the spheres of taxation for both the Union and the States and two separate lists of taxation were drawn up for the purpose. While allocating the taxation functions to the Union and the States due regard was paid to the principles enumerated for a sound taxation system. As a result, the Union was vested with the powers to levy broad-based taxes both direct and indirect like IT, CT, Customs and Excise which satisfy the cannons of economy efficiency convenience, etc. The States were left with the powers to levy taxes on consumption and localised items of income and wealth. Judging from the stand-point of economy, freedom of trade and commerce and equity, it may at this stage, perhaps not be possible to transfer any item of taxation from Union List without adversely affecting internal trade and economy. There is no denying the fact that major taxes like IT, CT, Customs Duty, Excise, etc. have a profound bearing on the economy of the country as a whole and as such the present division of tax resources in the Constitution need not be changed. Nevertheless, any concession, exemption and incentive that the Centre is now giving or propose to give which have the effect of reducing the divisible pool and other relevant matters the fiscal effect of which fall on the States, should be reviewed in depth by a Committee on which Centre and State Finance Ministers are represented. Sales tax being the most elastic and buoyant source of revenue to the States, any further incursion in this field will take away the limited flexibility the States now enjoy in the matter of augmenting their revenues.

5.9 For the purpose of transferring resources to the States to cover non-plan gap, the Centre appoints a F.C. every five years over a period of five years many unforeseen liabilities might arise which the Finance Commission will not be in a position to provide for. Thereby the States are left to the mercy of the Finance Ministry and the Planning Commission. Besides each Finance Commission is required to take the levels of State expenditure obtaining upto a particular date as stipulated by its terms of reference. The choice of a date prevents the Commission from taking cognizance of any liability adopted by the States after that date. Such an approach is designed to curb the propensity of the States to rush ahead with fresh expenditure proposals along with the announcement of a F.C. Consequently, many pressing non-plan needs are either shelved or taken up with severe strain on State finances. There is, however, no genuine reason to feel that the appointment of a F.C. will ring a signal for the States to go ahead with fresh expenditure simply to take advantage of the award. Such short-comings of

the Five Year Finance Commission system can be averted by a permanent Finance Commission-type body with wide powers of annual allocation to the States. The plan is to be financial through any surplus on non-plan revenue account, additional resources raised by the States and plan assistance given through the Planning commission. Once the Finance Commission is made a permanent body freed from simple gap filling approach, the Planning Commission will be relieved of the burden of finding resources for bridging non-plan gap and can perform its role of investment, planning and decision-making in more effective manner.

5.10 Sound fiscal management is dependent among other things on economy in expenditure consistent with efficiency. The manner in which the States deploy the resources allocated to them so as to get the best possible results from the expenditure incurred gives an idea about the level efficiency and of economy exercised by the State. Each Finance Commission adopts certain norms on an all-India basis for maintenance and upkeep of assets. It is, very often, not possible for the States to adhere strictly to such norms due to localised factors and abnormal price escalation. However, the State Governments in their eagerness to conserve resources for the plan have been impelled by motives of economy in public expenditure very often have to curtail expenditure at the cost of essential services. Fiscal transfers from the Union have not so far been able to reduce significantly the disparities in the level of public expenditure among the States. Disparities between the States still persist particularly in backward States. In terms of essential administrative and social services. Imbalances also exist among different areas within the States. Far greater priority needs to be assigned in providing essential administrative and social services in the backward States. This calls for larger allocations for education, medical cares, public health and welfare of SC/ST and OBC. A beginning has been made in this respect by the Sixth Finance Commission, while the earlier Commissions had assessed the requirements of States largely on the basis of maintenance of administrative and social services at the level obtaining in the base year, the Sixth Finance Commission for the first time made a departure from this norm. They sought to raise the provision for some of the administrative and social services in backward States with a view to bringing them up to the national average and recommended grants for the purpose. The Seventh Finance Commission also adopted a similar approach and recommended extension of this benefit to some other selected services. Such an approach should be gradually be able to narrow down existing disparities in the standard of services and level of public expenditure among the States. The approach adopted by the Sixth Finance Commission and followed by the Seventh, if pursued with vigour, is likely to promote over a period of time efficiency in administration and remove disparities in this regard.

5.11 In India fiscal transfers from the Union to the States is performed mainly by two separate agencies, the Finance Commission and the Planning Commission. The Planning Commission is entrusted with the task of recommending plan assistance. While the role of Finance Commission is limited to making recommendations for meeting the fiscal requirements of the States arising from their Non-Plan revenue account, the grants-in-aid recommended by the Finance Commission under Art. 275 after considering the tax devolution to the States have been used to bridge the residual gap. A *view* is sometimes expressed that this has encouraged the States to exaggerate their revenue requirements in the hope of qualifying for the grant The elaborate terms of reference of the Finance Commission should be able to curb such propensities if any on the part of the States. If necessary the terms of reference may be suitably amended to secure this objective.

A distinction, however, need to be made here as between the weaker States and others. It will not be correct to say that the weaker States also exaggerate their revenue requirements ignoring all norms of financial discipline. In fact, in their bid to extend to their people the level of administrative and other services obtaining in the advanced States, the weaker States project their revenue requirements in a manner which may not satisfy certain norms. They, however, do so not because of a propensity towards financial indiscipline and improvidence but because of their anxiety to secure for their State a minimum level of service.

5.12 The State Government also feel that the Seventh Finance Commission has quite appropriately preferred the modality of devolution of taxes and duties to grants-in-aid for transferring resources to the States. This would enable the States to share the benefits or buoyancy in the tax receipts of the Centre and of additional taxes raised by it. But such an approach may work to the detriment of weaker States having a poor tax base due to low degree of urbanisation and industrial backwardness and tend to aggravate the existing disparities among the States. This hindrance can be overcome if grants-in-aid are relieved of gap filling approach to maintain the budgetary equilibrium of the States. Instead they may be used as a tool to reduce the level of disparities among the States and to ensure distributive justice.

5.13 The State Government is fully in agreement with the principles enunciated by the Seventh Finance Commission about the role of grants-in-aid in the scheme of fiscal transfers from the Union. First of all, requirements of the States may be assessed on the basis of maintenance of administrative and social services at the existing level and thereafter provision may be made for the improvement of administrative and social services. In backward States where marked deficiencies are noticed in terms of per capita availability of such services with a view to catch up with the national average. Lastly. weightage may be accorded on matters of national concern. In case of Manipur, the State has a special responsibility in the matter of border security being located on or near the country's international borders with Burma.

5.14 The decision of the Government of India to float Special Bearer Bond implies reduction in aggregate revenues from taxes on income. Similarly, raising of administered prices of items like petroleum, coal, etc. with a view to mobilising additional resources for the Centre deprives the States of any share of such accrual. Instead of raising administered prices had this been done through revision of rates of Excise duty on such items the States could get their due share. It is, therefore, in the fitness of things that yields from such levies should be brought under the divisible pool for distribution among the States.

5.15 The savings generated in the Indian Capital market are at present distributed between the Centre and the States in the shape of market borrowings, loans against share of small saving collection and negotiated borrowings from financial institutions and LICI. Under the present system the States can borrow funds only within the Country and subject to the limitations imposed under Art. 293 of the Constitution.

In recent years the total amount of marked loans have been allocated among the States broadly on the same principles as those adopted for distribution of central assistance for plan. However, the share so determined have been allowed to vary upward by 10% in a year to all the States. In other words market borrowings have been allocated to different States by the RBI on the advice of the Planning Commission and the Union Ministry of Finance. If this principle is substituted by allowing market loans to be floated by the States on competitive basis this will enable the richer States to get more funds offering competitive interest rates at the cost of the poorer States which would be extremely unfair. The State Government subscribe to the view that the economically weaker States should be assisted with more grants than loans therefore, more Central loan and market borrowings may be allocated to the richer States and more outright grants to the weaker States. At present two-thirds of the net collection of small savings is advanced to the States as loan. The State Government are of the view that such loan should be treated as loan in perpetuity. Institutional borrowings like State Governments borrowings from NCDC, RBI, IDBI, LIC etc. occupy an insignificant role in the schemes of public debt of States like Manipur. It is felt that such borrowings should be distributed on the basis of investment priorities for specific self-liquidating projects which should be able to take care of the obligations arising out of servicing and repayment.

5.16 The budgetary deficits of the States are no doubt growing at a much faster rates than that of the Centre. The combined budgetary deficits of the States in 1983-84 was Rs. 750.00 crores and that estimated for 1984-85 is Rs. 1,312 crores. In the same period of deficit of the Centre is estimated to grow from Rs. 1,695 crores to Rs. 1,762 crores. It is also true that inspite of a substantial increase in transfer of resources from the Centre in absolute terms, the percentage of the Centre's revenue receipts being transferred to the States is declining. This trend is partially reflected in the quantum of central transfers channelised through the Finance Commission. During 1974-79 transfer to the States on the basis of the award of the Sixth Finance Commission aggregated to Rs. 11,168 crores out of the total revenue receipts of the Union amounting to Rs. 43,976 crores or 25.4 p.c.

In terms of the recommendations of the Seventh Finance Commission the overall devolution of resources during 1979-84 is estimated to be Rs. 20,843 crores out of Rs. 80,126 crores, or 26 p.c. recording hardly any increase. While the needs of the States are growing fast in volume, the resources allocated to them lack the needed flexibility resulting in fiscal imbalance and growing indebtedness of the States. The total outstanding debt of the State Governments rose to Rs. 27,449 crores in 1981-82 from Rs. 8,718 crores in 1970-71. The situation warrants urgent corrective measures to bring about better correspondence between resources and responsibilities of the two tiers—the Centre and the States in our federal set up.

5.17 Over the years the problem of indebtedness of the States has attained enormous proportion as a result of economic planning. The outstanding public debt of the States has risen from Rs. 8,718 crores in 1970-71 to Rs. 27,449 crores. Considering the magnitude of the problem an annual review of indebtedness instead of a periodical one as at present might be undertaken. A permanent Finance Commission type body shall be able to look into the problem effectively. As observed by the ARC Study Team, among the various components of public debt of the States, the loans from the Central Government occupy a predominant place. An analysis of the debt position of the States as on 31st March, 1982 shows that of the outstanding debt of Rs. 27,449 crores loans from the Central constitutes Rs. 19,967 crores and accounts for 12.7 p.c. of the total indebtedness. Alongwith the growth of public debt, apart from repayment liability on the capital account the burden of interest charges on revenue account of the States has also become progressively heavier and is causing serious concern to the States. The average rate of interest on outstanding debt has also risen from year to year. This is evident from the debt servicing and repayment liability of Manipur. With the advent of economic planning public debt has assumed a serious proportion because loans prenominate over grants in the composition of central assistance for plan. The growth of public debt need not cause any concern so long as borrowed funds are utilised in self-liquidating projects. But under the compulsion of economic planning and priorities accorded large portion of the borrowed funds have to be utilised for building up economic and social over-heads. A shift in favour of grants in the pattern of central assistance for plan as well as removal of deficiencies in the present scheme of devolution is called for to remedy the financial instability of most of the States.

5.18 In India the States are given powers to borrow within the Country and external borrowing is reserved exclusively for the Union. The State's borrowings powers are also subject to such limitation as may be imposed by State Legislatures

and further a State may not raise loans without the consent of the Government of India if there is still outstanding any part of a loan which has been made to the State by the Government of India. Since all the States are indebted to the Centre in varying degrees, there cannot be said to be any freedom left with the States even in the matter of raising internal loans. These constitutional restrictions are placed on the States internal borrowing with a view to avoiding adverse monetary and fiscal affects arising from competitive and unbridled borrowing powers of the States. Under the present arrangements, the total quantum of public loans to be raised by the Centre and also its allocation between the Centre and the States is decided by the Government of India. Without affecting the basic principles of sound finance such decision can be taken in consultation with the States and having regard to their actual requirement in the context of development.

5.19 It is true that on foreign borrowings the Centre charges from the States a higher rate of interest than what it pays to the foreign lender. So far as this extra amount is charged to defray the expenses of handling such aid it cannot be said to be unjustified. In any case, the relending rate of interest should not exceed the expenses incurred by the Centre for contracting and relending such funds. Since the weaker States are not in a position to draw up projects which satisfy the specifications of the external agencies. Certain percentage of rupee equivalent of net external borrowings contracted each year may be disbursed to the States as special credit.

5.20 States cannot be allowed to borrow as much as they like from the capital market since the richer and more developed States would avail the larger proportion of available funds at the cost of weaker States by offering competitive rates of interest. The Centre would then have to enter the market on behalf of the Weaker States. Anyway, the case for larger volume of loan is not justified for the poorer States. Rather they deserve larger amounts of grants. Nevertheless, the idea of a loan Council appears to be a welcome step in the sense that it would be able to dispense with the misgivings in the minds of advanced States about the manner in which loans are being distributed at present between the Centre and the States. This council would recommend the maximum amount that can be borrowed by the Centre and by different States on the basis of the principles approved by the NDC.

5.21 The inherent inadequacy of the States finances to meet their essential obligation get reflected in their overdraft with the Reserve Bank of India. The gap between receipts and expenditure is the real cause of the ailment of which overdraft is a mere symptom. The ever increasing gap is caused by a multiplicity of factors. On one hand, the State has to incur heavy expenditure on law and order, social services and debt servicing. On the other hand, failure to invest adequately in self-liquidating projects has resulted in a situation where the revenues yielded are not even sufficient for the maintenance of assets already created. Mere doubling of the entitlement of ways and means advances will not ease the situation. Unless the disease itself is cured the symptoms will persist. Liability for servicing and repayment of debt for a backward State like Manipur amounts to about Rs. crores which is far in excess of its own tax revenues. Remedial measures call for a change in the present pattern of central assistance for plan reducing the predominance of loans over grants, reduction in rate of interest, rescheduling of outstanding debts annually instead of after every 5 years as at present and a more liberal scheme of devolution. Besides, the distinction between normal and special ways and means advances may be dispensed with and the overall limit of ways and means advances should not be lower than the aggregate of the existing limits of the two kinds of advances. The existing practice of demanding security in respect of special ways and means advances causes severe hardship and may therefore be abandoned. Further, the existing rate of interest, applicable to ways and means advances and overdrafts should be lowered to the level of that applicable to plan assistance and to other forms of assistance extended by Government of India. The additional liability on account of interest would itself act as a deterrent to improvidence on the part of the States.

5.22 Performance of the States in terms of resources mobilisation should be viewed in the perspective of the powers conferred on them by the Constitution and the available base for mobilisation of resources. Most of the taxes left with the States, with the exception of sales tax, are inelastic. In sales tax again most of the States have reached a saturation point and there is little or no scope to raise further resources through modification of sales tax rates.

In spite of the constitutional limitations it will be seen that some States show a higher tax effort per capita than others. This is due to uneven level of industrialisation and urbanisation prevalent in the States. Low degrees of urbanisation and industrial backwardness prevents the Weaker States to catch up with the advanced ones in terms of per capita tax effort. In our country the major portion of national income originates in the agricultural sector and hence this sector should bear a large part of the burden. This is equally true of the States where major portion of SDP represents agricultural income.

5.23 The Central Government failed to raise the incidence of additional excise duties as a percentage of the value of clearance to 10.8 p.c. as agreed to with the States in 1970 in respect of items where sales tax has already been replaced by additional excise duties. Moreover, taxes and duties listed in Art. 269 have not been fully tapped by the Centre to raise resources for the exclusive purpose of the States. The State Governments are, as a result being deprived of revenues which legitimately belong to them. Besides, huge arrears, taxes and tremendous increase in investment in public enterprises even for meeting their losses has created a situation which needs to be reversed to increase the size of the Central surplus.

5.24 There is no doubt that much of the present distortion in Union-State relations would not perhaps have grown as it has over the years had

the States been provided with opportunity for full and free discussion with the Centre before taking decision on matters affecting revenues of the States. Much of the discontents could either have been avoided or dissolved through the process of consultation between the Centre and States. The views of the State Governments should be ascertained while moving a Bill to levy or vary the rate structure or abolish any of the duties and taxes enumerated in Art. 268 and 269.

5.25 Art. 269 of the Constitution lists the taxes levied and collected by the Union and lay down that the net proceeds therefrom are to be assigned to the States. Under this Article no tax except estate succession duty in respect of property other than agricultural land has been levied by the Union. Tax on railway fares and freights was once levied in 1957 but subsequently repealed in 1961. Art. 269 has not so far been fully availed by the Centre to raise resources for the exclusive purpose of the States.

5.26 No comment.

5.27 No comment.

5.28 The present arrangement in regard to financing of relief expenditure is that as recommended by successive Finance Commissions, an amount referred to as the margin money is provided and when a calamity occurs necessitating expenditure on relief measures, the States have the margin to draw upon immediately. In determining the margin the successive Finance Commissions considered the actuals of relief expenditure of the States for a few years and adopted the average of such expenditure as the margin for each State. Prior to the Seventh Finance Commission the margin did not provide for any element of repairs and restoration of public assets over and above direct relief in the calculation of margin on the basis of 9 years' average expenditure with suitable price escalation. In our view the adoption of 9 years average of actual expenditure does not truly reflect the need of the States and its substitution by 3 years would be a more realistic indicator.

In case of a natural calamity of more than moderate severity necessitating relief expenditure in excess of margin money, a Central team makes an on-the-spot assessment of the extent of damage caused and recommends the ceiling of expenditure above the margin. In regard to the expenditure of a State on relief and repair/restoration of public works following a natural calamity, Central assistance is made available as non-plan grant not adjustable against the plan or Central assistance for plan of the State to the extent of 75% of the total expenditure in excess of the margin. The remaining 25% is left to the States to meet from their own resources. But in case of Manipur with its slender resource base and furry of floods manifesting itself practically every year, it becomes impossible to bear the burden of 25% in excess of the margin. Manipur's case should be considered on a special footing and the entire expenditure in excess of the margin should be fully borne by the Centre. In order to ensure optimum utilisation of relief assistance the States should be free to incur expenditure on any item of relief and repairs subject to the overall ceiling.

5.29 It is felt that creation of too many agencies may lead to overlapping of jurisdiction and function. The proposed loans Council should be able to look into the distribution of loan and its utilisation for productive purposes and also the credit requirements of the States. However, a National Economic Council might be established to serve as a forum for consultation between the Union and the States in matters of economic, commercial, fiscal and monetary policies.

5.30 Collection and distribution of fund must conform to certain norms or also they will frustrate the basic purpose of how best the funds can be collected and employed for the benefit of the people so as to ensure distributive justice. As such, collection of funds must satisfy the canon of economy, efficiency, convenience etc. So also spending of funds should conform to national policies and priorities so that they can be applied at points where they are more needed in order to secure social justice and removal of regional disparities.

5.31 At present there is no organisation except parliament and its statutory committees that can exercise vigilance over the magnitude, appropriateness and efficiency of Union expenditure. Apart from the enormous increase in Central expenditure is recent years on subjects within their sphere, there has been tremendous increase in the expenditure on financing public enterprises as well as on subjects included in the concurrent list which ultimately has the effect of depriving the States through diminution of surplus transferred to the States. A National Expenditure Commission was experimented within 1979 but it was wound up. The Finance Commission may be assigned the task of looking into the receipts and expenditure of the Centre and a permanent Finance Commission type body may dispense with the requirement of a National Expenditure Commission.

On the other hand, the State Government with limited resources at their disposal do not have the capacity to indulge in fiscal indiscipline in a big way. In any case, the State's expenditure proposals are reviewed annually by the Planning Commission besides periodic review by the Finance Commission. In the circumstances, a National Expenditure Commission for the States does not seem to be necessary.

5.32 The present system of compilation and submission of accounts involves a lot of delay at various stages and as a result the overall financial picture of State pertaining to a particular financial year emerges after a considerable lapse of time. By the time, the final account of a year is obtained, effective steps to plug the loopholes or any remedial measures become meaningless due to the time-lag. Moreover accounting delay serves as a serious impediment to regular flow of funds from the Centre where release of Central assistance is dependent on audited figures of expenditure.

5.33 The desirability of evaluation audit is not denied but while conducting such audit due emphasis needs to be given on achievement rather than

pointing out defects alone. Unless suggestive remedies are focussed evaluation audit shall not serve any meaningful purpose. Left to C. & A.G. the conducting of evaluation audit might lead to direct interference with the executive. Considering desirability of evaluation audit it should be entrusted to an agency constituted by the State Government itself.

5.34 No comment.

5.35 At present C. & A.G. does only test audit. The periodicity of such audit is biennial, triennial etc. Though the reports are often delayed they serve a useful purpose to the extent the State Government want to take remedial action on the basis of the audit report for bringing the erring officials to book and for plugging procedural and other loopholes.

Since, in the nature of things, the C. & A.G.'s report is always likely to be delayed a useful improvement could be supplementing the C. & A.G.'s audit by an extensive system of internal audit.

5.36 Internally, there is the Ministry of Finance with its Financial Advisers in every Ministry to check improper spending and externally, there is parliament with its committee assisted by the C. & A.G. and between them they are expected to keep a watch on Union and State spending. Though the public Accounts Committee and the Committee on Public Undertakings have done very useful work.

5.37 Yes, the Estimates Committee should go into the wider aspect of policies and programmes and advise the Government on improvements necessary.

5.38 No separate Expenditure Commission is considered necessary in view of the existing provision in the Constitution empowering the C. & A.G. to play this role and the periodical scrutiny of the expenditure of States as conducted by the Planning Commission and the Finance Commission.

5.39 We share the views expressed by some State Governments in this regard. In order to avoid such irritants and consequential delay leading to lapse of funds, the proper implementation of schemes and evaluation thereof should be left with the respective State Governments. There is no reasons to apprehend that the State Governments will indulge in improper spending. The State Governments are equally interested in achieving economic and social objectives at a minimum cost.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 Plan formulation passes through at least four stages. The Planning Commission prepares basic documents which are at each stage discussed by the N.D.C. prevailing economic situation and performance of the current plan is reviewed through mid-term appraisal of the plan performance. In the light of this appraisal N.D.C. formulates the objectives/outlines for the next plan. The approach paper is prepared by the Planning Commission. Thereafter, it is again approved by the N.D.C. Then guidelines are issued by the planning Commission to the States for preparation of draft plan. In the whole process State involvements are only during the N.D.C. meetings which is considered as inadequate. Planning Commission or its Working Groups may involve State representatives at the formative stage, preparation of basic documents wherein the State's development aspirations for the period may be reflected. The State's participation at the subsequent stage of plan formulation may obviate, to a great extent, any tendency towards imposition of the schemes formulated by the Central Ministries.

The present system of sending guidelines to the States and asking them to work out their plan scheme in a hurry gives no time for reflection and scrutiny. This should be remedied by sending the guidelines well in advance. Discussions with the States by the Working Groups may be spread over longer periods doing away with the present system of calling all the States together and hurriedly going through each States' programme in a single day which results in rushing to decisions through bargains rather than any fruitful discussion. Invariably Working Groups have most of the say in the bargain.

6.2 Owing to their poor finances and due to inadequate planning machinery the States are landed in a situation where they can take few terminal decisions on the development of their own States. Irrigation, Power, Education and Health Scheme are conceived, planned, financed and implemented by the State Governments. Requirements that the schemes conform to national schemes of priority takes away the marginal decision making power from the States. When as have been mentioned earlier, finances of the State is in a bad shape, involvement of the Centre is complete. The sectors mentioned above, though essentially State subjects, by their very nature need huge capital outlay compelling the States to look to the Centre for finance and material resulting in increasing Central Encroachment on State subjects. The remedy lies in strengthening the State planning machinery and actual financing of major projects through Central loans or grants.

It is not considered necessary that the N.D.C. should be a statutory body unless the changes as suggested in our replies in part I and part IV are given effect to for the Inter-State Council. As at present the basic documents should be prepared by the Planning Commission in consultation with the States at every stage in the absence of the statutory Inter-State Council. The N.D.C. will continue to prescribe objectives, lay down guidelines for the Planning Commission and finally approve the plan prepared by the Planning Commission in the light of the guidelines. Once the development plans are approved by the N.D.C., the States should be free to implement them dispensing with further discussion with the Planning Commission which will, of course, continue to provide adequate financial resources to implement the schemes.

The prevalent system does not enable the States to have any say in shaping the national policies. The agenda papers not related to the State's plan do not reach the State capital before final decision.

This omission may be rectified and participation of States in formulating national policies should be ensured.

6.3 The resolution constituting the planning Commission invested the Commission with certain responsibilities. The Commission is supposed to act as an independent body. It may consult the Central and the State Governments and act in close understanding with both. Notwithstanding the resolution defining its responsibilities, the planning Commission in its present form is essentially an agency of the Central Ministries. States are seldom taken into confidence in the formulation of schemes of national importance. The Central Ministries, through the planning Commission, are in commanding position in formulation of schemes particularly the Centrally sponsored schemes or in schemes in respect of which the Central Government shares expenditures though the schemes fall under the State subjects.

The remedy lies in cutting across the tendency on the part of the Planning Commission towards dependence on the Central Ministries in formulating its decisions. Interaction should at best be limited to consultation with the Ministry and the State and not beyond that.

6.4 The Central Government is vested with virtually unlimited economic powers. Not to speak of the Union List and those not specified in the Seventh Schedule, the Central Government has over-ridding powers in respect of the Concurrent List. Since economic planning involves decisions of wide dimensions and of serious consequence in the socio-economic fabric of the country, it is proper that the nation's highest planning level should consist of eminent experts in the sphere of Economics, Science, Technology and Management. This body should be of the highest status and responsible only to the National Development Council. It should be free from other influences and act directly under the guidance and direction of the nation's highest Development Council. This will ensure at least optimum utilisation of the potential towards achievement of the nation's aspirations, working within the guidelines set up by the National Development Council.

6.5 As in 6.4.

6.6 The Planning Machinery at the State level is not at all equipped to guide the State Government on the national priorities. Until the State Planning Machinery is strengthened, the Planning Commission will continue to be in a commanding position. The States, due to their poor finances are dependent on Central decisions and have to determine their priorities and selection of schemes well within the bound demarcated by the Centre through the Planning Commission. The requirement that it should conform to the national scheme of priorities take away even the marginal decision making powers from the State. As Centrally sponsored schemes of education, health, employment, irrigation, etc. constitute part of the State Plan. These are conceived, formulated and sponsored by the Central Government. Even the outlays are included in the Central Sector Plan, the only task left to the State being to implement it. The States are compelled to accept it even though such schemes do not fit in their scheme of priorities. This they are obliged to do only because the State's resources are limited. This involvement in every detail has resulted in the erosion of the State autonomy. Once the outline is approved by the highest body i.e. N.D.C., a State should be free to work out how to implement the detailed schemes without any interference by the Centre.

6.7 The present system of channelising Central assistance through loans and grants, seems to be working satisfactorily. Divested of the responsibility of finding resources the Commission may devote itself solely to the evaluation and guidance of the plan schemes and to be instrumental, as it should be, in economic transformation of the country. This channelisation should conform to certain criteria outlined by the N.D.C. viz., backwardness of the State and their resource constraint. The basic objective should, of course, be balanced development of all the States, taking into consideration the special problems confronting each particular State. There should be check against too much inroads into the State schemes based on the special needs of the particular State in an effort to make them conform to the national priorities. Allowance should be given to the State Planning Machinery to handle the Special Regional Problems on its own. The Planning Commission may, however, oversee that the scheme is not too ambitious so as to be beyond the realm of practical implementation.

6.8 As stated in reply to Q.5.5(1), Manipur may be allowed to retain its status as a special category State outside the Gadgil formula. The pattern of Central assistance may be changed to an uniform pattern of 90 per cent grant and 10 per cent loan, doing away with the existing distinction as between General and Hill Areas.

6.9 The criteria evolved by N.D.C. for allocating central plan assistance to States places the backward States at a great disadvantage. Advanced States with more resources could go for bigger State Plans. Added to this, private investments are attracted mostly by advanced States, and are extremely shy in the less developed States. This cuts at the root of balanced development of States.

Manipur being a special category State outside the Gadgil formula and in recognition of the especial position accorded to Manipur there should not be different pattern for General, Hill and Tribal Areas. The existing distinction may be abandoned and the whole State may be governed by the uniform pattern of 90 per cent grant and 10 per cent loan. Determination of priority sector may be left to the State. The present system of allocation of 50% on population and 50% on area basis has not resulted in any perceptible forward step on the part of hill areas of weaker States towards their goal of removal of poverty apart from the avowed object of balanced regional development. The quantum of special Central assistance should be in conformity with the special need for accelerated development in certain spheres

e.g. high incidence of poverty and under-development prevalent among the Tribal and the other backward Classes of the North Eastern Region. The State Government should be given a free hand in the drawing up and implementation of priority sector schemes without any string attached to it.

6.10 Most of the Centrally sponsored schemes are conceived, formulated and sponsored by the Centre. Schemes of this category, coming under Primary Education, Public Health and Social Welfare constitute part of the State plan. The States are obliged to implement them even if such schemes do not get integrated with the rest of the State plan and remain attached as appendages. The Centre may consider these schemes necessary from the national point of view while the States are tempted by the inducement of Central assistance in the initial stages.

But under the federal policy and prevalent distribution of fiscal powers, any change in this regard cannot be visualised. As long as the State continue to suffer from the chronic illness of financial weakness and resource constraint, the Centre will continue to use its power more effectively reducing the limited decision-making power enjoined on the States by the Constitution.

6.11 At present, the evaluation organisation has been able to take up only evaluation schemes of experimental nature and few important schemes from the point of view of the State. Again, in respect of monitoring of plan schemes the organisation has not been able to achieve much due to inadequate staff in the organisation.

In order to examine that the Central and State funds invested in the development plan yield the desired results, the State Evaluation and Monitoring Organisation needs to be suitably strengthened without further delay.

The State units of the Planning Commission's Programme Evaluation Organisation, should maintain more effective and closer ties with the State Evaluation Organisation. Instead of present practice of occasionally exchange of reports prepared by each organisation separately, there should be constant rapport, close cooperation and in appropriate cases joint studies may be undertaken.

6.12 No comments.

6.13 In Manipur the State planning Board Oversees the plan formulation and implementation. But the extent of effective exercise of the State Board is circumscribed, as the State Plans are prepared within the guidelines prepared by the Centre. Secondly, the strengthening process of the State Planning machinery has been hindered or rather crippled by excessive inroads by the Centre. The strengthening of the State Planning machinery has to be effected through a prescription issued by the Planning Commission which, in effect, is a catalogue of junior officers, assistants and peons to be recruited and a few minor items to be purchased. The list does not provide for appointment of experts with decent salaries attached to their post. Nor does the list provide for any construction or purchase of conveyances for providing mobility for effective functioning of the machinery.

The remedy lies in allowing the State Planning machinery to strengthen itself and to meet its own needs without let or hindrance within the financial limitations recommended by the Planning Commission. In fact, if necessary, States may go beyond the recommendations of the Planning Commission for strengthening the Planning machinery at the State level to be able to handle its own plan and with the implementation of plan schemes.

PART VII

MISCELLANEOUS

Industries

7.1 The First Schedule to the Industries (Development and Regulation) Act, 1951 envisaged Central regulation of a few industries which were of vital public interest and of national importance. Thereafter Central control has grown to add more and more industries of all types leaving to the States only the small scale industries which are also controlled by the Centre to a large extent. However, we have no instance to cite that the Centre has used a deliberate policy to the detriment of the State interest.

7.2 We are of the view that the Central Government should only regulate those industries having connections with defence and security of the Country. The licensing authority for the remaining industries should be vested with the State Government under the guidelines of the Central Government.

7.3 It is observed that licences are taken for many items by big houses but never implement them. It is observed that such licences are taken to stop establishment of similar projects by other parties. It may also be pointed out that backward States are normally victims of this as new licences for these items are not considered on the ground that licences for excess capacity of these items have been issued. Definite time schedule be fixed for implementation of the project and such licences should be cancelled after the expiry of stipulated time. Application from public & co-operative sector should not be rejected on the ground of excess capacity licence being issued if the project is found otherwise viable. Applications for industrial licences for establishing project in category-A backward district and non-industry district should be given over-riding preference. Although the principle is laid down by the Government of India for non-industry district but this is not followed in practice.

Many States particularly the backward States are not fully organised to support the small scale industries mainly in respect of supply of raw materials and marketing assistance. Although State Small Scale Development Corporation are authorised to procure and distribute all variety of steel materials, the performance is not very satisfactory

because the cost of materials often becomes uneconomic for S.S.I. units. For other items, it is suggested that the organisations like S.T.C., M.M.T.C., N.S.I.C. etc., should open their functioning establishment in all States so that the small entrepreneur from the State need not run for their requirement to the head office or regional offices of these organisations. It is observed that the offices of these organisations were opened in many States but without sufficient power. The offices should be given necessary powers to function to assist the local S.S.I. unit in true spirit. Central Government is the biggest individual buyer in the country. It is true that the Central Government has taken number of steps to provide marketing assistance to Small Scale Industries but many more are necessary. It is suggested that the requirement of various organisations of Government of India's establishments & undertakings should purchase the requirement of various items from the local units where these items are required to be consumed. If the prices offered in such cases are found to be higher, the prices may be fixed by competent authority on cost analysis basis which is the established practice of D.G.S. & D.

7.6 The Centrally controlled industrial institutions working in the State are hardly known and their functions and facilities extended by them needs wider publication by running an educational programme. To reach this object a coordinated agency representing all such institutions is a necessity.

7.7 Locational decision on central investment in public sector is the most important matter particularly for the State where the private investment is shy. The Industries reserved for public sector should be established in the State where there is potentiality as well as availability of raw materials and in such cases the State Government concerned should have a major say in location of the industrial project. In respect of other items backward States should get preference. Under no circumstances States' demand for establishment of central sector projects should be turned down on the ground of lack of suitable infrastructure if the project is otherwise viable.

7.8 We are fully satisfied with the policy of the Government of India in regard to the assistance given for development of the backward areas.

Trade and Commerce

8.1 We agree to the provision of Article 307 of the Constitution providing for appointment of an authority for the purposes enjoined in Articles 301 to 304.

Agriculture

9.1 So far as the Centrally sponsored schemes are concerned, it is evident that while approving the State Plan. Central Government priorities are not keeping in tune with the State Government priorities—the tendency being to retain uniformity in the terms and conditions for the entire country. It is therefore, considered meet and proper that the Government of India would give priority to the interests of the States.

9.2 It is suggested that in such cases, the Government of India should continue to bear the whole expenditure of the scheme so long as the Government of India considers the running of the scheme necessary.

9.3 Apart from the recommendations of the National Commission, the Government of India should also formulate locally suitable schemes keeping in view the diverse conditions in different States.

9.4 (a) Fixation of minimum or fair prices of agriculture items uniformly throughout the country does not appear proper. It is suggested that they should be fixed keeping in view local conditions of productivity, market price, demand etc., which differ from State to State.

9.5 National Agricultural Research Institutions should come forward to help the State Governments for solving local problems faced by different States as the States do not have the infrastructure for conducting researches on he local problems.

Similarly NABARD should formulate the credit scheme keeping in mind the different stages of development in each State instead of having a uniform regulation applicable to all States.

Food & Civil Supplies

10.1 Present arrangements for the purpose mentioned in the question are adequate.

10.2 Periodical review will definitely help improved functioning. The States should have unfettered power in respect of those enforcement and regulatory orders administered by the States.

Education

11.1 It is not true that there is unnecessary centralisation and standardisation in the field of education and excessive interference. Our experience in recent past is that Centre seldom interferes in this sphere and has always sympathetically treated the problems of the State. It is an established fact that centralisation is essential in some fields of education and perhaps in such fields only the Centre has guided the States. Educationally, Manipur is one of the nine backward States and it has received special attention and financial aid from the Centre.

11.2 There is wide scope for the University Grants Commission to tone up the administration of the Universities for their effective functioning. In this respect, they can also extend financial help for imparting training for better management of University affairs. It will be better to provide legal action against the Universities for their failure to conduct the examinations timely.

11.3 At present a Central Advisory Board under the Chairmanship of Union Minister of Education is functioning and all the State Education Ministers are its members. Timely meeting of this Board

facilitating exchange of views at regular intervals will be quite adequate and no separate arrangement is called for.

There is no difficulty in maintenance of separate institutions for linguistic minorities both tribal and non-tribal, except financial drawbacks. There are restrictions in rules and procedures to provide deficit finance to such institutions. Even if rules are relaxed, it may not be convenient to give financial aid to all the linguistic minorities' institutions. The Central Govt. may consider to provide a scheme under the Central Sector for giving side to such institutions.

11.5 There is no such conflict between the Centre and the State in Educational fields.

Inter-Governmental Co-ordination

12.1 No serious problems in the Centre-State relations have been found in this State. Therefore, the setting up of an Advisory Commission in the line of U.S.A. is not considered necessary.

GOVERNMENT OF MEGHALAYA

(a) Replies to the Questionnaire

(b) Welcome Address of the Chief Minister

925 ISCS/98—25A

925 ISCS/98—25B

Meghalaya

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 to 1.6 Our Constitution provides the right mix of federal features with a unitary form of Government. Given the historical background, cultural, linguistic and ethnic diversities, sizes of the States and the vast area of the country the framers of the Constitution consciously felt that this constitutional arrangement with a strong bias in favour of an overriding centre was a paramount necessity. In the field of economic development, however, more powers and responsibilities need to be given to the State particularly in view of the disparities in the level of social and economic development in various parts of the country, which is provided for in the Constitution itself; it only needs proper appreciation while functioning under the Constitution. By and large comments appearing at 1.5 appear to be valid. We subscribe to the views expressed in (c) (i) and (ii) and suggest that an Inter-State Council (as envisaged by Article 263) may be set up.

1.7 These are reasonable and necessary.

1.8 No reconsideration is necessary.

PART II

LEGISLATIVE RELATIONS

2.1 to 2.5 Not being a true federal entity the scheme of distribution of legislative powers in the Constitution is correctly biased in favour of the Union. However, the gradual encroachment of the Union on the State Legislative field under the cover of a declaration of 'national interest' or of 'public interest' has been a retrograde step. Entry 24 of the State List which provides for 'industries' subject to the provisions of Entries 7 and 52 of the Union List has almost been totally transferred to the Union by enlarging the First Schedule to Industries (Development and Regulation) Act, 1952 — Union act under entry 52. This has hampered proper entrepreneurial development in States in regard to industrial enterprises.

Control over State list should be with State unless required to be transferred to the Union only for the purpose of defence or for prosecution of war or needed for purely regulatory functions to achieve uniformity of standard in exploitation of natural resources which are common to more than one State, particularly in case of mining practices. In all other developmental efforts, State should be free to the extent of subjects in the State list; in case Union Government also wants to enter that field, it can do so either as an additionality (in case of U Ts) or automatically delegate the powers to the States for their jurisdiction. Legislation under Concurrent list or of such nature should have ratification by legislators of not less than half the total number of States.

PART III

ROLE OF THE GOVERNOR

3.1 The Governor has an important role in our Constitution. There has, however, been cases in which Governors have not covered themselves with glory in their functioning; but such instances have been few and far between. Some basic norms are, however, needed to be laid down for the appointment and in functioning of the Governors.

(a) They should be appointed in consultation with the Chief Ministers of the States;

(b) Their duration of tenure should be, by and large, strictly adhered to;

(c) Incumbents of such high offices should be selected with care and should be demonstrated worthy of such positions;

(d) In their functioning as Governors, they should largely act accordingly to the advice of the elected council of Ministers;

(e) In case of doubts regarding commanding majority in the House, a test in the House is the best answer; only in case it does not become possible in a reasonable period should the Governor act on his own;

(f) In any other role, like Chancellor of a University, both the Governor and the State Government should respect the statutory powers conferred upon the Chancellor, who is not bound to accept the advice of the Ministry;

(g) As far as possible, the powers of assenting or refusing to assent on a Bill should be strictly decided on legal merits of the case; in case of difficulties or doubts eminent jurists including the Attorney General should be consulted and their opinions should be given due respect; the final action should also be made known to the State either by the Governor or by the President within a stipulated period, say one year.

3.2 Governor should play a healthy role in influencing both the functioning of the State Governments and the attitude of the Union for the best interests of the State.

3.3 (a) In most cases Governors have discharged their functions in the right spirit;

(b) By and large, the democratic principles have been followed;

(c) This has been done very fairly. The present practice may continue.

3.4 The purpose behind Article 200 & 201 is to see that there is no conflict inherent or apparent between a State Law and a Central Law. Further,

it is also to be ensured that a State Law does not in any way contravene any provision of the Constitution. No doubt, the Governor and the State Government will take care of all these aspects while introducing a bill and while it is under discussion in the State Legislature, however, a further check at a third stage at the Central level if the Governor decides this to be a desirable step. The State Cabinet can itself ask the Governor to refer it to the President or the Governor can do it on his own discretion. These two Articles should remain in their present form.

3.5 Through this power only the Constitutional propriety and foreign/defence interests of the Country should be protected, Union should not try to dictate its policies to the State Government unless the proposed Bill goes against national interest or provisions of the Constitution.

3.6 As given against Question 3.3(a).

3.7 We do not agree. A fixed term for Governors with elaborate procedure for their removal will create complications.

3.8 Already covered in previous replies.

3.9 The solution offered by the Constitution of the Federal Republic of Germany is not considered practical in the Indian context and does not suit our political culture. The better alternative may be to dissolve the Assembly and order fresh elections in the event of unstable party positions in the Legislature.

3.10 We do not feel that prescribing any guidelines will be practical or correct. Written guidelines will only lead to litigations and consequential constitutional dead lock. This issue was debated at length in the Constituent Assembly and later, by a Committee of Governors, appointed by President also went into the question. The consensus always was against any such measure.

PART IV

ADMINISTRATIVE RELATIONS

4.1 to 4.3 In the schemes of our constitutional frame-work such provisions are necessary for extreme contingencies. But use of these powers should be resorted to with care, wisdom and fitness. However, before the President holds the views under Article 365 that the Government of the State is not being carried on in accordance with the provisions of the constitution, the State Government should be given an opportunity to explain.

4.4 We have no such experience. Article 356 has never been invoked in the State.

4.5 It is felt that both the conditions laid down in Article 356(5) should separately be sufficient to warrant extension of the President's Rule in the State. It is, therefore, suggested that the word, "and" occurring at the end of Article 356 (5) (a) should be substituted by the word, "or".

4.6 Present arrangements are satisfactory, may continue.

4.7 These agencies are functioning as nodal organisations in the national economy as a whole and must, of necessity, continue. They have a role to play in removing regional disparities in development and supplementing the efforts of the States whose resources are inadequate for this purpose. What is, however, necessary is that the policy in regard to such agencies are reviewed regularly by the Union Government in consultation with the State Governments preferably through the Inter-State Council suggested in Part I of our replies. The Union Government should also ensure that the agencies are responsive to the problems and requirements of the States and their role and functioning should be discussed in the National Development Council. The Agencies should supplement and not supplant the role of the State Agencies, engaged in similar activities.

4.8 Article 312 inter alia provides for creation of one or more All India Services common to the Union and the States. The All India Services, as operated in the present form, are not common to the Union and the States, but have become a State Services though the members are appointed by the President through the Union Public Service Commission. The members of the Services are under full control of the States and they cannot claim, as a matter of right, transfer to the Union or to any other States. In fact, an officer will not be accepted by the Government of India if his name is not in the panel for Joint Secretary level posts and above. When an officer belonging to an All India Service is sent to the Union, it is only on deputation and such deputation is also available to other State Services like Judicial services, etc. Keeping in view the character of the All India Services as provided in the Constitution, Cadre posts should also be shown in the Central Government's establishment in each of the All India Services and members should not be posted to Central Government as on deputation. Moreover persons of the same batch in an All India Service face varying prospects of promotions in different States. The Scheme in the present form has, therefore, not fulfilled the expectations of the Constitution makers.

The only power that is reserved is regarding removal of a member from the service by the President keeping in view the provisions of Article 311. On the other hand while the members of the All India Services are for all practical purposes under the full control of the State Government, the Union Government has reserved itself the right to creation and management of posts in the senior scale super-time, etc., of the All India Services, and this has resulted in difficulties for the State Government in proper management of the cadre.

In view of the above, it is suggested that the scheme of the All India Services may be modified keeping in view the provisions of the Constitution. Full powers should be given to the State Governments for temporary creation of posts for such officers in the cadre at the same time the Union Government should exercise more control over the deployment of the personnel of this Services in the States. The personnel of the Services

should have a legal right of approach to the Union for posting in the Central Government. Allocation of officers belonging to All India officers should be done in consultation with the State Government. Any change in the scheme like distribution of vacancies between insiders and outsiders should also be done in consultation with the States.

4.9 It is a question of interpretation of the Constitution. In case, an occasion arises to determine the powers of the Union under Article 355, the President may consult the Supreme Court.

4.10 States should be free to use additional channels of T.V., Radio for their purpose at their own costs without changing the constitutional arrangement, by bringing entry 31 of list I to concurrent list.

4.11 Since inception Meghalaya has not been included in the Eastern Zonal Council as it was considered that the regional issues of the North East could be tackled comprehensively in the North Eastern Council. Zonal Council could be an useful forum to discuss matter of co-ordination among the States in a Zone. Even the State/Union Territories of the North Eastern Region should be included in the Eastern Zonal Council for providing an opportunity to interact with States which are outside the North Eastern Council in matter of mutual interest.

4.12 Inter-State Council under Article 263 should be set up as mentioned in Part I.

PART V

FINANCIAL RELATIONS

5.1 The intention of the Constitution-makers was that all the States should have adequate revenue to discharge their responsibilities assigned to the States. Due to various factors a number of States are unable to generate sufficient revenues from the sources assigned to them. These States have to depend mainly on the share of Central taxes and grants-in-aid under Article 275(1) of the Constitution on the recommendation of the Finance Commission.

The scheme of devolution envisaged by the Constitution-makers has not come up to the expectation in view of the fact that even after devolution of Central taxes and grants-in-aid under Article 275, large revenue gap existed in case of a few States. This is mainly due to the assessment of the receipts and expenditure of the States by the Finance Commission being not very objective.

5.2 According to the assessment of the Eighth Finance Commission, some States are surplus after meeting their commitment on the non-plan account, while the remaining States are dependent on the Centre even for meeting their non-plan expenditure. With a view to retain the federal structure of the country, it is essential that the disparities between the States should be eliminated. This can be achieved if all the States are placed on a more or less same footing. Adoption of any alternative mentioned at (a) to (e) will increase the disparities between the States. We, therefore, recommend that while the existing procedure may continue, the Finance Commission should adopt a principle under which all the States are recommended surplus of revenue by specific percentage of the total non-plan expenditure realistically assessed by the Finance Commission. In doing so the need and responsibility of the Central Government should not be overlooked.

5.3 We subscribe to the view that the regional imbalances can be reduced only by a strong Centre, having elastic sources of the revenue and more discretionary powers to use the available fund for the development of economically vulnerable States. While the existing procedure of division of the resources among the States may continue, the pattern of transfer should be such that the resources are made available with a view to reducing regional imbalances and attaining social and economic justice.

5.4 It is not factually correct that large deficits in the Union Government's account in recent years and mostly because of devolutions made to the States, which have been of the order of 30% of the Union's aggregate resources. The need of control expenditure and ensure its effective and efficient use will always be a major consideration whatever be the level of resources available. Resort to deficit financing should be made only on the basis of over all national consideration and not because either the Union or the States are in difficult financial straits. If the total situation does not permit such deficit financing the Union Government must desist from the measure and raise additional resources through taxation.

5.5 The fact that the inter-State financial disparities are on the increase is a definite indication that the present practice of transfer of resources has not been quite adequate to bridge the gap in resources between the rich and the poorer States. We would therefore like the Commission to consider the following measures :—

(a) **Transfer through Finance Commission :—** The approach of the successive Finance Commissions has been to devise principles of distribution of Central Government taxes and duties among the States which are not directly related with their practical needs. As a result many States are unable to fully meet their non-plan commitments and adequately discharge their responsibilities with the share of Central taxes and duties. We, therefore, recommend that the Finance Commission may use the union excise duties for covering the revenue deficits of the States on a realistic basis and the Grants-in-aid under Article 275(i) of the Constitution may be recommended to ensure a surplus as indicated at para 5.2 above. A substantial proportion say of the order of 30 per cent, should be with the State Government for taking up some improvement in the services under

non-plan expenditure and should not be tied up as resources for the Plan of the State.

(b) **Transfer through the Planning Commission.**—Plan assistance should be made in such a way that the backward States are brought at par with other developed States within a definite time frame. Non-Plan assistance may be given to the State only on the basis of actual need to meet any contingency arising out of unforeseen circumstances.

5.6 If the recommendations made at para 5.5 above are accepted, there is no need to set up a special federal fund. If the existing procedures are to continue then a special federal fund may be set up to meet the requirements which have been shown at para 5.5.

5.7 We do not suggest transfer of any Central tax to the State because this will increase the inequalities among the States; rich States will become richer and poor States poorer.

5.8 We agree that the fragmentary approach to taxation policy which have a bearing on the economy of the country as a whole should be avoided as far as practicable. However, we do not agree to surrender the right to impose and levy of sales tax to the Centre as this is a major elastic source of revenue for the States.

In case of inter-State sales tax, while the incidence falls on the people of the neighbouring States, the collection is appropriated by the other States. Therefore, it is suggested that the inter-State Sales tax should be collected by the Central Government and paid back to the consumer.

5.9 We suggest that the present procedure with modifications as suggested under paragraph 5.5 above may continue.

5.10 Under the existing arrangement inter-State disparities have not been narrowed down. The present practice while promoting some economy in expenditure has resulted in negligence of proper maintenance of the existing assets. The transfer of resources on the recommendations of the Finance Commission has been done largely on the basis of gap filling approach and the transfer of resources to the States through Central assistance for the plan has been done largely on the basis of distribution based on a general formula of a certain sum of money made available by the Union Finance Ministry to the Planning Commission. In neither case has the devolution been based on a study of the specific needs of committed expenditure or of development.

5.11 It will not be correct to say that the States exaggerate their revenue requirement ignoring the norms of financial discipline. In fact the poor States are anxious to extend the level of administrative and other services as prevalent in other advanced States. Truly speaking the norms should be different from State to State. While in case of thickly populated States, population may be the major criterion for fixing the norm, in case of scarcely populated States, the area and the population should be the basis for fixing the norms.

5.12 As recommended by as earlier in paragraph 5.5, share of Central taxation should take care all the revenue needs of the States to meet their non-plan commitments while grants-in-aid under Article 275 should be used to ensure a surplus of a specific percentage of the non-plan revenue expenditure.

5.13 As mentioned earlier, grants-in-aid under Article 275 should ensure a surplus over the non-plan revenue expenditure of the States to enable them to meet the requirements on account of fresh instalments of dearness allowance and improvement in administrative services under the non-plan.

We also recommend that the Meghalaya with sizable tribal population should be provided with grant-in-aid under Clause (b) to the second proviso to the Article 275(I) to the Constitution of India. It is to be noted in this context that the area now constituting the State of Meghalaya was a part of Assam when the Constitution was framed and that it received this special consideration under Article 275(IA) when the Autonomous State of Meghalaya was formed.

5.14 We do not recommend any such measures. These resources may remain with the Central Government for their use with discretion to remove inter-State imbalances.

5.15 The existing method by which total saving available in the community are apportioned between public and private sectors and between the Centre and the States is more or less satisfactory; provided the development needs of the States are adequately taken care of as recommended at paragraph 5.5.

5.16 & 5.17 The situation can easily be rectified if the devolution of Central resources to the States is recommended by the Finance Commission on the basis of the total needs of the States including the need on the capital account which will cover the liabilities of loans and the interest.

5.18 & 5.20 We do not favour any major change in the policy relating to market borrowings. For, if States are left to raise loans from the market not only it will favour the richer States but it may have an adverse impact on the national economy as well.

The States' needs for development should be realistically taken care of and the allocation of resources for the plan, including from market borrowings, should be made accordingly.

5.19 The present system does not appear to be unjustified.

5.21 The State Governments should not resort to deficit financing as it will have serious repercussion in the economy of the country and their total needs will have taken care of by Finance and Planning Commission. Ways & Means Advance by the Reserve Bank of India to the States is meant

only for overcoming a temporary financial difficulty. The limit of Ways and Means Advance should not be fixed arbitrarily. It should be reviewed from time to time and preferably be fixed as a specific percentages of the total transaction of the State Governments.

5.22 Such a generalisation cannot be made for all States. It may, however, be true that tax efforts of different States vary considerably. A review of the tax efforts of both the Central and the State Governments should be made and discussed in the National Development Council for remedying the situation wherever possible.

5.23 The existence of unaccounted money in the economy is the evidence of leakages occurring in the System. The system should be reviewed and effective steps should be taken to eliminate such leakages. The rate of return of the Public undertakings should also be improved by efficient administration and economic management.

5.24 It would be a healthy convention for the Central Government to ascertain the views of the State Governments before considering any proposal to levy or modify the rate structure or abolish any of the duties and taxes enumerated in Articles for the Central Government to ascertain the views of the State Government in case of modification in the rates of Excise Duties on the items which are subjected to additional excise duties in lieu of Sales Tax.

5.25 We feel that there is limited scope for raising any substantial revenues by exploiting Article 269 of the Constitution as far as this State is concerned.

5.26 Most of the State Governments are levying tax on passengers and goods carried by road transport at the rate of 10%. It is, therefore, reasonable that 1/11 of the gross earning from the passengers fares and freight of the Railways be constituted as divisible pool.

5.27 No comments.

5.28 We have suggested in paragraph 5.5 that the Central Government should meet the requirements of the deficit States for meeting unforeseen and inescapable expenditure by additional Central assistance. While the long term measures for control of floods and to overcome the drought situation may continue to be financed from Plan, the expenditure required for relief and restoration of damages due to natural calamities beyond the funds earmarked by the Finance Commission of this purpose should be met by the Central Government in full outside the Plan.

5.29 We do not feel it necessary to establish any of these Councils.

5.30 The real point at issue is to find a balance between the needs of decentralisation of power and resources and a balance development of various parts of the country. It is also important that the funds are spent prudently and that they benefit the maximum number of the people with emphasis on the weaker sections.

5.31 We agree that the expenditure of both the State Governments and the Central Government should be subjected to closer scrutiny. The task can be performed by the Finance Commission and the Planning Commission in respect of the State Governments as at present and by the National Development Council and the Finance Commission in respect of the Central Government expenditure. We do not feel the necessity of setting up of any other machinery.

5.32 The present system of accounting evolves a lot of delay at various levels. Under the present system it is not possible for the State Governments to have any effective control over the expenditure. The whole system requires a thorough review to evolve a very effective accounting system. The Comptroller and Auditor General may be relieved of the responsibility of maintenance of account of the States as has already been done in the case of the Central Ministries and IAAS may be converted into an All India Services.

5.33 The present system of 'Voucher Audit' cannot be totally dispensed with. The desirability of evaluation audit cannot be denied but it is apprehended that such an audit can be conducted only after completion of a project, what it will not be possible for the State Government to take any remedial measures.

5.34 No comments.

5.35 Under the present system the data furnished in the appropriation accounts are not always accurate and these are not always reconciled with the concerned departments. A lot of mis-classifications take place in the books of the Accountant General. If the Accountant General compiles the monthly accounts in time and facilitates verification of the figures by the concerned departments every month the appropriation accounts will be reasonably accurate.

5.36 Although the Public Accounts Committee and the Committee on Public Undertakings have served very useful purpose in highlighting irregularities the proper control over expenditure lies with the drawing and disbursing officers, the controlling officers heads of departments the administrative departments and the Finance Department. A system of regular and comprehensive internal auditing by the State Government may serve a useful purpose.

5.37 The Estimates Committee reports helps in improving the policies and programmes but it cannot act as a watch dog to scrutiny and the expenditure for which a comprehensive system of internal audit can only be effective.

5.38 We do not consider it necessary to constitute an Expenditure Commission. The Legislature and the Comptroller and Auditor General fulfil this role.

5.39 We agree that the funds meant for specific purposes should not be diverted to any other purpose. We have no objection to its being monitored by the Central Government but there should not be any clearing the State Government's action plans by the Ministries.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1, 6.2, 6.3, 6.4, 6.5, 6.7, 6.9 & 6.12 The National Development Council does not find a place in the Constitution. The Planning Commission also has neither constitutional nor statutory basis. At present the Plans do not adequately represent the aspirations of the States or secure their commitment (of the States). On the one hand the level of consultation effected through the National Development Council is not adequate; while on the other hand there is too detailed an envolvement of the Planning Commission and the Central Ministries with programmes legitimately falling wholly within State jurisdictions. Consequently the States find themselves in the role of a client in regard to the formulation and financing of Plan schemes. Given the predominant role of the Planning Commission and the Central Ministries, the State Planning Boards have not been effective.

The National Development Council should be a statutory body with the Prime Minister, the Central Ministers and all the State Chief Ministers and appropriate experts with a standing Committee which can meet more often. The Planning Commission can be its Secretariat. The Commission can advise on overall aspects of planning and investment, prepare a draft plan for the approval of the National Development Council and can also be given the task of fixing macro level priorities and targets. It should also be free to offer advice on resource raising.

Detailed planning with respect to subjects which fall within the States' sphere should be left to the States. The present practice of subjecting the State Plans and proposal to minute scrutiny by the Planning Commission may be discarded.

6.6 There is need to incorporate national priorities in the State Plans. The Planning Commission could discuss the resource mobilisation efforts of the State Governments and could also guide the State Governments in incorporating the national priorities in the state plans.

6.8 The pattern of assistance to the special category states vis-a-vis other states may continue. The criteria followed by the Planning Commission in regard to the allocation of funds among the special category states are not known to the state. In this connection it may be pointed out that even among the special category states, there is an additional source of central assistance to those having a significant tribal population. This is in the form of a tribal sub-plan funded by the Ministry of Home Affairs. The benefit of such an assistance is, however, denied to the tribal majority states of Meghalaya and Nagaland. The funding of various developmental programmes in the tribal sub-plan areas is obviously based on indicators of development in different sectors. Applying the same yardsticks, it may be possible for the Planning Commission or the Ministry of Home Affairs (or the two State Governments) to locate backward sectors in Meghalaya (and Nagaland), which merit (an) accelerated developmental programme and for which funding could be arranged on the pattern of tribal sub-plans.

6.10 A large number of centrally sponsored schemes tend to distort state plan priorities as they induce the State Governments to opt for them. Centrally sponsored schemes covering State subject should be drastically reduced. Such schemes taken up in the states should be wholly financed by the Central Government.

6.11 The Planning Commission's Programme Evaluation Organisation should maintain closer ties with the State Evaluation Organisation and for uniformity in evaluation comprehensive guidelines on methodology and organisation should also be laid down.

6.13 As mentioned earlier, under the existing circumstances there is too detailed an involvement of the Planning Commission and the Central Ministries, rendering the State Planning Boards less effective. The State Planning Boards are involved at present in the formulation of State Plans. However, changes in the plan take place later with the involvement of the Planning Commission and the Central Ministries and also with the addition of a number of Central sector schemes. The role of the State Planning Board in the formulation of the Plan thus gets seriously eroded. While the Planning Commission and Central Ministries may confine themselves to the broad guidelines and even perhaps the major sectoral outlays, keeping in view the national priorities, detailed Planning should be left to the State Planning Boards.

PART VII

MISCELLANEOUS

Industries

7.1 The Scheme of Schedule I of the industrial development and Regulation Act, 1951, is essentially designed to control the setting up of industries which are of National importance from the point of view of defence, investment and policy towards the small scale sector. So far as industrial proposals linked to the defence efforts are concerned, on change in the present arrangement is necessary. In the case of high investment sectors where financial resources need to be husbanded, licensing should also serve as a means of decentralisation since this is an aspect of overall National importance. Where licensing has become a means of providing protection to the small scale sector and here the examples quoted in the question are of relevance, licensing should be delegated to the State Government to the extent of meeting regional demand.

7.2 No narrowing down of the definition is called for inclusion of items with a view to protecting the small scale sector should, however, be contained in a separate schedule and the licensing powers assigned to the States.

7.3 Where licensing is a function of the Central Government, all other clearances should also be made available by adopting a single window

approach. Those cases which may be licensed by the States may also be similarly cleared by one agency.

7.4 Many States, particularly the backward States are not fully organised to support the small scale sector. This is mainly due to complexity of the requirements of different industries, the ad-hoc changes in policies and programmes, requirement of clearance from the Central Government for all matter relating procurement of raw materials and credit, etc. The task will be easier once a decentralised structure of administration and detailed planning becomes a reality.

7.5 No Comment.

7.6 Yes.

7.7 It is felt that objective criterion giving an opportunity to all States to present their case should be the primary basis for taking an investment decision. In addition, the industrial backwardness of a State should be an additional fact r in taking a final decision which may be taken by the inter-State Council.

7.8 The criteria for selection/identification of industrially backward districts is in order. The insentives, however, need to be designed more realistically in consultation with States and should not be imposed.

PART VIII

TRADE AND COMMERCE

8.1 An Authority as contemplated under Article 307 should be set up.

AGRICULTURE

9.1 We agree with the views of Administrative Reforms Commission on Centre-State Relation, 1967.

9.2 We agree that as soon as possible the Centrally Sponsored Schemes should form part of the State Sector subject to qualification in para 9(2)iii.

The reasons for the above being :—

(i) The sanction from the Central Government is usually not received in time and the amount earmarked by the State is often surrendered for non-implementation of such schemes.

(ii) The norms laid down by the Central Government are not always suitable for the State.

(iii) In this respect our specific suggestion is that the Centrally Sponsored Schemes may become a part of the State sector only if the State thinks that such schemes are conceptually and operationally suitable to the techno-agri-economic situation of the State.

9.3 The Planning Commission indicates broad national priorities and with the Central Ministries lays down schemes even in the spares of Agriculture and Social Services. The result is that we have stereotype system of schemes for the whole country with its immense diversity. Joint working groups may be profitably set up to study development potential and the strategy which can be adopted in different States. Such working groups should, however, have only recommendatory responsibilities and nothing beyond.

9.4 (a) The minimum prices fixed on the agri-items by the Centre have no effect in so far as our State is concerned because till now the open market prices have always been higher than the minimum prices for the items mesta, jute and cotton where minimum prices have been fixed. However, in case, the open market prices fall below the minimum fixed prices then the Central Policy of fixing minimum prices would be quite effective in safeguarding the interests of the farmers.

(b) No comments.

(c) The Central policy with respect to strategic inputs like fertilisers, seeds and credit, etc., is quite effective and should continue with greater sensitivity to individual state requirements.

(d) No comments.

9.5 There is no proper linkage at present between the activities of the ICAR and Directorate of Agriculture.

FOOD & CIVIL SUPPLIES

10.1 & 10.2 There is a need for improving Centre-State co-operation and co-ordination in the areas of procurement pricing, storage, movement etc., and for this purpose an Inter-State Advisory Body may be set up to discuss and advise Agencies operating in this field. Such a body will be helpful to States like Meghalaya which generally depend on Central Pool for foodgrains and other essential commodities. The body proposed above may also periodically review the enforcement and administration of Acts like Essential Commodities and other Central Acts.

EDUCATION

11.1 It is in the interest of smaller States that Education should continue to be in concurrent list. It is borne out by facts that centralisation is desirable in some spheres of education and in such matters interference of centre is of the nature of guidance only.

11.2 The role of the U.G.C. should be objective. The organisation at national level needs restructuring. There should be a National Educational Council with representatives of all States, Centre and eminent educationists for guiding the work of national level bodies like U.G.C.. NCERT, NIEPA etc.

11.3 There should be a consensus with the broad frame-work of national objective so that States are allowed certain degree of freedom to pursue the policy suited to their own needs and genius.

11.4 The provisions enshrined in the Constitution are adequate to meet the requirements.

11.5 We have a case of making Hindi a compulsory subject for All India Services Examination

in North-Eastern Indian (excluding Assam). Sudden imposition may deprive and pose a handicap to the intending candidates particularly those belonging to Scheduled Tribes from this region whose Mother tongues are not in VIIIth Schedule. State must be consulted before formulating such decisions.

PART XII

INTER-GOVERNMENTAL CO-ORDINATION

12.1 An autonomous and independent body on the lines of Finance Commission of permanent nature may be set up to take up issues concerning Centre-State relations and inter-Government co-ordinations.

Government of Meghalaya

WELCOM EADDRESS OF THE CHIEF MINISTER TO COMMISSION ON CENTRE-STATE RELATIONS

The Government of Meghalaya takes pleasure in welcoming you and Shri Sivaraman, and we express our gratitude that the Commission has taken the trouble of visiting us and giving us an opportunity to explain our view point. We are sure that with the wide and varied experience of em. nt persons like you, the Commission will do full justice to the task of national importance entrusted to you.

Of late the working of the Constitution, with particular reference to the relations between the Union and the States, has attracted a lot of attention, and has been a topic of analysis and discussions by scholars, committees and the Administrative Reforms Commission. The decision of the Central Government to set up this Commission to specifically examine and review the working of the existing arrangements between the Union and the States in regard to powers, functions and responsibilities in all spheres and recommend appropriate changes, if any, and other measures is a welcome development. It has become quite necessary to have an authoritative examination of this delicate issue.

In the discussions on the principles of our Constitution in the Constituent Assembly, three different alternatives—a Unitary State, a Federation with a strong Centre and with residuary powers vesting in the Centre, or a Federation with larger powers for the States—were all considered. Considering the historical context that India was emerging as a unified country with a common political system and given the extreme diversity of culture and background that constitute the country, it was finally resolved that a Unitary State would be retrograde step both politically and administratively and "the soundest framework of our Constitution was a Federation with a strong Centre", with residuary powers vesting in the Centre.

After the Constitution was adopted, the country undertook national planning for development. With the introduction of national planning, the Union Government's area of influence and operation got enlarged to cover almost all the subjects relating to development, and this has increasingly blurred the separation of powers and subjects between the Union and the States. The formulation of a national plan including detailed State Plans, the detailed examination of the States resources and the development schemes in each sector by the Central agency from year to year, the quantum of Central assistance decided by the Central agency on annual basis, the clearance required for the State plans from the Planning Commission and the Central Government, and introduction of an increasingly large number of centrally sponsored schemes for sectors which are fully under State jurisdiction have led to a high degree of administrative and financial centralisation. Lack of any institutional arrangements through which the States could put forth their views on policies and working of the Central financing agencies and the nationalised banks which have been concentration of savings and on whom depend substantial investments in agriculture, industry, housing, water supply and power development, all of which are so vital to the development of each State, has only aggravated the problem.

The challenge, therefore, facing the polity of the country is how to balance the requirements of planning for national development and those of local initiative, local savings and investments.

The State Government is of the view that a strong Centre is needed for preserving and fostering the unity and integrity of the country and for national planning for development. We are also equally firm in the view point that States should be equally strong, as the strength of the Centre lies in the strength of the States. Excessive planning, financial and administrative centralisation is not a healthy phenomenon. The need for national planning for development and of balanced regional development do not require the involvement of Central agencies in such a detailed manner as at present. There is considerable scope for improvement in the institutional arrangements for national planning, for devolution of larger resources to the States commensurate with their vastly increased responsibilities and for dealing with inter-State distribution. There is great need for evolving new procedures for meaningful Centre-State and inter-State consultations. We feel that the system of zonal councils should be strengthened and the States of the north-east should be given the opportunity for discussions with the neighbouring States by including them in the Eastern Zonal Council.

We have presented the views of the State Government on the various issues in the legislative, administrative, financial and development spheres, in the form of detailed answers to the questionnaire received from the Commission. I wish to highlight some of the salient points.

The questionnaire of the Commission has exhaustively covered the subject of Centre-State relations in all its aspect.

Under legislative relations, we feel that while the bias in distribution of powers is correctly in favour of the Union, the gradual extension of Union jurisdiction under the cover of "Public interest" or "national importance" is not desirable. Unless it is necessary for purpose of defence or

proper regulation, the State Government jurisdiction over the "State List" should not be curtailed or circumvented.

We feel that the office of the Governor is essential in the present political situation, but certain norms should be laid down for proper and harmonious functioning of the office. A great care is called for in selecting incumbents to this high office and the States should invariably be consulted for selection. The Governor is a close link between the Union and the States and should not be made to act as an agent of one against the other. We have had no problem in this regard so far.

Our reaction to the question whether the present regulations regarding imposition of President's rule need change is that the present system, implemented with wisdom and discretion is quite effective but States should generally be given an opportunity to explain the position before President's rule is resorted to unless the Party in power has been defeated on the floor of the House. We also feel that the management of the All India Services needs to be reviewed. The present arrangement is not satisfactory and do not conform to the intentions of the founding fathers of the Constitution.

In the light of our experience of financial administration in Meghalaya over the last fifteen years, we feel that the scheme of devolution of resources from richer to poorer States and from the Centre to the States has not been equitable and effective as the Finance Commission have not generally taken a practical view of the receipts and expenditure of the States. Financial imbalance between the States must be removed if regional imbalance is to go. Instead of additional taxes, it is necessary to reallocate existing taxes more rationally and Plan assistance should aim at bringing backward States forward. We do not agree that some of the taxes currently with the Centre be given over to States as this will benefit only richer States. We would like to see a more realistic approach to financial planning and sector allocation for the State Government based on actual needs and performance. The formulation of State Plans and finalisation of their size and content should be based on the resource potential of the State, the gaps in development and its special requirements and not in a routine manner. In this context Meghalaya has a case of getting grants under sub-para (a) and (b) of second proviso to Article 275(1)(a) which was available even when an Autonomous State of Meghalaya was formed (Article 275-1A), but has been stopped when a full-fledged State was set up. It has to be noted that Meghalaya was a part of Assam at the time the Constitution was framed. The State should also be allowed the advantage of a tribal sub-plan which is made available to other States for development of tribal population.

In the present system the State do not have the required commitment to plan objectives as these are framed without their active participation. We feel that the Planning Commission should be the Secretariat of the National Development Council, which should be a statutory body. The N D C should work out and decide in consultation with Chief Ministers the macro level targets and allocation of resources. The State Governments should be given more autonomy regarding the detailed sector plans of the States. To this extent, centrally sponsored schemes related to State subjects should be greatly reduced.

In all matters connected with the transfer of resources to the States, an integrated and coordinated approach is very essential. We, therefore, do not favour creation of a number of independent bodies like the National Loan Council, National Credit Council, National Economic Council and the National Expenditure Commission. We feel that a reorganised National Development Council with its committees should be able to deal with these matters most effectively.

With these few observations, I should like to conclude our submissions.

[illegible]

... regulation, the State Government [illegible] ... should not be curtailed or circumvented.

We feel that the office of the Governor is essential in the present political situation, but certain norms should be laid down for proper and harmonious functioning of the office. A great deal is called for in selecting incumbents to this high office and the States should invariably be consulted for selection. The Governor is a closer link between the Union and the States and should not be made to act as an agent of one against the other. We have had no problem in this regard so far.

Our reaction to the question whether the present regulations regarding imposition of President's rule need change is that the present system [illegible] implemented with wisdom and discretion in rare circumstances, but States should generally be given an opportunity to explain the position before President's rule [illegible] has been defeated on the floor of the House. We also feel that the management of the All India Services needs to be reviewed. The present arrangement is not satisfactory and do not conform to the intention of the founding fathers of the Constitution.

In the light of our experience of financial administration in Meghalaya over the last fifteen years, we feel that the scheme of devolution of resources from either as pooled States and from the Centre to the States has not been equitable and effective as the Finance Commission have not generally taken a practical view of the revenue and expenditure of the States. Financial imbalance between the States must be removed if regional imbalance is to go. Instead of additional taxes, it is necessary to reallocate existing taxes more rationally and Plan assistance should aim at bringing backward States forward. We do not agree that some of the taxes currently with the Centre be given over to States as this will benefit only richer States. We would like to see a more realistic approach to [illegible]

GOVERNMENT OF NAGALAND

(a) Replies to the Questionnaire and Additional Points

(b) Memorandum

Nagaland

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTION

1.1 The framers of our Constitution having deep knowledge of the country as a whole and the people residing in different parts of this vast country, thought it fit that the best features of the different constitutional systems prevalent in the world should be incorporated in the Constitution of India and at the same time took care to avoid the defects inherent in any particular system. As a result, a compromise was effected in framing the Constitution of India, which is really a combination of federal structure with unitary features. In the Constitution of India so framed, there is a distribution of powers between the Union and the States and the powers are so distributed as to maintain the homogenity and unity of the country as a whole. In order to achieve these objectives, some powers have been conferred exclusively to the States and powers have been conferred on the Unoin on matters concerning the country as a whole. Again the powers conferred on the States are hegged with certain restrictions during the emergency Proclamation under Part XVIII of the Constitution.

The Constitution of India is thus not 'Federal' in its true sense, but can be said to 'Quasi-federal'.

1.2 In the Constitution of India, the Legislative powers are distributed between the Union and the States in the three Lists of the Seventh Schedule. The powers have been distributed basically on sound principles and in the view of the Government of Nagaland, no substantial modifications are considered necessary in the matter.

However, some modification is suggested in sub-clause (b) of Clause (1) of Article 356 of the Constitution of India. In the said sub-clause the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament as per sub-clause (b) as it stands. Under the said sub-clause, the Parliament may, by law, authorise the President to exercise the powers of the State Legislature and instances are thereof conferring such powers on the President by law made by the Parliament.

It is suggested that the powers of the State Legislature should be exercised by the Parliament alone in enacting laws to be made for the State, as and when occasions arise.

The State Government of Nagaland is of the view that abolition of appeals to the Supreme Court altogether may not be desirable. However, it is suggested that there may be a separate division in the Supreme Court for dealing exclusively the constitutional matters and cases involving validity or otherwise of the Parliamentary laws and the State laws and another division for dealing with appeals admitted in the Supreme Court by grant of Special Leave against judgments and orders passed by the High Courts. It may be also desirable to constitute appropriate Tribunals for disposal of service matters and cases arising out of different Tax laws in force giving finality to the decisions made by such Tribunals constituted.

1.3 In view of the answers given to the earlier questions, the State Government is of the view that no substantial decentralisation of powers and functions both in normal times and also in times of emergency are considered necessary.

1.4 To the best knowledge of the State Government, nowhere in the present day world, a federation of traditional type really exists.

1.5 The State Government fully endorse the views expressed by the eminent Constitutional Experts as mentioned in the said question. The State Government shares the view that the difficulties, issues, tensions and problems which may arise in Union-State relationship can be resolved without major constitutional amendments and that there are no substantial defects in the scheme and fundamental fabric of the Constitutional relating to Union-State relationship.

1.6 The State Government fully agrees that the protection of the Independence and maintenance of the unity and the integration of the country is undoubtedly of paramount importance. Provisions to that effect appear in a chain in the different parts of the Constitution and proper implementation of all such provisions are sufficient to achieve the aforesaid objectives.

1.7 The Constitutional provisions imposing obligations on the Union and the States are considered reasonable taking into consideration the interest of the country as a whole.

Save and except the suggestion made with regard to Article 356 (1)(b) of the Constitution, no change is considered necessary with regard to the other Articles mentioned in the question.

1.8 Basically no change is considered necessary in Article 3 of the Constitution of India. However, for dissolving dispute or disputes arising between one or more States with regard to the respective boundaries of the different *States, it is suggested that it may be desirable to incorporate a provisions for appointment of Commission or Commissions in dissolving such dispute or disputes.* The powers and functions of such Commission or Commissions should be clearly indicated making suitable provisions for giving opportunities to the concerned States

to place their respective cases, produce materials and documents before such Commission or Commissions in support of the respective claims. On the recommendations of such Commission or Commissions constituted, Parliament may make laws increasing diminishing or altering the boundaries of any State as provided in Article 3 of the Constitution of India.

Article 371 A

One other Article, *viz.* Article 371A of the Constitution, which is applicable only to the State of Nagaland needs to be mentioned with the observations as hereunder. The said Article was incorporated in the Constitution on the basis of an Agreement arrived at between the delegation of the Naga Peoples' Convention and the Representatives of the Government of India because of the keen initiative taken by the then Prime Minister of India Pandit Jawahar Lal Nehru before the formation of the State of Nagaland. The said agreement is commonly known as *'Sixteen Point Agreement'*. To give effect to Clause 7 of the said Agreement, Article 371A was inserted in the Constitution by the Constitution (13th Amendment) Act, 1962. The said Article was incorporated with the clear view that notwithstanding anything in the Constitution, no Act of Parliament in respect of the four matters enumerated in clauses (i) to (iv) shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides. It is implicit in the said provision that all laws made by Parliament, whether before or after the commencement of the said Article in respect of the aforesaid four matters shall not apply to the State of Nagaland unless the Nagaland Legislative Assembly so decides. It is suggested that what is implicit in the said Article as regards applicability of Article 371A in respect of laws made by Parliament before the enforcement of the said Article 371A, should be made explicit so as to remove ambiguity, if any, in the matter as may be contended by some quarter.

In the said Article 371A, it has not been specifically mentioned as to what consequences will follow if any law made by the Parliament in respect of the four matters mentioned above is not adopted by the Nagaland Legislative Assembly by any resolution passed. It is again implicit that in such an eventualities, the State Legislature of Nagaland, shall be competent to enact laws in respect of the four matters mentioned in the said Article and the laws so made by the State Legislative shall prevail in the State of Nagaland. It is again implicit that in such an eventuality, the State of Nagaland shall have also full executive powers in respect of the aforesaid four matters being competent to legislate regarding the said matters as mentioned earlier.

In view of the above, it is suggested that necessary amendments may be made to Article 371A of the Constitution in order to make explicit what is implicit in the said Article and to make the said Article as an effective provision as desired at the time of incorporation of the said Article on the basis of the 'Sixteen Point Agreement' mentioned earlier.

PART II

LEGISLATIVE RELATIONS

2.1 As expressed earlier, there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States.

There are some legislative entries like Entry 7, 52, 53, 54 and 56 in the Union List, whereby power has been conferred on the Union to declare by law the matters specified in the aforesaid entries either to be necessary for the purpose of defence or for the prosecution of War or in the public interest or the like. In exercise of the powers conferred by the said entries, the Parliament has enacted laws, from time to time, to achieve the objectives envisaged by the said entries. Legislations made by the Parliament in exercise of the said entries even though might affect the powers of the State Legislatures, should not be considered as encroachments.

2.2 No substantial changes in the present provisions are considered necessary.

2.3 It may be desirable to have the views of the State Governments before enactment of any legislation by the Centre on any matter in the concurrent list. However, the views expressed by the State Governments in the very nature of things have to be in the nature of recommendations and may not be binding as such on the Centre. Nontheless the views expressed by the different State Govenments are likely to help the Centre in enacting laws on a matter falling under the Concurrent List.

2.4 & 2.5 The State Governments is of the view that the existing provisions in the Constitution in this regard do not require any substantial change.

PART III

ROLE OF THE GOVERNOR

3.1 The present provisions of the Constitution as regards the role of the Governor are considered necessary and do not require any substantial change. The relevant consitutional provisions regarding the matter postulate that the powers should be exercised by the respective Governors according to the letter and spirit of the Constitution. Any omission or commission in the matter of exercise of powers in one or two instances, does not justify substantial changes in existing provisions. It is desirable that there should be more insistence for the exercise of such powers by the respective Governors being true to the Constitution as envisaged by the expressed provisions of the Constitution.

3.2 The Office of the Governor of a State being an office of high respect and honour, it is envisaged by the Constitution that the Governor without being guided by any other consideration not contemplated by the Constitution, should act according to the latter and spirit of the Constitution and if it is so done, it will undoubtedly help in fostering healthy Union-State relationship.

3.3 (a) While making a report to the Parliament suggesting action under Article 356(a) of the Constitution, it is essential that the Governor has to act

fairly, not being influenced by any other consideration than in the public interest giving a true and correct picture of the affairs of the State.

(b) Since under Article 164 of the Constitution, the Chief Minister has to be appointed by the Governor and other Ministers are to be appointed by the Governor on the advice of the Chief Minister, it is essential that the Chief Minister, so appointed has the undoubted support of the majority of the House. It is essential in the very exercise of that power that the person appointed as Chief Minister is not dependent on Members sitting on the fence and has the support of the majority of the House to run the Government of the State.

(c) In proroguing the House or dissolving the Assembly under Article 174(2) of the Constitution, the Governor has to act as a Constitutional Governor, *viz.* on the advice of the Chief Minister of the State.

3.4 to 3.6 So far the State of Nagaland is concerned no difficulty was faced at any time in respect of Bills passed by the State Legislature and placed before the Governor for doing the needful in terms of the provisions of the Constitution.

3.7 Under Article 157 of the Constitution, any person who is a citizen of India and has completed the age of 35 years, is eligible for appointment as Governor. It is suggested that there should be some guidelines by way of laying down qualifications for being appointed as Governor of any State, in as much as, a Governor of the State has to perform very many important duties and functions which necessarily requires necessary knowledge and experience of various matters to be dealt with as the Governor of a State. Any person appointed as Governor should have a full term of 5 years. It may be considered in this connection that whether it is desirable that person once appointed in the high office of the Governor of the State, should be permitted to be a member of the Parliament or Rajya Sabha or any State Legislature, after rendering service as a Governor. It is not considered desirable that the same procedure should be prescribed as in the case of a Judge of a Supreme Court or High Court in the matter of removal of the Governor.

3.8 The role of the Governor as suggested in the said question is not considered desirable.

3.9 Criticism may be there in making choice of the Chief Minister by the Governor in one or two isolated cases, but that may not justify any substantial change in the existing provisions. Any provision like Article 67 of the basic law in the Constitution of the Federal Republic of Germany may not be appropriate in India at this stage.

3.10 The recommendations of the Administrative Reforms Commission in laying down guidelines on the manner in which discretionary powers should be exercised by the Governors, may not achieve the desired objective, in as much as, discretionary powers should be allowed to be exercised in the best judgment and wisdom of the authority concerned. Any such guidelines as suggested, may be of doubtful constitutional validity. That apart, such guidelines as suggested, may be of doubtful constitutional validity. That apart, such guidelines may not be of any substantial pragmatic utility.

PART IV

ADMINISTRATIVE RELATIONS

4.1 In a vast country like India, there are good grounds for incorporation of Article like 256, 257 and 365 of the Constitution. The powers conferred by the said Articles have to be considered in the greater perspective of India as a whole any wrong exercise of powers under any of the said Articles does not by itself justify the deletion and/or substantial modifications of the said Articles.

4.2 The provision contained in Article 365 of the Constitution should remain as a reserved provision. It is conceivable that occasions may arise for exercise of powers under the said Article bonafide.

4.3 Powers under Article 256 or 257 of the Constitution should always be exercised with due care and only when exercise of powers under the said Articles becomes absolutely necessary. That appears to be the scheme behind the said Articles.

4.4 No exception should be taken to the powers conferred by or under Article 356 of the Constitution and such provision in the Constitution has been incorporated advisedly. By and large, powers under the said Article have been exercised so far to meet the situation envisaged by the said Article.

4.5 The provisions contained in Clause (4) of Article 356 of the Constitution, as they now stand after the 42nd amendment of the Constitution, should be retained as such. However, to meet the eventualities mentioned in the second paragraph of the said question, some provisions need to be incorporated to meet such situation arising in any State. In incorporating such provision/care should be taken to avoid any possible misuse of power that may be conferred to meet such eventualities mentioned in the second paragraph of the question.

PART V

FINANCIAL RELATIONS

5.1 No

5.2 We agree with the suggestions in part (d) & (e).

5.3 With a view to have a strong Centre, we agree to the suggestion. We feel that a strong Centre, having elastic sources of revenue and more discretionary powers to use the funds available with it for the development of backward States, is desirable to remove regional disparities.

5.4 No. We agree with the suggestions in Part I(ii) and 2 in this para.

5.5 (a) **Share of taxes**—It should be distributed on the basis of backwardness of the State concerned. In addition to that, 25% of share of income tax and 10% of excise duties should be reserved for hill States.

(b) & (c) **Plan assistance and Non-Plan assistance**—These should also be based on backwardness of the State with a view to remove disparities from State to State.

5.6 The State Govt. is of the view that some special provision may be incorporated in the Constitution enabling the Centre to make liberal grants to the economically under-developed States to ensure faster development in such States and raise the economic standard of these States at par with the developed States.

5.7 No comments.

5.8 We agree.

5.9 We agree.

5.10 To a very limited extent.

5.11 No comments.

5.12 We agree.

5.13 We agree.

5.14 The State Government's view is to have a strong Centre. Under Article 273, grant-in-aid needs to be continued.

5.15 No.

5.16 The fiscal imbalance and amount of indebtedness on the part of the States is mainly due to the reason that their resources are very limited and such resources need to be augmented well.

5.17 Same comments as against item 5.16.

5.18 We do not agree. The present restrictions may be maintained.

5.19 Not relevant to Nagaland. Hence no comments.

5.20 We feel that the present system is functioning satisfactorily.

5.21 Same comments as against item 5.16 above.

5.22 No. So far as Nagaland is concerned, the scope for additional resource mobilisation is very much limited. Inspite of that, the State has exceeded the target.

5.23 We have no comments.

5.24 We agree.

5.25 & 5.26 We agree that the said grant should be increased.

5.27 No comments.

5.28 Assistance for natural calamities should be in the form of grant as loan will increase the indebtedness particularly of the deficit States.

5.29 No comments.

5.30 We agree.

5.31 We have already stated that Finance Commission should be a permanent organisation, which can look into the requirements of the States every year.

5.32 to 5.35 No comments.

5.36 & 5.37 The present system is functioning satisfactorily.

5.38 Same as against 5.31.

5.39 No comments.

It is suggested that sub clauses (b) & (c) of Art. 371A(1) need to be deleted from the said Article by necessary amendment of the said Articles. In view of the fact that the complete peace prevails in the entire State of Nagaland and the law and order position of the State for the past so many years are much more better than other States in India. It is no longer necessary for the continuation of two clauses in Article 371A of the Constitution of India. Further, the Regional Council for the Tuensang District as contemplated by clause (d) is also no longer there. In view of the above, clauses (b) to (d) of Article 371A(1) and clause (2) of the said Article need to be deleted by constitutional amendment.

Nagaland being a State like other States in the constitution, any further continuation of the said clauses (b) and (c) is no longer necessary and needs to be deleted.

The provisions contained in sub clause (d) and clause (2) of the said Article 371A have already spent its force, in-as-much as the period of ten years from the data or the formation of the State of Nagaland as mentioned in sub clause (2) is already over and the extended period under the said sub clause is also already over.

Nagaland

MEMORANDAM

CHAPTER I

INTRODUCTION

Physical and Economic Conditions

Nagaland is one of the smallest and most backward States of the Indian Union. Bounded by Arunachal Pradesh on the North, Assam on the West, Burma on the East and Manipur on the South, the State has an area of 16,527 sq. kms. Except the foot-hill area on the West, the whole area of the State is full of Hill ranges varying between the heights of 900 to 3000 metres. The hill slopes are found very steep, specially on the Eastern region. Though rich with mineral and forest resources, Nagaland has lagged behind in the spheres of social and economic development. To some extent, this can be attributed to the difficult terrain and positional location of the State, but more than anything else, the backwardness of State is mainly due to the fact that investment for economic development made in the State has been much below is requirement. Apparently, proper attention has not been paid to the historical circumstancs, leading to the creation of the State on the 1st December, 1963, after a prolonged and traumatic experiences of insurgency. Constitutionally, the State came into being on the 1st December, 1963, but till 1975, the State could not participate fully with the rest of the country for Plan and peaceful economic development. The State was created,

knowing well of its limited resources. No doubt, although small, the State is strategically very important from the angle of the security of the country.

The creation of the State has opened up opportunities for the Government to fulfil the aspirations of the people in their socio-economic development. But the investment so far made in the State for laying a proper foundation of infrastructure for development has been far from satisfactory.

2. The State has no big rivers. The longest river is Doyang, which is navigable for a few kilometres within the State before entering the Assam valley and joining the Brahmaputra. The other important rivers in the State are Dikhu Jhanzi and Dhansiri which join the Brahmaputra and Tizu and Zunki which flow towards Burma and join the Chindwin river.

3. It may be stated that formerly, the people were living in the villages isolated from each other and any interference by out-siders was viewed with concern. But now this isolation is fast disappearing and more people are coming out and having contacts with the outside world. The rate of social transformation is directly related to the desire for economic and social advancement. Each village wants basic amenities such as roads, medical care, water supply, electricity, good administrative set up and other necessities of life. The State is till at the lowest level with regard to various economic aspects. The tribal population in the State is 84% and as such the socio-economic situation in Nagaland is vastly different from that obtaining in other parts of the country. In case of such heavily tribal populated areas, a greater allowance has to be made during the transition period to enable the tribal people to grasp fully the feeling of up-liftment and get on to emotional integration with the rest of the country.

4. The State has no Central Sector Projects. The State also suffers from shortage of flow of funds from the Central financial institutions, which could improve its economy. The road transport is the only means of transport, which is a much constlier medium. The resultant effect is that the prices in Nagaland are much higher than other parts of the country. Now the State has been moving forward through the process of Plan development undertaken in various Five Year Plans. Due to insurgency prevailing for a long time, the State had a late start in its developmental efforts. Consequently the real impact of planning has not yet been felt by the people. Besides, lack of technical and experienced personnel and technical knowhow have been the other constraints. These short-comings and deficiencies can be overcome by massive doses of properly planned investment. To achieve this end, adequate resources are to be made available to the State Government not only for proper maintenance of assets already created, but also for undertaking programmes for upgrading the standards of administration which is mainly accounted for on the non-Plan side.

5. The need is to sympathetically consider Nagaland's requirements keeping in view its potentials as well as economic deficiencies and thus raise the economic base of the people and the State to generate more resources of its own to enable the State to transform its economy into a selfrelient one.

Population

6. In 1961, the population of the State was 3.69 lakhs which increased to 5.16 lakhs in 1971 and 7.75 lakhs in 1981. The percentage of growth during the last three decades is the highest in the country. Percentage growth during the last two decades in Nagaland is as follows :—

YEAR	POPULATION IN LAKHS	PERCENTAGE INCREASE
1961	3.69	—
1971	5.16	39.80
1981	7.75	50.19

People

7. Population comprises mainly of 16 tribes in Nagaland. Broadly, 16 dialects are spoken. In general, one tribe does not understand the dailect of the other tribe. Communication amongst them is generally in Oagamese, a combination of Assamese and other spoken languages in the neighbouring areas. This serves as a vehicle of communication among the people. Each tribe has its own distinct culture and customs.

Climate and Rainfall

8. In certain areas, due to heavy rainfall, ercsion and land-slides are very common. Generally rainfall exceeds the average. Because of the high altitudes, temperature is very low and on some days in the winter it nears 0° centigrate.

Administrative set-up

9. The State has seven districts, i.e. Kohima, Mokokchung, Tuensang, Phek, Zunheboto, Wokha and Mon. It was done with a view to bring administration at the door of the people and to accelerate the process of socio-economic development in the State.

Contribution of Agriculture and industry to State income

10. Agriculture is the main stay of the people. 35.6% of the State Domestic Product is contributed by the agricultural sector and on as little as 3.51% by the organised manufacturing sector. In 1971, 80.85% of the population was living in villages and according to 1981 Census, this percentage has gone down a little but still quite a large number of people i.e., 84.54% are living in rural areas and are mainly dependent on agriculture for their livlihood. In Nagaland except two town Dimapur and Kohima, the rest of the population lives in rural areas.

11. Agriculture practices are still primitive. About 62.3% of the cultivated area is under jhuming and the area sown more than once is hardly 2% of the cultivated area. The State is deficient in foodgrain production and is mainly dependent on imports from other States, which are always constlier due to long distances and heavy transportation charges.

Industrial Backwardness

12. The State lacks in big and medium industries. In fact, industrialisation is yet to take roots in the State. There are only three medium size industtial projects worth mentioning, i.e. Nagaland Suger Mills Ltd. at Dimapur, Plywood factory at Tijit and Pulp and paper Mills Ltd. at Tuli. The Pulp and Paper Mill has gone into production from 1-7-82 only. In all, Nagaland has eight factories as against 88, 077* factories in the country in 1978-79. Thus Nagaland ranks probably the last among the States in respect of industrial units located within the State. During the Sixth Plan, a mini Cement Plant is being set up at Wazeho of Phek District. Value added by manufacture is only Rs. 3.84 crores (under small scale sector) as against All India total of Rs. 13,308** crores in 1978-79. The total number of industrial workers per lakh of population is merely 90 as against 902 of All India as per 1971 Census.

Minerals

13. Nagaland is rich in mineral resources. Important minerals found so far in Nagaland are vast reserves of high grade limestone, sizeable reserves of coal, multimetal deposits of chromium-nickel-cobalt bearing magnetite encouraging deposits of copper, lead, zinc, molybdenum with possible association of gold, silver, tin etc. and minor minerals like clay and slate. As regards coal, a reserve of approximately 6.50 million tonnes of coal has been estimated from Borjan Coal Fields. The inferred reserves of limestone, which are of very high grade are of the order of 375 million tonnes, Magnetite deposit, which has become attratctive because of of its nickel content, is one of the promising metallic mineral deposits of North East India. The Oil and Natural Gas Commission have also recently established a commercially viable oil-field at Tsori-Champang area of Wokha District. These minerals need to be exploited fully but much progress could not be made due to lack of resources.

Transport

14. The State has lagged behind in transport and communications facilities. There are about ten areas where habitation is there, but are still inaccessible by roads. In these areas, essential articles are required to be air-dropped almost regularly throughout the year. The only Railway line which passess through Dimapur is about 9.35 kms. As such Dimapur railway station is the source of supply and the rail head for the whole State of Nagaland and Manipur.

Low Resource Raising Capacity of the State

15. The above paragraphs show that the economy of the State is decidedly low and has not been able to pick up the thread of self-reliance. The dimensions of the problems with which the State is faced are too many. Deficiencies enumerated above give rise to a situation, in which the capacity of the State for raising additional resources is severely restricted. State's own tax revenues constitute only about 5.3% of its total revenues as against the All India average of 45.9%.

16. The week resources raising capacity of the State is directly linked with the weak economic base of the people. Thus the entire State comes in the category of backward area without much tax potential.

*Source : Council of State Industrial Development and Investment Corporations of India, New Delhi, Courier October, 1982.

** ,, Central Statistical Organisation — National Accounts Statistics 1970-71 ..1979-80

CHAPTER II

CONSTITUTION AND LEGISLATIVE

PART I

Constitution

In the operation of the Constitution especially in regard to the provisions relating to the Centre-State relations, the Govt. of Nagaland is of the view that there has not been any area in which the State Govt. has felt any undue strain. Hence there is hardly any need to bring about any fundamental changes in matters pertaining to Centre-State relations.

2. The framers of our Constitution having deep knowledge of the country as a whole and the people residing in different parts of this vast country, though it fit that the best features of the different constitutional systems prevalent in the world should be incorporated in the Constitution of India and at the same time took care to avoid the defects inharent in any particular system. As a result, a compromise was effected in framing the Constitution of India, which is really a combination of a federal structure with unitary features. In the Constitution of India so framed, there is a distribution of powers between the Union and the States and the powers are so distributed as to maintain the homogeneity and unity of the country as a whole. In order to achieve these objectives, some powers have been confirmed exclusively to the States and powers have been conferred on the Union on matters concerning the country as a whole. Again the powers conferred on the States are hedged with certain restriction during the emergency Proclamation under part XVIII of the Constitution.

The Constitution of India is thus not 'Federal' in its true sense, but can be said to be 'Quisi-federal'.

3. In the Constitution of India, the Legislative powers are distributed between the Union and the States in the three lists of the Seventh Schedule. The powers have been distributed basically on sound principles and in the view of the Government of Nagaland, no substantial modifications are considered necessary in the matter.

4. However, some modification is suggested in sub-clause (b) of Clause (1) of Article 356 of the Constitution of India. In the said-sub-clause, the powers of the Legislature of the State shall be exercisable by or under authority of the Parliament as per sub-clause (b) as it stands. Under the said sub-clause, the Parliament may, by law, authorise the President to exercise the powers of the State Legislature and instances are thereof conferring such powers on the President by law made by the Parliament.

It is suggested that the powers of the State Legislature should be exercised by the Parliament alone in enacting laws to be made for the State, as and when occasions arise.

5. The Government of Nagaland is of the view that abolition of appeals to the Supreme Court altogether may not be desirable. However, it is suggested that there may be a separate division in the Supreme Court for dealing exclusively with the constitutional matters and cases involving validity or otherwise of the Parliamentary laws and the State laws and another division for dealing with appeals admitted in the Suprems Court by grant of Special Leave against judgements and orders passed by the High Courts. It may be also desirable to constitute appropriate Tribunals for disposal of service matters and cases arising out of different Tax laws in force giving finality to the decisions made by such Tribunals constituted.

6. The State Government is of the view that no substantial decentralisation of powers and functions both in normal times and also in times of emergency are considered necessary.

7. To the best knowledge of the State Government, no where in the present day world, a federation of traditional type really exists. The State Government shares the view that the difficulties, issues, tensions and problems which may arise in Union-State relationship can be resolved without major constitutional amendments and that there are no substantial defects in the scheme and fundamental fabric of the Constitution relating to Union-State relationship.

8. The State Government fully agrees that the protection of the Independence and maintenance of the unity and the integration of the conutry is undoubtedly of paramount importance. Provisions to that effect appear in a chain in the different parts of the Constitution and proper implementation of all such provisions are sufficient to achieve the aforesaid objectives.

9. The Constitutional provisions imposing obligations on the Union and the States are considered reasonable taking into consideration the interest of the country as a whole. Save and except the suggestion made with regard to Article 356 (1) (b) of the Constitution, no change is considered necessary with regard to the other articles. Basically no change is considered necessary in Article 3 of the Constitution of India. However, for dissolving dispute or disputes arising between one or more States with regard to the respective boundaries of the different States, it is suggested that it may be desirable to incorporate a provision for appointment of Commission or Commissions in dissolving such dispute or disputes. The powers and functions of such Commission or Commissions should be clearly indicated making suitable provisions for giving opportunities to the concerned States to place their respective cases, produce materials and documents before such Commission or Commissions in support of the respective claims. On the recommendations of such Commission or Commissions constituted, Parliament may make laws increasing, diminishing or altering the boundaries of any State as provided in Article 3 of the Constitution of India.

Article 371A

10. One other Article, viz Article of the Constitution, which is applicable only to the State of Nagaland needs to be mentioned with the observations as hereunder.

The said Article was incorporated in the Constitution on the basis of an Agreement arrived at between the delegation of the Naga Peoples' Convention and the Representatives of the Government of India because of the keen initiative taken by the then Prime Minister of India Pandit Jawaharlal Nehru before the formation of the State of Nagaland. The said agreement is commonly known as 'Sixteen Point Agreement'. To give effect to Clause 7 of the said agreement, Article 371A was inserted in the Constitution by the Constitution (13th Amendment) Act, 1962. The said Article was incorporated with the clear view that notwith standing anything in the Constitution, no Act of Parliament in respect of the four matters enumerated in clauses (i to iv) shall apply to the State of Nagaland unless the Legislative Assmbly of Nagaland by a resolution so decides. It is implicit in the said provision that all laws made by Parliament, whether before or after the commencement of the said article in respect of the aforesaid four matters shall not apply to the State of Nagaland unless the Nagaland Legislative Assembly so decides. It is suggested that what is implicit in the said Article as regards applicability of Article 371A in respect of laws made by Parliament before the enforcement of the said Article 371A, should be made explicit so as to remove ambiguity, if any, in the matter as may be contended by some quarters.

11. In the said Article 371A, it has not been specifically mentioned as to what consequences will follow if any law made by the Parliament in respect of the four matters mentioned above is not adopted by the Nagaland Legislative Assembly by any resolution passed. It is again implicit that in such an eventuality, the State Legislature of Nagaland shall be competent to enact laws in respect of the four matters mentioned in the said Article and the laws so made by the State Legislature shall prevail in the State of Nagaland. It is again implicit that in such an eventuality, the State of Nagaland shall havealso full executive powers in respect of the aforesaid four matters being competent to legislate regarding the said matters as mentioned earlier.

12. In view of the above, it is suggested that necessary amendments may be made to Article 371A of the Constitution in order to make explicit what is implicit in the said Article and to make the said Articles as an effective provision as desired at the time of incorporation of the said Article on the basis of the 'Sixteen Point Agreement' mentioned earlier.

13. It is suggested that sub clauses (b) & (c) of Article 371A (1) need to be deleted from the said Article by necessary amendment. In view of the fact that the complete peace prevails in the entire State of Nagaland and the law and order position of the State for the past so many years is much more better than other States of India, it is no longer necessary for the continuation of these two clauses in Article-371A of the Constitution of India. Further, the Regional Council for Tuensang District as contemplated

by clause (d) is also no longer there. In view of the above, clauses (b) to (d) of Article 371A (1) and clause (2) of the said Article need to be deleted by Constitutional amendment.

14. Nagaland being a State like other States in the Constitution, any further continuation of the said clauses (b) and (c) is no longer necessary and needs to be deleted.

15. The provisions contained in sub clause (d) and clause (2) of the said Article 371A have already spent its force, in-as-much as the period of ten years from the date of the formation of the State of Nagaland as mentioned in sub clause (2) is already over and the extended period under the siad sub clause is also already over.

PART II

Legislative Relations

16. As expressed earlier, there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States.

17. There are some legislative entries like entry 7, 52, 53, 54 and 56 in the Union List, whereby power has been conferred on the Union to declare by law the matters specified in the aforesaid entries either to be necessary for the purpose of defence or for the prosecution of war or in the public interest or the like. In exercise of the pow.rs conferred by the said entries, the Parliament has enacted laws, from time to time, to achieve the objectives envisaged by the said entries. Legislations made by the Parliament in exercise of the said ent ies even though might affect the powers of the State Legislatures, should not be considered as encroachments. No substantial changes in the present provisions are considered necessary.

18. It may be desirable to have the views of the State Goverments befor. enactment of any legislation by the Centre on any matter in the concurrent list. However, the views expressed by the State Governments in the very nature of things have to be in the nature of recommendations and may not be binding as such on the Ce.tr. . Nonetheless the views expressed by the different State Governments are likely to help the Centre in enacting laws on a matter falling under t.e concurrent list. The State Governments is of the view that the existing provisions in the Constitution in this regard do not require any substantial change.

PART III

Role of the Governor

19. The present provisions of the Constitution as regards the role of the Governor are considered necessary and do not require any substantial change. The relevant constitutional provisions regarding the matter postulate that the powers should be exercised by the respective Governors according to the letter and spirit of the Constitution. Any omission or Commission in the matter of exercise of powers in one or two instances, does not justify substantial changes in the existing provisions. It is desirable that there should be more insistence for the exercise of such powers by the respective Governors being true to the Constitution as envisaged by the expressed provisions of the Constitution.

20. The office of the Governor of a State being an office of high respect and honour, it is envisaged by the Constitution that the Governor without being guided by any other consideration not contemplated by the Constitution, should act according to the letter and spirit of the Constitution and if it is so done, it will undoubtedly help in fostering healthy Union State relationship.

21. While making a report to the Parliament suggesting action under Article 356 (a) of the Constitution, it is essential that the Governor has to act fairly, not being influenced by any other consideration than in the public interest giving a true and correct picture of the affairs of the State.

22. Since under Article 164 of the Constitution, the Chief Minister has to be appointed by the Governor and other Ministers are to be appointed by the Governor on the advice of the Chief Minister, it is essential that the Chief Minister, so appointed, has the undoubted support of the majority of the House. It is essential in the very exercise of that power that the person appoint as Chief Minister is not dependent on Members sitting on the fence and has the support of the majority of the House to run the Government of the State.

23. In proroguing the House or dissolving the Assembly under Article 174(2) of the Constitution, the Governor has to act as a Constitutional Governor viz. on the advice of the Chief Minister of the State.

24. So far the State of Nagaland is concerned, no difficulty was faced at any time in respect of bills passed by the State Legislature and placed before the Governor for doing the needful in terms of the provisions of the Constitution.

25. Under Article 157 of the Constitution, any person who is a citizen of India and has completed the age of 35 years, is eligible for appointment as Governor. It is suggested that there should be some guidelines by way of laying down qualifications for being appointed as Governor of any State, in-as-much-as a Governor of the State has to perform very many important duties and functions which necessarily require necessary knowledge and experience of various matters to be dealt with as the Governor of State. Any person appointed as Governor should have a full term of 5 years. It may be considered in this connection whether it is desirable that a person once appointed in the high office of the Governor of the State, should be permitted to be a member of the Parliament or Rajya Sabha or any State Legislature, after rendering service as a Governor. It is not considered desirable that the same procedure should be prescribed as in the case of a Judge or a Supreme Court or High Court in the matter of removal of the Governor.

26. Criticism may be there in making choice of the Chief Minister by the Governor in one or two isolated cases, but that may not justify any substantial change in the existing provisions. Any provision like

Article 67 of the basic law in the Constitution of the Federal Republic of Germany may not be appropriate in India at this stage.

27. The recommendations of the Administrative Reforms Commission in laying down guidelines on the manner in which discretionary powers should be exercised by the Governors, may not achieve the desired objective, in-as-much-as, discretionary powers should be allowed to be exercised in the best judgement and wisdom of the authority concerned. Any such guidelines as suggested, may be of a doubtful Constitutional validity. That apart, such guidelines may not be of any substantial progmatic utility.

PART IV

Administrative Relations

28. In a vast country like India there are good grounds for incorporation of Articles like 256, 257 and 365 of the Constitution. The powers conferred by the said Articles have to be considered in the greater perspective of India as a whole. Any wrong exercise of powers under any of the said Articles does not by itself justify the deletion and/or substantial modifications of the said articles.

29. The provision contained in Article 365 of the Constitution should remain as a reserved provision. It is conciveable that occasions may arise for exercise of powers under the said Article bonafide.

30. Powers under articles 256 or 257 of the Constitution should always be exercised with due care and only when exercise of powers under the Articles becomes absolutely necessary. That appears to be the scheme behind the said Articles.

31. No exception should be taken to the powers conferred by or under Article 356 of the Constitution and such provision in the Constitution has been incorporated advisably. By and large, powers under the said Article have been exercised so far to meet the situation envisaged by the said Article.

32. The provisions contained in Clause (4) of Articles 356 of Constitution, as they now stand after the 42nd amendment of the Constitution, should be retained as such. However, to meet the eventualities, some provisions need to be incorporated to meet such situation arising in any State. In incorporating such a provision, care should be taken to avoid any possible misuse of power that may be conferred to meet such eventualities.

CHAPTER III

Financial relations Planning and general

The issue that is now at conflict is unity among diversity. Unity comes with the pre-supposition that there is diversity. For if there is no diversity, the concept of unity does not arise. Keeping this fact in view, the functioning of the federal structure has to be studied. In this connection, James Boyce, an eminent writer, has compared a federation with the solar family i.e. the sun and the planets. He has stated, "The problem of every federation is to keep centrifugal and centripetal forces in equilibrium so that neither the planet States shall fly off into the space nor the sun of the Central Govt. shall draw them into its consuming fires". The planets have got to be kept in such a position that they would not drift away from the course of orbiting the sun and, at the same time, the planets should have the necessary strength as not to be drawn into the body of the sun, only to be vanished. In other words, there should be an equilibrium between the Central Govt. and the various Govts. in the States.

2. Generally there are three areas of Centre-State relations which tend to converge and become controvertial. One is the area of legislative authority, the second is financial participation and the third is of planning. The first has been amply discussed in Chapter II. As regards second and third, these are discussed in the paragraphs that follow.

3. Under the Constitution, the Centre has been entrusted with the responsibility of maintaining important national matters such as National Defence, Foreign Affairs and Communications etc. but the burden of socio-economic development falls mainly on the State Govts. which too is no less important as this is the sphere which directly affects the quality of life of the people. Therefore, the basic criterion in the Centre-State relations should be that devolution of funds from the Central resources to the States should be based on the concept that the federal financial system should be so oriented that surpluses of the Union are given to the States which are in acute need of them and liberally to those whose capacity to create assets of their own is limited. This is more so in the case of States like Nagaland whose sources of revenue, because of its highly undeveloped and backward character, are very inelastic. As a result, backward States in the country and Nagaland, in particular, are faced with inherent imbalances between resources and responsibilities.

4. It is a matter of common experience that the States which have non-Plan revenue gaps also tend to have non-Plan capital gaps. This is because of the fact that the investments of loans for planned development do not bring in, especially in backward States, the comparable returns, resulting in inability of the individual State Govts., to meet the liability of the loan repayment and the interest thereon to the Centre as the returns from investment are, to a large extent determined by the level of economic activity in an area.

5. Accordingly, we feel that balances in Central receipts should be revised in as large a measure as possible so that it may be possible for the Central Govt. to come to the help of chronically weaker and backward States from their inherent disequilibrium, resulting from resource imbalances.

6. Therefore, it is our plea to the Commission on Centre-State Relations to recommend a scheme of devolution of resources in such a way that would enable the States with a low fiscal capacity to maintain comparable standards of administrative, social and developmental services corresponding to a national norm. So long as this objective is not achieved, the devolution of resources to different States should be worked out in such a way that the poorer States are in a position to expand services at a faster rate than the richer States.

7. Locations of industrial projects were based on the decisions taken by the Central Govt. and preference was given to the areas, where already developed communication system, market accessibility, availability of power and technical know-how are available. Secondly the relatively smaller contribution made by the States, like Nagaland, to the national resources pool has inhibited the Finance Commissions from giving adequate consideration to the requirement of such States in the past. Lack of adequate Central assistance, whether in public or private sector and a comparatively less developed entrepreneurial skill have acted in a vicious circle resulting in low absorption of capital. With the result that the vicious circle of backwardness has been breeding backwardness in States like Nagaland and initial economic advantages were multiplying in other well developed States leading to further economic gaps.

8. To carry out these social responsibilities and undertake development programmes to achieve desired welfare objectives, the State has to mobilise resources of a higher order. The resources raising powers of the State are very much limited. They continue to remain at a very low ebb. Despite efforts by the State Govt. there are certain limiting factors which do not allow raising of resources beyond a particular level. For instance, it is not possible to raise the rate of sales tax beyond a particular point. Similar is the case with State excise on liquor and other taxes. It is here that the State Govt. has felt its helplessness in a situation where it is committed to uplift the economic standard and social welfare of the people.

9. As regards Corporation tax and Union surcharge on income tax, many States in the past had pleaded that these should be brought within the shareable pool. Various Finance Commissions have held the view that these taxes should be retained by the Centre as any change in this regard requires amendment of the Constitution. There is no doubt that Corporation tax and Union surcharge have considerably increased during the past years and the yield is of a sizeable order now. The revenue from Corporation tax has been increasing at compound rate of 15% in the last ten years. The Sixth Finance Commission has suggested that the question of bringing them in the divisible pool should be considered by the highest policy making body like the National Development Council. The State Govt. feels that the Sarkaria Commission should consider the need for making the Corporation tax shareable.

10. Similarly, it may be stated that surcharge on income tax is not different from the income tax itself. It has been exclusively appropriated by the Centre. This type of exclusive earmarking of growing revenues for indefinite period by the Centre has deprived the States of growing source of revenue. It is therefore, suggested that it should be levied for only a limited period and, subsequently, be merged in the basic rate of income tax so that the benefit of the increasing receipts from this source accrues to the States as well. The Commission may consider it.

11. As regards shareable pool of income tax and Union excise duties, the State Govt. had pleaded to the Eight Finance Commission that 25% share of income tax and 10% share of Union excise duties should be earmarked for hill States. As these States have special problems which need to be tackled on priority basis. Unless the regional imbalances and backwardness of the areas suffering from such drawbacks are removed, there is a continuing dissatisfaction among the people of such States. We are glad to note that the 8th Finance Commission has appreciated this fact about deficit States. The Commission has stated that the deficit States are also members of the Federation and they should not be left* to fend for themselves. Accordingly, the Commission has earmarked 5% of the Union excise duties, for the 10 deficit States—Assam, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Nagaland, Orissa, Sikkim, Tripura and West Bengal (Rajasthan being deficit in 1984-85 only). The State Govt. feels that this share of 5% should be increased to 10%. So we submit to Sarkaria Commission to consider and recommend raising of the share of deficit States from 5% to 10% during the forecast period 1984-89. As regards tax on railway passenger fare, the Eighth Finance Commission has recommended increase in the quantum of grant to the States from Rs. 23·12 crores to Rs. 95 crores. Since 1971-72, the annual passenger earnings as well as gross earnings of the railways have shown annual growth of about 15%. Keeping this fact in view, the recommendation of the Eighth Finance Commission appears to be reasonable. We hope that Sarkaria Commission would impress upon the Railway Convention Committee to approve it.

12. We also feel that location of Central Sector Projects should be based on the consideration of regional imbalances also and not only on the basis of industrial and locational facilities available in a particular area where industries are already concentrated.

13. The monetary limit of Rs. one crore fixed for power projects in 1950 to be cleared and approved by the Central Electricity Authority, still continues. The result is that schemes which the States could take up on their own 35 years ago, have now to be submitted for Central clearance due to escalation of cost. The examination by the Central Authorities even in respect of small schemes is so time consuming that it takes about two to three years to clear a small scheme. These Central Authorities could be entrusted with schemes above a certain size and projects which have inter-State implications.

14. The approach adopted by the Finance Commission in regard to the transfer of resources has been mainly on the basis of a gap filling approach and the transfer of resources through Central assistance for the Plan has been done mainly on the basis of distribution under a common formula. The transfer of resources has not promoted either efficiency or narrowed down the disparities between different States. Basic changes are, therefore, desired in regard to the principles governing the transfer of resources.

15. The principles of inter-State distribution should be such that they do not leave the advanced States with huge surpluses. Norms should be adopted and weightage be given to matters of national importance.

*Page 50 para 6·25 and page 54, Table 2 of the report of the Eighth Finance Commission.

16. Basic requirement in the matter of distribution of resources in a rational way between the Centre and the States and finally amongst the States themselves should be to increase the overall Central assistance to the deficit and hills States.

17. National Development Council with its Committees will be in a position to deal with most of the problems like planning and Central assistance. It will not be necessary to create a number of organisations such as National Credit Council, National Economic Council and the National Expenditure Commission. We feel that Finance Commission should be made a permanent organisation, which can look into the requirements of the State properly.

18. Deficit States are unable to fully utilise the Centrally Sponsored Schemes for want of matching resources. Therefore, these schemes should be fully financed by the Centre.

19. Industrial backwardness is different from general backwardness. The State has spent substantial sums of money to develop the infrastructure for social and economic development. As a result, the State has achieved a high rate of literacy in the country and a reasonably well-developed physical infrastructure. But, on the other hand, industrial growth has been slow and unemployment in the State is increasing. It should be the specific objective of policy makers and planners to direct massive industrial investment to such States.

Government of Nagaland

ANSWERS TO THE QUESTIONNAIRES AS PER ANNEXURE ATTACHED (SARKARIA COMMISSION)

I. It will not be correct to say that providing initiative and leadership and consultancy services should be left to the Central Ministries only. Every State has their own popular Government Constitutionally established. Even in matters of Planning, the State Government should take initiative and leadership in preparing their own Plans according to the socio-economic needs of their State. The socio-economic condition is different from one State to another. The local Government and leaders know their problems much better than the Central Ministries. Therefore, in actual practice, initiative and leadership in all matters of Planning should be left to the State Government. However, in matters of common national policies affecting all member States, initiative and leadership of Central Ministries is welcome within the framework of the Constitution. In so far as consultancy services are concerned, in some backward States like Nagaland which do not have experts it will take time to build up experts in various disciplines, the Central Ministries can provide consultancy services to the States depending on the demands and needs of the State Government. In so far as the Central Ministries acting as a clearing house of information and intimate such details and datii about good programmes and methods, we welcome the suggestion.

II. (1) The present practices is that State Governments formulate their own Plans on the basis of the guidelines and formats prescribed by the Planning Commission. When the State Plans are also discussed both at the stage of Working Group discussion and the final round, the concerned Ministries are also associated. In this connection the views of Nagaland State is as follows :—

Nagaland which is a very backward and poor State having no resources of its own is in a very disadvantageous position. In respect of National Five Year Plans also, Nagaland is a late starter. In view of this position, Nagaland including the other north-eastern States and Jammu & Kashmir are categorised as Special Category States. But while allocating the resources of the nation for development works, the criteria laid down by the Government of India like population, area and specially the resources gap between Plan and Non-Plan, etc. etc. works against the interest of the backward State like Nagaland. A State like Nagaland which is scarcely populated but its terrain is hostile for development work and the high cost living because of various reasons and which has remained neglected need more resources allocation in its share of national wealth. Inspite of the determination and aspiration of the State Government to take up more development works, the final decision for selecting and locating projects and the resources allocation still remain with the Central Government. This has resulted that advanced States are becoming more advanced and backward States are becoming more backward. In order to bridge the gap, it will be necessary to allocate larger amount of resources to the backward States to bring them up at par with the other advanced States to strengthen the national unity. It may be added that inspite of the good policies and guidelines which may be formulated by the Central Ministries or by the Planning Commission, they may not be able to appreciate the Special and peculiar local problems of the State. Although some States like Nagaland have been declared as special category States, while allocating resources, the resources gap between Plan and Non-Plan is linked in such a way that the resources gap in Non-Plan expenditure is deducted from the Plan resources. This system of giving from one hand taking away from the other works against the interest of the States where there is no resource base. While it is necessary that financial discipline and austerity should be observed by all concerned, the Plan resources once determined should not be reduced due to gap in non-Plan resources.

(2) We have no objection for the Central Ministries or Planning Commission to organise studies, research, surveys, etc. in the field of various departmental sectors and collection of background materials and economic and statistical datii. But this has to be done in close association with the State Government. But as has been stated above, statistical datii do not really reflect the actual socio-economic status of the society. For example, per capita income on the basis of population and the resource allocation works out very high but the actual financial benefits accrued to the people is negligible because a large chunk of the resources goes to capital investment and infra structure development. Therefore, the per capita income worked out on the basis of population does not give a correct picture of the economic condition of the people.

(3) No comments. Since it is between the Central Ministries and the Planning Commission only.

(4) It is no doubt important that the views of the Central Ministry should be taken into account while determining programmes and assistance to the State Plans. But our experience has been that the Central Ministries having no agencies in the States cannot appreciate the local situations. Even if they have any regional institution, they cannot also closely co-ordinate or appreciate the peculiar problems prevailing in the States. Therefore, while determining the development programmes and the size of the State Plans for central assistance, the views of the State should have more weightage. For instance, if the Chief Engineer of the State Government formulates some important project, the Central Works & Housing Ministry who have got their zonal officers insist that it should be cleared first by their Zonal Officers before it is sent to the Ministry. Since the Central Ministries are having their own technical personnel such projects should be directly sent to the Ministries to avoid delay.

(5) The State Government is of the view that once the size of the Plan and the programmes are determined, scrutiny of the various Plan schemes should be left to the State Government and not to the Central Ministries. However, in respect of fund under their control like schemes for National Highway, scrutiny and examination in details should be done by them.

III. We agree provided such research reports are made available to the State Governments.

IV. It is very doubtful whether the Central Ministries can send their evaluation team timely. Otherwise it is a welcome suggestion and the State Government will also co-operate with such evaluation and monitoring teams.

V. It may not be advisable for the Central Ministries to directly undertake activities or schemes which cater to regional or all India needs. It will be always advisable that such activities or schemes are taken up in consultation and in close association with the State Governments.

VI. We will have no objection that it will be advisable that the State Government is taken into confidence before such projects are taken up.

VII. We have no objection that in all foreign and internationally aided programmes which may be implemented in a particular State, the Central Ministry should have closer co-ordination to the extent necessary for compliance with the agreements.

VIII. We agree and we hope to be benefited by such co-ordination and participation.

IX. No objection.

X. With regard to Centrally Sponsored Schemes, it may be stated that the uniform pattern/methods/plans/cost, which are evolved in the Central Ministry cannot be made applicable uniformly to all the States. The State Government should be given power to modify such schemes to suit the local needs and conditions.

XI. We welcome the suggestion.

XII. We have no objection but in the interest of harmonious Central-State relations, it would be advisable that the State Government is always taken into confidence even in dealing with the All India Voluntary or Autonomous Organisations.

FUNCTIONS OF THE CENTRAL MINISTRIES AND PLANNING DEPARTMENTS IN RELATION TO SUBJECTS IN THE STATE LIST

(i) Providing initiative, leadership and consultancy services to the states and in particular serving as a clearing house of information intimating details and data about good programme and methods adopted in one part of the country to the rest of the country.

(ii) Undertaking the responsibility for drawing up the national plan for the development sector in question in close collaboration with the states and developing for this purpose, well manned planning and Statistical Units. This responsibility will *inter-alia include.*

(1) Assisting the Planning Commission in formulating Plans for the sectors with which the ministries are concerned and working them out in appropriate details.

(2) Undertaking, for the above purpose, preparatory work which will include organising studies, research and surveys having a bearing on the development of the sectors and collection of background materials and economic and statistical data.

(3) Providing technical and other assistances with regard to planning to the Working Group set up by the Planning Commission and to Development Councils.

(4) Assisting the Planning Commission in determining the programme in the state plans to which assistance should be tied.

(5) Scrutinising in detail, and before they are put into execution, such state plan schemes as are required to be scrutinised by the Ministries according to the policy in force.

(iii) Undertaking research on matters which are beyond the research resources of states or which have a national import.

(iv) Taking the initiative in the evaluation of programme with the object of checking programmes, locating bottlenecks, giving advice regarding remedial measures and adjustment etc.

(v) Undertaking directly activities or scheme which cater no regional or all-India needs.

(vi) Undertaking experimental projects.

(vii) Coordination of programme undertaken in agreement with foreign and international organisations and agencies and association with their implementation to the extent necessary for compliance with the agreements.

(viii) Attending to functions of the nature of coordination which can appropriately be handled at the Centre.

(ix) Providing a forum and meeting ground for state representatives for the exchange of ideas on different subjects and for the evolution of guidelines.

(x) Centrally Sponsored Schemes.

(xi) Undertaking training programme of a foundational or advanced nature, e.g. training of planners and administrators and training of trainers and assisting the states in other ways in developing their administrative and technical capacity.

(xii) Dealing with all-India voluntary or autonomous organisations (as distinct from such organisations at the state or lower levels).

GOVERNMENT OF ORISSA

(a) Replies to the Questionnaire

(b) Presentation of the Case before the Commission by the Chief Minister

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTION

1.1 Notwithstanding several centralising features which co-exist with the basic federal set up, our Constitution can be recognised as a federal one. This is a well-settled position. As would be evident from the debates of the constituent Assembly, it was a conscious decision of the Constitution makers to create a federation with strong Centre. Considering the peculiarity of the genesis of India nation (carved out of a unitary government) the socio-economic diversity that characterises its various regions, and the historical necessity to preserve its unity and integrity, a federation with strong Centre was the soundest option available. Judged in the present perspective, the centralising features obtaining in the Constitution may not be considered to be unique, when in the classical federations, there has been growth of distinctly unitary tendencies. As for instance, in the Federation of U.S.A. which is accepted as a model, extra constitutional unitary features have developed through the practice/system of Governors conference and frequent meetings of Federal and State functionaries. A federal structure with strong Centre has, therefore, been a historical imperative and its necessity in the present times is amply borne by the socio-political imbalances afflicting the country now. The Constitution of India in this perspective is FEDERAL containing, as it does, the main basic features of Federation viz., dual polity consisting of the Union at the Centre and States at the periphery, each endowed with soverign powers to be exercised in the fields assigned to them respectively by the Constitution.

1.2 The basic scheme of the Constitution is sound and does not need any change although there is room for modifications in detail but nothing should be done to whittle Central supervision and control in the interest of preserving the unity and integrity of the country.

1.3 The existing Constitutional devolution of powers under which reasonable autonomy at the State level has been provided is adequate and quite compatible with efficiency and equity. It does not require any change either in the normal times or during emergency. We feel that greater autonomy contains inherent dangers of generation of local and regional imbalances. In our country, advanced States have to co-exist with backward States and it is the obligation of the Union Government to bring about a degree of uniformity among them. Dichotic division of normal and emergency provisions may lead to resorting to emergency even in normalcy.

1.4 This concept is an exercise in abstaction. Function of Government in the present day has become so complex and interdependent that any 'co-ordinate and absolutely independent' structure cannot sustain itself. In any case, there is no traditional federalism today and every country has to have its own brand of federalism suited to the needs of its people and other relevant factors.

1.5 By and large, these comments appeal to be valid. We subscribe to the views expressed in (c) (i) and (ii). There should be strong institutional network to curb political arbitrariness. The spirit and values enshrined in the Constitution should be constantly imbibed and practiced by evolving healthy conventions and procedures like the British Constitution.

1.6 Yes. This has been ensured by the very first Article of Indian Constitution which stipulates the country to be a Union of States and also be constitutional provision for single citizenship fundamental rights, integrated judiciary, united audits and accounts, appointment of governors by the President, a single Election Commission. All India Service, Finance Commission, primary of Parliament in part XI; (Chapter I), emergency provisions part XVIII, concurrent powers and constitutional obligations for protection of minorities, scheduled castes and scheduled tribes. Financial integration have been ensured through shared taxes, grants to States and a statutory Finance Commission.

1.7 Even, if the obligation of the Centre and the States, to one another, are not mutually commensurate and may put the States prima facie in a defenceless position in certain matters, this kind of balancing was not entirely unintended. The States in the Indian Constitutional frame-work do not enjoy power of equal representation in the Centre, as distinct from the American States which have equal representation in the Senate. This over-riding position of the Centre may be partly offset by the States by seeking judicial relief against the Union directives which are judiciable. But, a more pragmatic approach would be enhance the area of Central obligation towards the States to, not only to meet the rising regional expectations but also to ensure uniform level of development by bolstering up the less-developed ones through certain special dispensations over and above what the Planning Commission and Finance Commission are able to achieve.

1.8 No. It is necessary for the Parliament to have powers as now embodied in Article 3. The present position may continue as it is.

PART II

LEGISLATIVE RELATIONS

2.1 In our view, the State should be fully competent to legislate on all matters allocated by the Constitution

to the State List; otherwise, the arrangement as envisaged in the Constitution would appear to be in order. In this context, attention is drawn to the construction of Article 246 which makes the State List categorically subject to the Union List and the Concurrent List. The expression "notwithstanding anything'," in Article 246(1) and "subject to" Article 246(2) opens up possibility of encroachment in the State List, and it may be difficult for the State to seek judicial redress in such contingency. Therefore, the alternative of deleting the aforesaid expressions may be considered.

Instances can be seen in the Mines and Minerals Development Act and Industrial Developments Regulation Act. The reasons are :—

(i) Entry 23 of List II empowers to make law for regulation of mines and mineral development. It has been made subject to the provisions of List I (obviously Entry-54 of List-I) which provides "regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the Public Interest." In other words, the Union Parliament possesses the power to take under the control of the entire subject and the power given in Entry-23 loses its meaning for the State Legislatures. In fact, the present mines and mineral development law is made by Central Government and State Legislature has been completely deprived of its competency to make any law on the subject.

(ii) The next Entry-24 of that List relating to industries has been made subject to the provisions of Entry-52 of List-I. Entry-52 provides, "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest." The moment Parliament by law declares any industry to be under the control of the Union as in case of Industrial Development and Regulation Act, the State Legislatures loses its competency to make law. In cases the State has not been able to reach assistance to certain industries which have been put under the control of the Union Government and has failed to redress the financial or monetary sickness of the industry due to lack of competency.

(iii) This Entry-52 of List-I also has partly affected the trade and commerce within the State and production, supply and distribution of goods as enumerated in Entry-26 and 27 of the State List in respect of the industry control of which has been placed under the Union by the legislation made by Parliament as embodied in Entry-33 of the Concurrent List.

2.2 (i) We feel that trade and commerce should be within the competency of the State Legislature whether it is relating to essential or non-eessetial articles.

In substance, it is suggested that some of the legislative powers dealing with financial matters and taxation enumerated in List-II may be made free from restrictions made by Parliament, such as Entries-50 and 57, since the State Legislature has very limited items of taxation for augmenting State revenue.

2.3 Yes.

2.4 Assumption of the power of legislation of the State legislature by the Parliament in 'national interest' or 'public interest' being always a matter of temporary nature, such legislative power, in the fitness of things, should be of temporary duration. The present provision of Article 249 appears adequate to meet any exigency.

2.5 The point has exhaustively been discussed while answering question 2.2.

PART III

ROLE OF THE GOVERNOR

3.1 The Constitution has visualised that Governor is the Head of the State in whose name the Government of the State is carried on. He is to act in the running of the government on the advice of the council of Ministers except when exercising the choice of the Chief Minister and reporting to the President under Article 356.

Governors have generally functioned as the constitutional head of the state in Orissa and have fulfilled the role assigned to them in the Constitution. We have no instance to quote where a Governor has acted in deviation of the powers envisaged under the Constitution.

3.2 Primarily Governor has to act as the Constitutional Head of the Government. Additionally he acts as the watch-dog/agent of the Central Government. For fostering healthy relations he should act as a broker for the State Government and liaison agency between the State Government and Central Government and should help shaping high policy in the union state sphere.

3.3 Any consideration other than objective in the context of a prevailing situation should not guide or influence a Governor in discharging his obligations under (a), (b) and (c) mentioned in the question. The powers conferred on a Governor under (a), (b) and (c) are of extraordinary nature and should be exercised with great amount of caution and prudence, so that appropriate linkages are built up between the Centre and the States within the framework of a federal Constitution. No change is, however, recommended in the existing provisions of the Constitution in these respects.

3.4 The intention and purpose of the Constitution makers was to ensure uniformity in legislation and also conformity with requirements of the Constitution, as for example Articles 254 and 255 Chapter V of Part VI and Article 368. Our Constitution adopts the checks and balances system of U.K. in the matters of legislation. Hence the progressive views of the members of the Legislature embodied in a legislation calls for a check by the Governor who is part of the Legislature and has equal importance as the Legislative Assembly to ensure that the legislation is in conformity with the provisions of the Constitution and justified in terms of social and economic conditions prevailing in the country. It is healthy and necessary provision and in Orissa no instance has been noticed where Governor has reserved a bill for consideration by the President against the advice of the Council of Ministers.

3.5 Yes, although there are cases where Government of India have suggested changes in respect of provisions contained in Bills received for consideration by President. However, it is not a case of dictation by the Centre. Whenever the suggestion of Central Government has been accepted in such cases, it has been done after discussion between the Central and State Governments. In case of our State, such situation had arisen in case of amendment to Land Reforms Act and Arbitration Orissa (Amendment) Act; but Centre has not tried to dictate any decision in these cases. Of course, cases of delay in getting assent of the President to the bill have occurred as in the case of Orissa Land Reforms (Amendment) Act sent in 1979. However, the delays can be overcome by administering alertness.

3.6 Yes, this is the correct position. Governors have functioned generally as constitutional heads of the state and fulfilled the role envisaged in the Constitution. However, different Governors have adopted different standards when they were requested to exercise discretion in calling or not calling a leader to form a Government when majority support for him was not clear or when recommending or non-recommending action under Article 356. The well-reported case of Orissa High Court in Bijayananda's case can be referred to in this regard.

3.7 No.

3.8 No, the task should be lef tto the Chief Minister who is appointed by the Governor. Governor is an umpire. He should not enter into any political calculation. It is the speaker who should verify in the House as to which party has the majority in the Legislature.

3.9 No, we do not think it will be advisable to incorporate a provision in the lines of Article 67 of the Basic Laws of Federal Republic of Germany, as it does not suit Indian political culture. The better alternative would be in the event of any anticipated party instability, to dissolve the Assembly and allow the existing Government to continue as care taker and order fresh elections. Incidentally, the recent anti-defection law will go a long way in obviating such situation taking place in future.

3.10 The issue whether guidelines should be laid down to be followed by the Governors for exercising their discretionary powers was debated by the Constituent Assembly and it was decided that it was not necessary/desirable to lay down any such guidelines. Later, a Committee of Governors appointed by President in 1970 went into this question and also advised against any such measure/move. We are of the opinion that no guidelines are necessary and the exercise of discretionary powers should be left to be exercised by Governor in the context of political situation confronting the State and the Centre at any given time. We also feel that any written guidelines will create litigations and consequential Constitutional deadlock.

PART IV

ADMINISTRATIVE RELATIONS

4.1 & 4.2 There is absolute need to have Art. 256 and 257 in the Constitution as already explained under 1.2. The Constitution of India envisages a federal polity with some strong unitary characteristics. The pattern though a departure from the classic structure of a federal Constitutional system, would appear to have suited well the Indian conditions. The role of the Union Government in such a set up has been, it may be said, provided with the Constitutional sanction by incorporating the Art. 256, 257 and 365. However, it is to be stated at the same time unless it is a case of an extraordinary situation or a State or a group of States are set on a course of action which is manifestly in opposition to the accepted national ethos and the objectives thereunder, the levers of authority recognised by the Constitution in Arts. 256, 257 and 365 should not at all be operated. Minor aberrations, if any, and other situation of dissent on the part of the States should be resolved through an appropriate institutional arrangement which will afford opportunities for debate, discussions and consultations. A democratic and not an authoritarian tradition is the avowed goal of our Constitution and it should not be eclipsed by frequently having access to the powers vested under Arts. 256, 257 and 365 of the Constitution.

4.3 We feel that the recommendation of Administrative Reforms Commission are reasonable and commend the course suggested by it of exploring all the possibilities of deciding points of conflict by all available means before issuing any direction to a State Government under Article 256.

4.4 In Orissa, the power has been used-twice during the last 35 years. While we feel that generally this extra-ordinary remedial power has been exercised properly, the invoking of the power firstly in 1977 in the wake of victory of Janata Party and secondly in 1980 following the victory of Congress in the Lok Sabha Election, was not free from controversy and its use was contrary to the relevant provisions of the Article. We, therefore, feel that necessary safeguard should be built into Article 356 to prevent recurrence of such instance.

4.5 Prolonged President's Rule is not a solution to these difficulties and, as such the provisions under clauses (4) and (5) need not change.

4.6 The present arrangements are working satisfactorily.

4.7 The Central agencies must of necessity, continue . We do not subscribe to the view that the Agencies enumerated have made undue inroads into the States autonomy. These agencies, while functioning within the charters given to them, are quite careful that they do not encroach upon any area which is the exclusive concern of the State. They mainly deal with the subjects handled by them from the view of the country as a whole or with matters pertaining to more than one State. Generally, we have found their role quite helpful and constructive. We have also to remember that quite a few of these Agencies have been set up under relevant Acts passed by Parliament and, as such chances of any conflict arising between the Centre and State in regard to their functioning are not there.

4.8 In the changing times and situations the All-India Services can definitely be said to have stood up the expectations of the Constitution makers. In,

respect of All-India Services the Union Government must have sufficient control over them. The existing arrangements regarding the All-India Services and the control of the Union and the State Governments exercise over them need not be changed.

4.9 Law and order being a State subject, the State should be allowed to play their legitimate role on this sector with the aid and assistance as and when required of the Centre whether it relates to calling up of the Army or deployment of paramilitary forces. The Centre, however, should not be disabled from the acting in situation of grave emergency or situations which constitute a threat to the integrity of the country. In this context, Article 355 becomes very important for the sake of preserving the integrity of India. There should, therefore, be no question of opposition to Central aggression and internal disturbances although normally no Central force be deployed in the State unless asked for by the State Government.

4.10 The present scheme under the Constitution in this regard may continue. However, States should have a say in the administration of organisation like AIR or DOOR DARSHAN and other media in view of the vital role played by them in dissemination of correct information relating to the functioning of the State Government. An arrangement should be provided under which states are allowed specified period of TV and Radio programmes for their own broadcast subject to central guidelines and inconformity with Central Government directives.

4.11 The Zonal Councils and their functioning do not appear to have so far achieved the objectives for which they were set up.

4.12 We are of the opinion that institutional arrangements should be set up in different areas for consultation between the Union and the States to sort out various issues and problems affecting the centre-state relations. Disputes which may arise between the States may be attempted to be resolved in a forum with representatives from the States and the concerned central ministers. An inter-State Council may be too large a body to go into such disputes. Besides, the Constitutional obligations devolving either on the Centre or the States should not be subjected to any review or discussion in a Council for taking action. Any disputes between the States which cannot be settled by discussions should be taken to the appropriate judicial or semi-judicial forum.

PART V

FINANCIAL RELATIONS

5.1 So far as we restrict our attention to the financial needs of State Government for providing the basic administrative services in the State, the arrangement for closing the gap between the State's needs and their resources through sharing of the Central taxes and making available grants-in-aid on the basis of the recommendations of duly constituted Finance Commission, have commanded the confidence of all. And, to this extent, it can be said that the scheme of devolution envisaged by the Constitution makers has worked well and come up to their expectations. In order that this arrangement continues to command the confidence of the State Government, a strong convention has to be established that the recommendations made by the Finance Commission will be accepted by Government of India in toto.

However, the growing needs of the State for financing different developmental activities, which need transfer of resources from the Centre to the State in a much large magnitude, do not come within the purview of the Finance Commission and is dealt with by Planning Commission. We feel that it is this area that the existing principles of resources transfer have left much to be desired. While, therefore, suggesting that the present system should be improved upon and there should be effective co-ordination between the Planning Commission and Finance Commission, we would recommend that strict objective criteria for determining the quantum of Central assistance to States and its distribution should be laid down and scrupulously and meticulously followed.

5.2 The over-all position stated by the ARC Study Team still holds good. As regards the alternatives given, our views are given below :—

We are not in favour of complete separation of the fiscal relation of the Union and the States and feel that it will be neither desirable nor practicable to do so. Similarly, concentration of all powers of taxation with the Union is not desirable. We believe, in a country like India, transfer of few taxes from the Union to the State List will not suffice. This may improve the finance of richer States but will be detrimental to the interests of poorer States, Centre itself will be left with a much lower order of resources at its command. Poorer States will be starved on account of their inadequate resource base.

Because of some historical reasons, the production, consumption and other economic activities, which sustain the modern and organised sectors of our economy and constitute base for all taxes with Union or States, are located in the specific region of the states of the Union. While the activities in these regions are sustained by the population of the entire country and purchasing power of the entire country is spent on goods and services placed in these areas, this would contribute to the resources of the States of their location only, after more taxation power are transferred to the States.

As already stated, we do not favour the idea of transfering more and more taxation powers to the States because that would subvert the mechanism of transfer of resources from richer to the poorer regions. Nor, do we favour taxation powers to be transferred to the Union List which will render the States absolutely dependent on the Centre.

On the other hand, we feel, in the context of planned development, it is necessary to take an over-all view of the financial needs of the States and the devolution of resources should be made in accordance with the pre-determined principle and on the basis of an assessment of the gap between a State's needs and its own resources to augment the funds to be transferred from the Centre to the State. All

income taxes (including Corporation tax and surcharges) and all excise duties should be shareable with the States, and States should get most of the resources through assured devolution and the principles of inter-State distribution should be such that advanced States are not left with large surpluses. There should also be institutional arrangements for more equitable distribution of resources other than tax resources between the Union and States.

5.3 We subscribe to the view that regional imbalances can be reduced only by a strong Centre having elastic sources of revenue and more discretionary powers to use the funds available with it for the development of poorer States. However, the Central Government has to display the stance in favour of regional imbalances more boldly than has been the case hither to and follow more progressive policies in this regard.

5.4 We do not consider that deficits in the Central Revenue Account are in any way due to the devolutions of resources to the States. On the other hand, we are of the opinion that there is scope and justification for greater devolution of resources from the Centre to the States, as transfer of resources hither to being made through the Finance Commission and Planning Commission is not even adequate—not to speak of being generous. Centre should raise more, wherever feasible and also by improving collection of taxes already levied and through better economy and control of expenditure and, in particular, by improving the performance of the Public Sector Undertakings in which huge funds have been invested. We would suggest that revenue deficits should be avoided but over-all deficit financing may not be totally avoidable. However, it should be kept within reasonable limits contain and control its inflationary impact on the economy.

5.5 Presently, the devolution of resources from the Centre to the States takes place—

(i) Through the channels of the Finance Commission,

(ii) Through the channels of the Planning Commission, and

(iii) Through discretionary transfers in the shape of Central sector schemes and Centrally Sponsored Schemes implemented by different union ministries.

The fact that the relatively under-developed States continue to be less developed and inter-regional disparities seem to be on the increase even after 35 years of planning, is a definite indication that the present scheme of transfer of resources has not been effective in bridging the gap in resources between the poorer and the richer States. We would like the Commission to consider the following alternative scheme of resource transfer.

(a) Transfer through Finance Commission—The approach of the successive Finance Commissions has been to devise formulate for sharing of union taxes and duties by the States without any reference to their resource needs. As a result of this, the developed States, with richer resource bases, which could meet all their requirement of funds for committed non-plan expenditure from their own resources alone or, perhaps, with a limited help from the Centre, have been left with huge surpluses on their non-plan revenue accounts, after receiving their shares in the union taxes in accordance with these formulae. At the same time, the poorer States, with meagre resource bases, whose own revenue fall far short of their non-plan requirement, are left with deficits in their non-plan revenue account even after receiving their shares in the central taxes in accordance with the tax-sharing formulae. The Finance Commission do only bridge this gap through grants-in-aid and leave these States with a zero deficit. This has resulted in a situation where the richer States have been left with huge surpluses from their current revenues for financing their plan outlays while the poorer States have been left with no surpluses at all. In fact, after the non-plan capital disbursements and the additional liabilities on account of the sanction of ADA to the Government employees have been accounted for, these States are left with large deficits on their revenue account which is to be first met from the borrowings and the additional resources raised for the plans, before any provision can actually be made for their plans.

We suggest a departure from this essentially negative approach of bridging only the deficit in a State's non-Plan resources through grants-in-aid without any regard to the State's need for resources to finance its development plans. We suggest that this approach adopted by successive Finance Commissions, hither-to should be discontinued and a more positive view of the State's resource needs be taken. The awards of the Finance Commission should be such that the poorer States as well as the richer ones would be left with some positive surpluses from their current revenues, after meeting all their committed liabilities, for providing the essential administrative services, so that this could form the core for financing their development plans. In fact, it should strive to ensure that the per capita surplus available from current revenues, should, more or less, be equal for all States. The guiding principles of the alternatives scheme of devolution and grant-in-aid, suggested by us, would be the following :—

(i) States which would be found to have deficits in their non-plan revenue accounts even after receiving their shares from income-tax, additional excise duties and estate duty should be first paid sums from the divisible pool of the union excise duties necessary to bring them to the level of a zero deficit. The remaining portion of the divisible pool of the union excise duty may be distributed among the States on the basis of a uniform formula of devolution. The detailed picture of such a formula has been indicated by us in our answer to Question No. 5.12. This would alone reverse the present situation in which the richer states are flushed with funds while the poorer states received enough grants-in-aid from the centre just to bridge the gap in there non-plan revenue account and are left with no surpluses for financing their development plans. Instead, now, each State would have enough to meet its non-plan liabilities and some surplus to meet any unforeseen expenditure and to form the core of its resources for financing its development plans.

(ii) Grants-in-aid under article 275(1) of the Constitution should be made available to the States in need of improvements of the standards of administration and essential services in specific sectors so as to bring these around the national norm. Grants-in-aid should also be available for financing relief expenditure. Our detailed suggestions, in this regard, have been given in our answer to question no. 5.13 and 5.28.

(iii) We also feel that the assumption of price stability made by successive Finance Commissions is not realistic and this fact has been proved by continuous rise in the price level over the past 35 years. We would suggest that all States grant ADA to their employees more or less in keeping with the Centre. Since the Central Government alone has any control over the prices and changes in the price level necessitating the sanction of A.D.A. are directly or indirectly the results of policies followed by the Central Government, such as deficit financing credit expansion, etc., the additional liability on the State Governments on account of sanction of A.D.A. should be borne by the Centre. Grants-in-aid should be sanctioned in favour of the State Governments annually on the basis of actual requirements towards A.D.A.

(iv) The Finance Commissions have also often assumed receipts from certain heads while re-assessing the revenue forecasts of the State Governments which never materialise in reality, This creates a problem for the deficit states. This practice should, as far as practicable be avoided by the Finance Commissions in future.

(b) **Devolution through the Planning Commission**—The level of central assistance for the state plans is presently determined in accordance with the Gadgil formula as revised from time to time. We feel that there is a strong case for reviewing the present arrangment based on Gadgil formula as it is out of alignment with the emerging needs of our times. The Planning Commission's review and adjustment of outlay and central assistance for each year have become mechanised arithmetical exercises of late. In order to reduce inter-regional disparities, it is imperative that the planning authority should be guided by the investment needs of a State for generating a rate of growth which will bring it at par with the rest of the country within a reasonable time-frame. This is not feasible in any formula bound situation. We, therefore, suggest a more positive approach towards allocation of central assistance for planned development of different States according to which the Central assistance receivable by a State for its plan would not be determined in terms of any rigid formula; but solely by the required level of investment dictated as per a global perspective plan formulated by the Planning Commission aiming at progressive reduction in regional inequalities along with a desired rate of growth in the national economy. Evidently, to make such an arrangement work complete impartiality on the part of the Planning Commission will have to be ensured. We also feel that the present mode of central assistance which constitutes 70 per cent of loan and 30 per cent grant, creates heavy loan repayment burdens for the State Governments and, in effect, results in much lower net assistance from the Centre. This question has been discussed in detail by us in our answer to question No. 5.17. We would suggest that the central assistance should consist of 30 per cent loan only and the balance 70 per cent as grant.

(c) **Transfer of Resources through Central Sector and Centrally sponsored Schemes**—The allocations of resources between the States under different Central Sector Schemes and Centrally-sponsored plan Schemes should be such as to augment the level of investment in the less-developed areas so that the pace of development in the backward areas would be speeded up and these can catch up with the more developed states faster. The transfers under Central Sector Schemes and Centrally Sponsored Plan Schemes should supplement the State's plan assistance in this sense. The Planning Commission, while determining the levels of outlays in different Central Plan and Centrally Sponsored Plan Schemes should also, therefore, determine the state-wise allocations. Any factors such as matching contributions of State Governments etc., which would interfere with the freedom of Planning Commission in this regard should be done away with. We are of the view that this basic change in the approach in the transfer of resources from the Centre to the States is necessary if the less-developed States are to catch up with the economically advanced States of the Union within a reasonable time horizon. This should deserve adequate attention of the Commission. Unless a departure in this direction is made, no formula of tax-sharing or plan transfers etc., would be of more than marginal help.

5.6 The creation of a special federal fund for the economically under-developed areas is not felt necessary in our country. The problem of regional inequalities and imbalances can be suitably tackled within the existing institutional frame work for planning. The real need is for making more intensive outlays on infra structure development and income-generating schemes in selected areas which can be easily ensured by devising appropriate Area Development Sub-Plans within the over-all frame work of the State's and Centres Plans.

5.7 The principles stated in the question would appear to be sound and do not call for any alteration. However, a larger divisible pool is to be the objective within the existing scheme of statutory devolutions by bringing into the pool those legitimate items of resource which, by some mechanism or other, have been kept out of it. (Also, please see reply to Question 5.2).

5.8 We agree that there should not be a fragmentary approach to taxes. However, taxes can be imposed only through legislation and it is a basic and un-alterable feature of our Constitution that this power vests only with the Parliament or the State Legislatures. The respective legislative bodies alone are competent to make laws imposing taxes. A Committee of Finance Ministers exercisin

control over the legislative powers of the Parliament would be incongruous and inconsistent with the basic features of our Constitution. However, we can agree that, on a selection basis, some of the items for taxation at present included in State List could be considered for being regulated by the Centre as has been agreed to by us in case of Sales Tax being substituted by a Central Levy (Excise) subject to certain guarantees and safeguards being built in to the arrangements.

5.9 We do not agree with the approach suggested, as we do not consider it to be a feasible proposition to have a single body.

We suggest the following alternative mechanism for transfer of resources for meeting the plan and non-plan expenditure :—

(a) The Finance Commission should continue to exist and function as before, and its recommendations should take care of the non-plan needs.

(b) There should also be a Planning Commission to guide about the choice of technique, investment criteria, Project formulation etc. It may decide upon resource transfer from Centre to States for financing plan outlays.

(c) There should be effective co-ordination between Planning Commission and Finance Commission. In our suggestion, the Central assistance receivable by a State for its Plan would not be determined by any rigid formula but would be taken solely by the required level of requirement dictated by perspective plan formulated by the Planning Commission for the States in order to bring it at par with the rest of the country within a given time-frame. Such schemes, as involve matching contribution by the State Governments should not be encouraged as they tend to distort the allocation of resources worked out by the Planning Commission. Devolution of plan assistance to the States should not be done in a formal mechanical way but should be determined on the basis of State's need for capital outlay for generating a certain rate of growth.

5.10 & 5.11 So far as transfer of resources on the advice of successive Finance Commission is concerned, we feel that each succeeding Finance Commission has adopted a more and more normative approach for forecasting the expenditure of States; this in our opinion has contributed substantially to an inbuilt incentive for the State Governments to promote efficiency and economy in expenditure on the one hand and narrow down the disparity in public expenditure among the States on the other. The schemes of upgradation of standards of administration recommended by the Finance Commissions have also been very useful in narrowing down the disparity in the quality of administrative service of the different States. We do hope the future Finance Commissions would be more normative in their approach so that this tendency will further be strengthened. Also the adoption of a normative approach in assessing the expenditure requirement of different States have an inbuilt disincentive against financial indiscipline on the part of the State Govts and against adoption of populist measures resulting in revenue loss and inessential expenditure. Such a normative approach would also make exaggerated revenue deficit forecasts made by the states meaningless and a tendency would develop in the State Governments not only to effect efficiency and economy in expenditure but also to project their actual requirement to the Finance Commission. However, so far as transfers under the advice of the Planning Commission is cocerned, we feel that it has been done on the basis of distribution in terms of a general formula of a certain amount made available by the Union Finance Ministry to the Planning Commission ignoring by and large the specific needs for development. As recommended by us earlier, a set of objective criteria should be evolved and applied for transfer of resource under central plan assistance for state plan keeping in view the perspective plan drawn up by the Planning Commission for the development of the state need for removal of regional disparities.

5.12 We agree with the Seventh Finance Commission's proposal on effecting bulk of the resource transfers through tax sharing and attaching only a supplementary role to the grants-in-aid under Article 275(1) of the Constitution. The Scheme of devolution should be so formulated as to help closing all the gap between the developed and less-developed states, at the same time leaving enough resources with the Centre. The states having deficit in their non-plan revenue accounts after getting their shares from income-tax, additional excise duties, estate duty, grants-in-view of tax of Railway fares and grants against wealth taxes on agricultural property should be first paid from the divisible pool of the Union excise duties necessary to bring them to the level of zero deficit.

The uniform formula of devolution may have the following features :—

(i) Percentage of the population to the total population of all States;

(ii) Percentage of scheduled caste and scheduled tribe population of a State to the total of such population of all States;

(iii) Inverse ratio of the per capita State domestic product.

(iv) Inverse ratio of per capita household consumption of each State.

5.13 We feel that the role of grant-in-aid should be limited only to be made as correctives intended to narrow the disparity in the field of various administrative and social services between the developed and the less-developed states, the objective being to endeavour to assure certain basic national minimum standards of such services in the country irrespective of state boundaries. Grant-in-aid may also be given to individual States, as has been done by the Eighth Finance Commission, to enable them to meet special burdens on their finances because of their peculiar circumstances or matters of national concern. The role of grant-in-aid for bridging the deficit in revenue accounts of the State Government as has been the past practice should, however, be discontinued. As stated in our reply to the Question No. 12 above, this should be the first charge on the divisible pool on union excise duty.

5.14 We feel, the Special Bearer Bond schemes are in lieu of taxes which could have been collected and shared with States and as such, the entire proceeds have to be shared with the States.

As regards administered prices of petroleum, coal etc., there is justification for bringing the revenue accruing there from into the divisible pool as explained below :

Revenue from excise duties is shared between the Centre and the States. But, of late, the Centre by raising the prices of products of public sector undertakings is able to raise resources for itself and the States, who would have benefited also if excise duties had been levied, are deprived of the additional resources. Since the States are deprived of revenue by the administered prices, it is reasonable that the revenue obtained by the Centre thereby should form part of the divisible pool. Further, we would like to point out that since these items are liable to pay royalty to the State Governments, we feel that is unfair to peg the rates of royalty down for four years while effecting changes in the consumer price of these commodities more often. We would advocate that the rates of royalty of these items should be linked to the administered prices as a fixed percentage so that these would be subject to automatic revision as and when the prices are revised upwards and the State will automatically get a share in the additional resources accruing to the Centre as a result of revision of these prices.

5.15 At present, there is concentration of savings through nationalised banks and central financial institutions, such as LIC, GIC, IDBI, IFCI, NABARD etc., and there are no institutional arrangements through which the States can express themselves regarding the policies and working of these institutions (on whom depend wholly), investment in agriculture, industry, housing, water-supply and urban infrastructure all of which are vital to the development of each State. The link between local savings and local investments have been snapped with consequent deleterious effects on both. Further, there has been, as already stated, decline in the State's share of total public sector resources and a large portion of this decline is accounted for by decrease in the transfer of capital resources from the Centre to the States. It is necessary to correct this trend in the interest of the finances of the State and needs of development. We strongly feel that savings of both the public and private sectors should be drafted for public purposes as we have adopted the philosophy of planned economic development. The proportion of total national savings, which should be deployed for the plan, is a matter which should be decided on the basis of national policy considerations by the N. D. C. One aspect of the distribution between the Centre and the States which needs a second look, is that a larger flow of savings should be in favour of the States as a proportion of the total aggregate capital receipts of the Centre.

Also, the criterion of credit-deposit ratio used now for allocation of funds for lending in different States by the nationalised banks is not appropriate. Credit-deposit ratio may be utilised as a norm for planning each individual bank's lending activities in the country as a whole. The allocations of credit to a particular State should be made on the basis of the credit needs and absorption capacity of the State within the broader plan perspective. Of course, prudence should be observed to ensure recovery of the loans advanced by the Banks.

5.16 It is a fact that most of the States suffer on account of growing indebtedness and over-draft problems in view of the fact that they do not have elastic resources of revenue. Repayment of loans has also become a major burden of the States.

5.17 Observations of the A. R. C. Team would appear to have continued validity. Periodical review of indebtedness and re-scheduling cannot be a permanent solution. Despite re-scheduling and write-off, the State Government contracts huge accounts of loan as a part of the central assistance and bears a huge burden of repayment liabilities much above the levels fixed by the Finance Commission. Statement showing the repayment, liabilities against the central loans is enclosed. We would suggest that the grant of the central loan ratio in the plan assistance should be reversed and 70 per cent of this should constitute grants and 30 per cent loans, particularly in case of the poorer States.

5.18 We do not feel that the freedom of the states to incur public debt has been restricted unduly in the existing system.

5.19 Additional central assistance given by the Centre to the State for funding externally-aided projects should not be viewed in isolation from the overall central assistance of the plans. In view of this, charging the same rate of interest on the additional central assistance given for externally-aided projects as on plan loans should not be construed unjustified.

5.20 We find the working of the R. B. I. quite satisfactory and the constitution of a separate Loans Council on the Australian pattern is not felt necessary.

5.21 The major factors contributory to this situation are :

(1) In case of those States which do not have sufficient revenue surplus as a result of the recommendation of the Finance Commission, it is found that while the requirement of funds increases with the progress of schemes and the rising costs during the plan period, there is substantial erosion in their resources on account of grant of instalments of dearness allowance and other items of expenditure related to rise in costs. Since there is no corresponding increase in assistance for the state plan, the State's resources are squeezed between the increased, demand both on the non-plan and plan sides leading to a situation where overdraft becomes inevitable. The situation is aggravated as within the State itself it is found that generally returns from Road Transport, State Electricity Board or other Public Sector Undertakings do not show much improvement indeed in some case deteriorate. Further, at times during the course of a plan period, State Governments are compelled to include/treat new schemes as plan schemes.

(2) A considerable part of the Centrally sponsored/sector schemes externally assisted schemes, etc., is released towards the later part of the year though it must be admitted, some improvement in this respect has been registered recently as payment in instalments are being made.

As regards, remedies, it is suggested :—

(a) that fixation and distribution of central assistance for state plans should be completely revised;

(b) that for Centrally sponsored/Sector etc., Schemes, instead of expenditure being first incurred by the State and then reimbursed, quarterly advances of the total expenditure provided in the budget should be given to State Government and adjusted against actual expenditure incurred on the basis of certificates received by the concerned State Governments;

(c) Since grant of instalments of dearness allowance causes greatest upset and the main reason for granting instalments of D. A. is rise in the cost of living as result of inflationary forces operating in the economy for which Central Government is responsible being in charge of price situation, the expenditure incurred by the State Government on this account should be covered by the Centre by Grants-in-aid each year;

(d) The State Government, on their part should not add any new schemes to the Plan during the plan period. Also, they should make all out effort to raise the estimated receipts for Road Transport, State Electricity Board, Public Sector Undertakings and see that there is no deterioration in revenue from these sources.

5.22 We feel that our State Government has done whatever was possible for exploiting the difference sources of the revenue for mobilisation of additional resources for the Plans.

5.23 We do not subscribe to these views. However, there is need for continued efforts on the part of the Central Government to assess the collection of revenue from all the items falling within its jurisdiction and also for increasing the contribution from the Public Sector by improving its efficiency. To illustrate, circulation of what is labelled as unaccounted money in the economy in the country is sufficient evidence of leakages occurring in the system. Surplus generated by the Public Sector Undertakings, at present, leave much to be desired. A pragmatic taxation system and a more business like approach for the public sector undertakings, which are not burdened by a large component of social service/obligation, would appear to be the remedy.

5.24 Yes; It will be a healthy convention.

5.25 We agree with the views expressed in this regard by the 8th Finance Commission that there is no large scope for raising additional revenues by exploiting Article 269 of the Constitution.

5.26 Since the 8th Finance Commission have recommended an increase and the Union Government have accepted this recommendation, we have no further comments to make.

5.27 No Comments.

5.28 Provision of Central assistance to the States for dealing with natural calamities has two major lacunae :—

(a) 25% of the expenditure in cases of the margin money has to be borne by the state Government in case of floods and cyclones. This invariably creates a deficit in the State Government's account. we suggest that expenditure on repair, restoration etc., necessitated by the floods or cyclone should be entirely borne by the Centre.

(b) expenditure on drought relief is now conceived as plan expenditure and is covered by advanced plan assistance which is recovered in subsequent years. We suggest that suitable drought control and amelioration schemes as well as employment generating works in drought-affected areas should be covered fully by grants from the Centre.

5.29 We do not feel the need of any such institutions. Our existing institutions take care of all these tasks.

5.30 It is to general a statement to call for specific comments. However, we do not fully subscribe to the view that it does not matter who collects the fund and how the funds are distributed to us. These are very material issues and more so is how the funds are utilised. Prudent deployment of funds is the sine qua non if any system of financial management whether it is by the Centre or by the States. This, however, does not militate against the basic proposition that the weaker states should have adequate resources to carry out the various responsibilities assigned to them.

5.31 We do not agree with the statement (a) or (b) and we do not feel the need for such a machinery.

5.32 The role of the Comptroller and Auditor General and the procedure prescribed by the Articles 150 and 151 of the Constitution are not likely to create any operational problems. However, we find that the present form of National accounts makes it possible to have a comparable set of accounts for all States and therefore, should continue. Some improvements in accounts were made in 1970.

In view of the fast-changing needs of Development and Government, however, it is necessary that form of accounts is reviewed and, if necessary revised every five years. The method of preparation of accounts should also be studied and modernised. At present it is not possible for state Government to have any effective system of financial control, as the figures are available after 3/4 months, despite the fact that prescribed time-limit is 1/2 months. Even the figures of cash balance reported by the RBI for any particular day do not reflect the actual position. They reflect the partial position of receipts

and expenditure over a period of 20/25 days preceding. We also suggest that the C & A. G. may be relieved of the responsibility of maintenance of accounts of State and this process is completed in 7th Plan.

5.33 Although the present system of audit relies heavily on voucher audit evaluation audit has of late been taken up by the A. G. In many important schemes, evaluation or performance is assessed. But voucher audit cannot be completely dispensed with as it is the basis of audit for unearthing irregularity of expenditure, misappropriation etc. Further, proper evaluation audit will be possible only if performance budgeting introduced in all Departments/activities where work can be reasonably quantified. Hence, the present system of voucher audit should be supplemented by evalution audit in major departments of Government.

5.34 Under the provisions of Section 13 of Comptroller & Auditor General of India's (Duties) Functions and Conditions of Service Act of 1971, it shall be duty of the C. & A. G. to audit all expenditure from the Consolidated Fund and all transactions from the Contingency Fund and Public Account. Under Section 14 of the Act the C. & A. G. shall audit all receipts and expenditure of anybody which is substantially financed by grants or loans from the Consolidated Fund. "Substantially financed" has been defined as not less than Rs. 5 lakhs or not less than 75% of the total expenditure. There are many autonomous bodies like registered societies or those set up under separate law like Universities or those directly administered by Government which are either entirely or partly financed by Government which are completely outside the scope of audit by the C. & A. G. It is suggested that all bodies which are fully or partly financed by Government with investment not less than 75% of the total expenditure with a minimum of Rs. 25 lakhs should be brought under the purview of audit by the C. & A. G.

5.35 The Audit Report presented by the C. & A. G. consists of the following :—

(1) Audit Report on civil expenditure.

(2) Audit Report (Revenue Receipts)

(3) Appropriation Accounts.

(4) Finance Accounts.

(5) Accounts relating to commercial establishments.

The reports contain fairly accurate data as these are generally based on the written documents and discussions with the officers concerned Regarding Appropriation Accounts there is, however, considerable scope for improvement in reconciling the accounts as well as in the procedure for booking of expenditure under Works and Purchase through the operation of Suspense Accounts. At present Accounts are not sufficiently accurate in these matters as they do not reflect the correct position at a given time. The improvement in this direction would involve modernisation through computerisation. Regarding comprehensiveness of the reports, it may be stated that these reports contain only such items which come to the notice of audit in course of Test Audit. Although the entire system is analysed by audit, yet there might be many items of commissions and omissions which may not be included in the Audit Report. Further, in case of big project, audit points out only a few items of lapses/default and does not give a comprehensive picture regarding performance, review and achievements. In case of commercial under takings/projects detailed commercial review analysing the profitability or commercial viability is not made. The standard of audit would improve substantially if these aspects are taken into consideration.

5.36 In a democracy the Legislature and its Committees are the ultimate authorities to sanction and control expenditure. Although the Public Accounts Committee of the Union or State only examines individual cases of lapses and default that are pointed out in the audit report of the C. & A.G., this is not a sufficient check to ensure proper control over expenditure which really lies with the various authorities like the Drawing and Disbursing Officers, the Controlling Office or the Head of Department, the Administrative Department and the Finance Department. Unless these agencies from the bottom to top co-operate in observing the rules and norms of financial control, merely pointing out a few cases of default and lapses by the C. & A.G. will not work. It is, therefore suggested that for ensuring financial control these various authorities should observe the financial norms meticulously and serious cases of lapses pointed out by the C. & A.G. will be discussed by the Public Accounts Committee for taking appropriate action to curb their recurrence. The Committee also can raise basic issues such as the usual growth in expenditure of certain items in their reports instead of confining themselves to only the points raised by the C. & A.G. as indeed has been done in some cases both by the Public Accounts Committee at the Centre and in the States.

5.37 It is true that the Estimates Committee can advise the Government on matters necessary for improvement in the existing policy and programmes. But experience has shown that this Committee has not been able to give valuable suggestions in this regard, as the members generally do not possess necessary experience and expertise. It is, therefore, suggested that they may co-opt experienced persons with expertise to assess them.

5.38 In our view, a separate 'Expenditure Commission for assessing the propriety of expenditure of the Union and the States is not necessary as the C. & A.G. can continue to discharge this function efficiently. Bifurcation of responsibility might reduce efficiency. Further, proliferation of checking agencies is not desirable as it may act as a hindrance to field performance.

5.39 Shifting the emphasis of check from pro-expenditure to post-expenditure stage is desirable. Plans and Schemes can be sanctioned by a general check at the pre-expenditure stage and detail check can be exercised by monitoring the progress of work and expenditure at the post-expenditure stage. Sometimes it takes a little long for the State Government to get their schemes cleared from the respective Ministries. The present time consuming process may be cut short. The Centre can ensure utilisation of funds meant for specific projects by deputing experts for field inspection in suitable cases, if necessary. It may further be pointed out that experience has shown that obtaining of the prior clearance

of the central administrative ministries in respect of details of the schemes and projects led and assisted by the Centre causes delay. This realisation has let to setting up of empowered committees at the state level to clear all schemes under the upgradation grants and provisions recommended by the 8th Finance Commission. Similar institutional arrangements may be thought of by including representatives and experts of central ministries for centrally-assisted/sponsored schemes.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The three shortcomings in planning relationship between the Centre and States have no doubt been operating but as time has elapsed and more particularly, of late, there has been more interaction/consultation/collaboration between the Centre and the States in the formulation of National Plans and respective State Plans. We will recommend the following measures to improve the present position and minimise/overcome the shortcomings noticed. The National Development Council determines the policy objectives for national planning. The Central and State plans are formulated in conformity with these objectives though in accordance with their respective priorities. The association of the Chief Ministers with the Council lends the policy objectives the commitment of the State Governments. The process of policy determination, however, also some times involves issues requiring closer scrutiny. To facilitate this, it is suggested that—

(a) officials concerned with development administration in the states may be involved in the process of policy determination for planning,

(b) the meetings of the National Development Council may be preceded or followed by the meetings at the official level.

(c) systematic follow up action may be taken on the decision of the National Development Council.

In regards to the schemes formulated by the Central ministries. it may be advantageous to associate the State Governments or at least such of them as are concerned with the schemes at the formulation stage. The Centre should have a prominent, though not dominant involvement in the determination of plan programmes. This would facilitate better understanding of the States' problems including resources. Since backward states have a narrow resource base and a large number of commitments to fulfil, the Centre may consider taking over the implementation of large projects in the States having inter-State and/or national importance from its own resources.

6.2 There may be no particular advantage in giving the National Development Council a statutory basis. This may. on the contrary, introduce inflexibility in its working Problems may also arise in providing financial resource to the States for implementing the approved schemes. Besides, the formation of an apex body with statutory powers to approve State Plans may also run counter to the principles of decentralisation. Pragmatically. a single statutory council cannot be expected to function as an inter-State Council for all States. The National Development Council should, however, evolve a working procedure which may be incorporated in a set of "Rules of Business".

6.3 In respect of State Plan Schemes, the Planning Commission ordinarily acts in consultation with the State Governments. It may, however, be desirable to associate the State Governments in the formulation of Central Plan and centrally sponsored scheme also. This would enable them to have pre-view of their resources to implement the schemes and facilitate adjustments to be made to suit the local conditions/needs. Suggestions made in reply to question 6.1 may be considered in this regard.

6.4 We are neither in favour of making the Planning Commission an autonomous body nor a purely advisory body. Nor, do we consider it practicable to include in the representatives of all States. Presently, the Planning Commission is composed of union ministers, economists, technological and management experts and it should be continued. Full functional autonomy should, however, be given to the Planning Commission in formulating the national and State plans.

6.5 As an autonomous body, the Planning Commission may not be able to act "in close understanding and consultation with the Ministries of the Central Government and the Government of the States". As planning in India, particularly in the backward State, is yet to cover a large ground, it may be useful to have a Planning Commission both with administrative and advisory functions instead of an autonomous body "overseeing planning, investment and decision making" at the national level.

6.6 National priorities are kept in view in the formulation of State Plans so that they may be conducive to the national objectives. This does not erode the autonomy of the States. As regards the scrutiny of State Plan Schemes by the Planning Commission: it has been suggested in reply to questions 6.1 and 6.3 that the Centre should play a prominent though not dominant role in the formulation of planning policies. Adoption of other suggestions made in reply to questions 6.1 and 6.3 will go a long way in securing necessary reflection of national priorities in State Plans without eroding State autonomy in any way.

6.7 Since the Planning Commission the size of the State Plan with reference to the availability to resources. there is no disadvantage in channelising Central assistance (Loans and Grants) through the Commission. However. as pointed out earlier quantum of Central Assistance to the State Plan as a whole is now fixed on an *ad hoc* basis at the instance of the Finance Ministry. This needs to be modified. as under this arrangement. while the resources of these Central Plan are increased progressively during a Plan period to offset that impact an inflation there is no corresponding increase in the Central assistance to the State Plans. We will. therefore. plead for a mechanism to be evolved to stop this erosion in States' resources for the Plan as also for inclusion of overall quantum of Central assistance to States for their plans.

6.8 The Gadgil formula for determining Central Plan assistance gives 60 per cent weightage of population, 20 per cent to backwardness and 10 per cent each to the States' tax efforts and special problems. The efforts to make the formula more progressive have not succeeded in significantly altering the State-wise shares in favour of less developed States. The Income adjusted to Total Population (IATP) formula, though more progressive, envisages proportionate shares for all States eligible for Central assistance from the allocable resources. The share of poorer States therefore, suffers diminution. Since backward States with a high incidence of population below the poverty line are in need of greater share of Central assistance, it is suggested that the Gadgil formula may be modified as follows :—

(a) tax efforts may be assessed in relation to income minus the consumptionneeds for the population below the poverty line;

(b) The weightage given to population may be reduced from 60 per cent to 50 per cent; and

(c) the weightage for per capita income below the all India average may be increased from 20 per cent to 30 per cent.

6.9 Grant of Central assistance on the basis of ITAP formula may also be discontinued in the seventh Plan. Moreover, at present in terms of Gadgil formula 30 per cent of the assistance is made in terms of grants and 70 per cent in terms of loans. This places an unduly large burden on the States. It is suggested that the formula may also be modified to provide 70 per cent of the assistance in terms of grant and 30 per cent in terms of loan as suggested by us earlier.

6.10 Introduction of a large number of Centrally sponsored schemes sometimes distorts State Plan priorities. Pre-emption of funds for externally aided projects also accentuates the problem. To enable the State Governments to fix their Plan priority *vis-a-vis* Central Sector Schemes, it would be useful if all Centrally sponsored and Central Plan programmes are put forward and taken into account at the commencement of the Plan. Introduction of new Central Sector Schemes during the Plan period may be discouraged. Since Central Sector Schemes are intended mainly to achieve National objectives, it is also proper that they are fully funded from the Central resources leaving the slender resources of the State Governments to be utilised for other schemes.

6.11 The monitoring machineries in the Planning Commission and the States need strengthening. Though guidelines are issued by the Planning Commission from time to time, they are not adopted by the States uniformly. In view of the varying levels of development in the States, it is necessary that, for effective monitoring, guidelines on methodology and organisation are provided for different levels. Inadequacies in monitoring at the lower levels also need to be removed. As a large number of small programmes are executed by various field agencies, the emphasis generally due to the inadequacy of staff, is more on implementation than on monitoring and review. The assistance and directions received from the Planning Commission from time to time help the monitoring process at the State level but a gap still remains to be filled in respect of the monitoring requirements and the sub-state levels. Consolidated progress reports received from the sub-state levels do not generally reveal the items requiring monitoring and review. In the circumstances, it would be useful if scheme-wise guidelines are made available by the Planning Commission for monitoring and evaluation of Plan programmes in different States in accordance with their needs. Training at the State level should also be strengthened and organisational support provided for the sub-state levels to make monitoring and evaluation efforts more effective.

6.12 Decentralised planning is essential for balanced regional development. One of the main constraints for decentralised planning has been the scarcity of resources. Suggestions with regard to the devolution of Central assistance for improving the States, resources have been made in the replies to Q. 6.8 and 6.9. The difficulties in locating adequate funds for State Plan Schemes in view of the implementation of a large number of central sector and externally aided schemes have also been pointd out in reply to Q. 6.10. To remove the existing constraints, it is suggested that—

(a) plan policies may be formulated keeping the resources angle in view and plan programmes may be backed by adequate resources support. This would need re-orientation of the formula based resource allocation arrangements to the States,

(b) in the National Development Council and other official groups of participant states, a broad agreement should be reached in regard to the Central priorities and the sources of resources support. In the other sectors, the States initiative may be supported after mutual discussion,

(c) Decentralised planning in the States should be looked after by the States and adequate financial support may be provided for the purpose.

6.13 State Planning Boards in different States have grown and developed differently. However, as the State Planning Boards gain an experience, the National Plans would become progressively more indicating and less imperative. However, the time has not yet arrived when we can say that an indicating National Plan can be held and the role of the Planning Commission and Central Ministries in formulating the State Plan can be reduced to minimum. Indeed, in a mixed economy like ours, National Plan would have both imperative and indicating features depending upon which sector of the economy and which major projects are dealt with.

PART VII

MISCELLANEOUS

7.1 The Industries (Development and Regulation) Act, 1951 was enacted by the Parliament pursuant to the policy objectives enunciated in the Industrial Policy Resolution dated 6th April, 1948. It has been amended from time to time keeping in view the changes in the policy objectives of Government of India as announced from time to time in Industrial Policy

Resolutions of 1956, 1970, 1973, 1980 and 1981. These Policy resolutions have taken into account the Plan objectives particularly those with regard to correction of regional imbalances through preferential development of industrially backward areas and promotion of economic federalism through an equitable spread of investments and establishment of nucleus plants linked to major ancilliarisation programme. The licencing system introduced by the aforesaid Act has to be seen in this context as an instrument of dispersal of industries so as to correct the regional Imbalances which had developed on account of concentration of industries in a few selected metropolitan centres. Prior to independence there was no industrialisation of the State of Orissa and even now it continues to be industrially backward in spite of the investments made in the Central sector projects and the liberal incentives offered both by the State and Central Governments to promote industries in the backward and no-industry districts. Therefore, it is necessary that the Central licencing system which is in vogue should be vigorously enforced with a view to ensuring flow of industries both in the public and private sectors to the backward regions. We therefore, do not agree that through amendments to the First Schedule, the basic constitutional scheme has been subverted. According to item 52, List I, Parliament has powers to legislate in respect of all industries, the control of which by the Union is declared by the Parliament by law to be expedient in the public interest. Since control and regulation of most of the industries included in the First Schedule to the Industries Act, 1951, is necessary in order to achieve the plan objectives it cannot be said that such regulation is against the public interest.

Although we support the licensing system as envisaged in the Scheme of Industries (Development and Regulation) Act, it has to be conceded that in expanding the scope of the First Schedule of the Act and bringing in a number of insignificant items as enumerated in the questionnaire itself, a certain degree of rigidity has been introduced which has resulted in considerable delay in grounding projects. Licensing of items such as razor blades, gum, match sticks, scraps, paints, varnishes, weighing machines, sewing machines, hurricane lanterns, steel furniture, cutlery, pressure cookers, agricultural implements, bicycles, foot-wear, house-hold appliances and tools, type writers, China-ware and pottery, oil stoves, etc. could be usefully delegated to the State Governments. If necessary detailed guidelines governing the issue of licences in respect of those items could be issued by Government of India according to which the powers of State Government to license industrial units would be regulated.

Although we do not agree that the basic constitutional scheme has been subverted, we feel that in respect of consumer goods, items which usually cater to the demands of regional markets it would be better if, through amendment of the statute, the Parliament delegates the power of licensing to the State Governments.

7.2 As has been mentioned in the preceding paragraphs, the Parliament is competent to legislate in respect of all industries, the regulation of which is considered expedient in the "Public Interest". There is no mention about the "National Public Interest", anywhere in the Constitution. Therefore, in our view, there is no need to define "National Public Interest" in order to justify Parliament's competence to legislate regulating any industry. In order to implement the national objectives of planned development as incorporated in the Five-Year Plans formulated by the Planning Commission and approved by the National Development Council where States are represented, it is necessary that Parliament's legislative powers to control and regulate growth and dispersal of industries should not be limited in any way. However, as has been mentioned in our reply to question No. 7.1 most of the items and items of the nature of consumer goods which cater to the regional demands, could be deleted from the First Schedule and enlisted separately in respect of which licensing powers could be delegated to the state Government.

7.3 At present it is necessary to obtain the approval of Ministry of Industries, Government of India, in all cases where a change of location of the industrial project is involved except in respect of changes to a no-industry district. This has proved very inconvenient necessitating prolonged correspondence with Government of India and consequential delay in establishment of industrial projects. It is suggested that the State Government may be given the powers to approve such change of locations provided it is in consonance with the overall policy framework, approved by the Government of India. In other words, if a project has been approved for establishment in a backward district change of location would be permitted by the State Government to any other area.

In case of transfer of letter of intent from the original applicant to another party prior approval of Ministry of Industries, Government of India, is now required. It is suggested that this power may be given to the State Government with the stipulation that it would be exercised in accordance with the guidelines to be issued by the Government of India and provisions of NRTP Act so that the objectives of prevention of concentration of economic power as well as the other policy directives of Government of India in this regard are not lost sight of.

Recently, administrative Ministries in Government of India have been delegated with powers in the matter of foreign collaboration for certain items. It is suggested that the same powers may be given to the State Government to sanction foreign collaboration arrangements in respect of the industrial projects of the respective States. These powers are to be exercised under the guidelines to be issued by Government of India for the purpose. Considerable delay is experienced at present to obtain central clearance regarding capital issue, import of capital goods and raw materials. The powers of clearing proposals for capital issue, which at present, are being exercised by the controller of capital issues, could be delegated to the State Governments to be exercised under the over-all limit to be fixed for each State by Government of India. Alternatively, regional offices may be set up with full powers to expedite clearance of all proposals for capital issue. Since detailed guidelines regarding import of capital goods and raw materials are available, it is suggested that the powers to clear specific proposals for import

of such items could be usefully delegated to the State Governments. Such delegation would enable the State Government and the State promotion agencies to expeditiously clear all industrial projects while ensuring compliance with the national guidelines to be issued by Government of India in this regard.

Alternatively, regional Boards may be set up with representation from the States coming within the regional zone with full powers to clear all the proposals regarding import of capital goods and raw materials as well as foreign collaboration.

7.4. A number of steps have been taken by the State Government to extend support to small, tiny and artisan sectors. Particularly artisans working in handloom, leather goods, handicrafts have been organised into co-operatives. At the district level, Multi-purpose industrial Co-operative Societies have been set up in order to assist the Primary Co-operative Societies to market their produce and get their raw material requirements. These, in fact, have been linked into state level co-operatives. Raw material banks have also been set up at places where there is concentration of artisans in specific lines. The Small Industries Corporation also looks into the raw material and marketing needs of the industries in the small sector. In spite of this, the fact remains that these organisations have not been able to cover all the artisans and entreprenuers in the small, tiny and village sectors, nor have they functionally stabilised themselves as an alternative to open market operations. It is necessary that Government of India should come forward with special assistance grants to stabilise these co-operatives. The National level institutions engaged in the field of research and development should take the initiative in finding out appropriate technologies for the traditional craft which, besides, removing drudgery, would ensure better quality product, higher productivity and at the same time should not prove too labour displacing. Therefore, transfer of technology is an important area where the central agencies should come to the assitance of the state level institutions. Similarly, they can play a very important role in finding out export and all-India markets, disseminating information regarding demand trends, fashion designs and where necessary transfer of appropriate technologies.

7.5 If we evaluate the performance of the Central financing institutions, the conclusion is inescapable that relatively not much investment has been made through the financing institutions in backward regions like Orissa. The stock argument put forward in this connection is that not many applications have been made for location of industries and consequently for sanction of loans. Although of late, flow of funds from the central financing institutions have improved, they have been entirely due to the promotional efforts of the state agencies. Now-a-days, when, apart from the licencing authority, the central financing institutions also play a great role in financing of the project and, therefore, on their location it may not be out of place to suggest that they should be enjoined upon to encourage funding of projects in the industrially backward states like Orissa with greater priority. A clear policy formulation in this regard would be extremely helpful. We will strongly recommend such a policy instrument being evolved.

7.6 It is necessary that the central investments in the Public Sector are made on an objective evaluation of locational advantages of competing sites after giving necessary weightage to the objective of removing the regional imbalances and ensuring equitable spread of industries in all parts of the country. It may be mentioned here that the National Committee on Development of Backward Areas have recommended to declare Gujarat, Haryana, Tamil Nadu, Karnataka, Maharashtra, Punjab and West Bengal as industrially advanced. This recommendation may be accepted and while deciding on investments on major central industrial projects, weightage should be given to the other States, which by implication, are to be treated as industrially backward. In this context, it is suggested that the Public Investment Board of Government of India which consider all proposal in the central sector should have also representatives of the State Government short-listed for the purpose. This would ensure that the comparative advantages of all the sites are adequately highlighted by the concerned representatives of the States before the Board.

7.7. Yes. Few selected places like Bangalore, Hyderabad and Bhopal have received concentrated attention in the matter of direct central sector investments in heavy industries. It is suggested that every backward state should have one nucleus area developed for central sector investments in heavy industries like machine tools, heavy electricals, electronics development, heavy machineries and structurals, and such other industries requiring heavy investments. Sufficient weightage should be given to the backward States in the matter of allocation of such industries requiring heavy investments in the central sector.

7.8. At present, backward districts/areas and no-industry districts have been identified for various central sector incentives for promotion of industries. In case of Orissa the unit has been a district although specific area (blocks) as and when they get industrially developed are excluded from the purview of the incentive schemes. If the economy of the state is to be strengthened, it is necessary that the whole state should be declared industrially backward and special incentives which are offered for a no-industry district are made applicable to all the districts of the backward state. Of course, exception could be made in respect of certain selected, highly industrialised blocks. The National Committee on Development of Backward Areas in their report have defined all centres with a level of employment in non-household manufacturing exceeding 10,000 according to the 1971 Census as "existing industrial centres". They have defined areas which are not close to such centres on the basis of a nearness formula as industrially backward. Nearness has been defined in terms of the following out-off distance from each category of existing centres;

Level of employment in non-household manufacturing in the existing Centre	Distance
Over 150 thousand	150 Kms.
50-150 thousand	100 Kms.
25-50 thousand	75 Kms.
10-25 thousand	50 Kms.

We have supported these recommendations except that the sphere of influence of an existing industrial centre, should not be allowed to transcend the State's boundary. For example existence of Jamshedpur as an industrial centre has made no impact on growth of industries in the adjoining districts of Keonjhar and Mayurbhanj of Orissa. We had contended that the industrialising impulse of an existing centre would be confined to the territorial limits of a State where the existing centres are located. As the administrative and industrial culture differ from state to state, it would be unrealistic to expect that the neighbouring state would usefully take advantage of the industrialising impulse generated by the existing centres in other state. Therefore, the concept of the NCDBA in defining backward areas in terms of its nearness to existing centres would be useful if the sphere of influence of an existing centre is confined to the political boundaries of the existing states. In that event, except for some of the blocks in Sundargarh district where Rourkela Steel Plant has been set up the whole state of Orissa would qualify to be declared as industrially backward. The other recommendations of the Committee, to categorise states like Gujarat, Haryana, Tamil Nadu, Karnataka, Maharashtra, Punjab and West Bengal as industrially advanced, should be accepted. The remaining States which, by definition, become industrially backward, should be eligible for preferential treatment both in the matter of central subsidy, concessional finance and concessions available u/s 80 HH of the Income Tax Act. We had recommended that all these three modes of assistance *i.e.* central subsidy, concessional finance and concessions under the I. T. Act should apply in package to all the districts/areas which are declared industrially backward. The recommendaion of the Committee that the geographical coverage of the central subsidy and concessional finance should be the same as has been endorsed by us.

8.1 We are of the view that time has come when an authority as contemplated under Article 307 is set up in the country.

9.1 Central involvement in the shape of assumption of responsibility for substantive activity should be permissible since an all-India view has to be taken regarding the matter.

Some of the soil conservation programmes have inter-state bias in nature and implementation of these programmes needs heavy investment and close co-ordination. It may not be possible for the States to implement such programme independently without financial aid from the Centre. Hence, the Centres' involvement to the extent of co-ordination with other States of appreciating the nature of the problems confronted by the States and giving adequate financial aid for implementation of suitable schemes and their subsequent maintenance by way of award appears to be necessary.

9.2 We agree with the recommendation of the National Commission on Agriculture (1976) that a long term perspective be developed in which the central and centrally-sponsored scheme being implemented through the state agency ultimately form part of the State sector and that their number be kept to a minimum. However, the number of central and centrally-sponsored schemes to be implemented in a State will depend to a large extent on the nature of the problem and the financial resources of the State to tackle the same. Care should be taken to see that the new arrangement does not result in the reduction of the volume of financial assistance made available by the Centre for the implementation of various schemes in the States for development of Agriculture.

9.3 Joint Working groups under the auspices of the Planning Commission are likely to enable the States to make meaningful contributions towards shaping of the various central and centrally sponsored schemes. The Planning Commission and the Union Ministries would have the benefit of the feedback from the States and the variations which are warranted in view of the different local conditions and compulsions of the environment.

9.4 The central initiative for fixation of minimum or fair prices of agricultural items has been quite helpful and we fully support its continuance.

In case of irrigation we would suggest that in respect of projects which do not have any inter-state implication or financial assistance from abroad, the sanctioning of schemes should be left to State Governments and the present system of detailed scrutiny of all projects costing above Rs. 5 crores should be given up. However, monitoring and evaluation of projects above a certain level of costs can and should be done at the time of finalisation of the Plans and also by the central technical agencies.

As regard projects for inter-state waters, it is advantageous to retain the need for approval by central agencies. In the matter of allocation of inter-state waters, the procedure for arbitration and appointment of a tribunal are well-laid down and should be followed whenever need arises.

As regard Forestry policy and administration, earlier it was a purely state subject. Of late, however, the Central Government has stepped in a big way with the transfer of the subject to the Concurrent List and enactment of the Forest Conservation law. State Governments are required to refer even small matters pertaining to forest clearance to Central Government. It is suggested that this needs to be reviewed and considerable latitude should be given to State Government in administration of forest subject to national goals in regard to conservation of forest wealth being followed, guidelines for which should be clearly laid. As regards provision of strategic inputs including credit, the central initiatives have been adequate and we will support their continuance.

9.5 As regards the role of agricultural research through ICAR it may be pointed out that research institutions should be further strengthened through setting up of regional units and it should also enlarge the co-ordinated projects in States, involving fully the State Agricultural Universities and Research Institutions. Regarding NABARD we have no suggestion to offer.

10.1 Consultation with the States should precede the formulation of measures in the areas of pricing, storage, movement and distribution of foodgrains as well as other essential commodities. Unilateral directives, unless in the national interest, need to be avoided.

10.2 Periodical review in a forum which need not be statutory, while removing irritants, are likely to bring about greater cohesion and camaraderie between the Centre and the States.

11.1 Unnecessary centralisation and too much central interference in the initiative and authority of the State are not borne out by the experience of our State. Efforts at standardisation have, however, given rise to some difficulties at times, but most of such difficulties have been satisfactorily resolved.

By way of illustration it might be mentioned that the State Government had prepared a comprehensive Bill to substitute the existing Acts of the universities of the State. Several provisions of the existing Acts were proposed to be modified on the basis of the experience gained with the working of the provisions contained therein. The draft Bill was referred to the Central Government who made several observations presumably on the basis of a model legislation prepared by the UGC/Central Government. The State Government was of the view that the suggestions made by the UGC and the Central Government were not appropriate or were unworkable in the context of the situation prevailing in the universities of this State. After a series of discussions and correspondences, the Central Government agreed to the State Government enacting the Bill, but made certain observations for consideration of the State Government. In this context, there has been a feeling in certain circles that models prepared by the Central Government largely on the basis of the experience gained in the management of the central universities are not necessarily appropriate for the state universities and that there should not be any insistence or adherence to a central model for all state universities as well.

Financial assistance provided by the Central Government to the States is usually linked to specific schemes. In other words, the financial assistance is available only to those States which are willing to implement the centrally-sponsored schemes and to the extent the scheme is implemented. Most schemes also involve financial participation by the States at a varying rates. The centrally sponsored schemes may not necessarily conform to the educational priorities of the State. In other words, if the Central assistance were to be made available to the State Governments without being tied to a specific scheme the funds so available would not necessarily be spent by the State on that type of scheme and the State Government may then be in a position to spend the money in priority sectors. To illustrate, if funds earmarked for a particular State for introduction of Educational Television Programme were to be made available to a State without being tied to that programme, the State may well prefer to spend that amount for meeting the basic infrastructural and other deficiencies in the same sector, *i.e.* primary sector rather than on television programme.

This problem would be obviated if the Central and centrally sponsored schemes are related to the needs and priorities of the States. There is, however, a strong case for some measure of uniformity in the matter of educational facilities available in different States and educational standards at various levels. Since the State Government may not be in a position to ensure uniformity in regard to facilities for education wholly from its own resources, it is essential that the Central Government should intervene and assist the educationally backward States to come up to the level of a National minimum. It is also essential that there should be some measure of uniformity as regards the standard or levels of proficiency expected to be attained at various levels of education. The need for uniformity is particularly strong atleast at the Matriculation and Plus 2 stages. A wide divergence in the standards adopted by different States will not only impede mobility from one State to another, but also involves the risk of non-recognition of qualifications acquired in one State by the institutes of another. Since Central Government is the only agency which can ensure this, it is not only necessary for them to ensure that there is reasonable measure of uniformity in the standards of curriculum and teaching in different States atleast upto plus 2 stage, but also to help the States which have not been able to attain the minimum standard, to reach that standard.

11.2(i) The UGC grants have by and large been responsive rather than promotional in that the Commission reacts to the proposals received from the universities and colleges instead of taking initiative in assessing the requirement of universities and colleges on its own and providing assistance on the basis of the assessment. Consequently, there have been instances where low priority projects have been financed by the Commission while high priority items and basic infrastructural and other deficiencies such as deficiencies in laboratories, libraries etc. have remained unattended to.

(ii) The financial assistance given by the UGC is inequitous in that it is more munificent to the Central Universities as compared to the State Universities and affiliated Colleges which are responsible for over 83 per cent of the student enrolment. The Grants also show a wide inter-State and inter-University variation in terms of per-student average annual input.

(iii) Most of the grants sanctioned by the UGC involved matching contribution from the State Government and/or the institutions concerned. Quite a few schemes failed to get implemented because of the inability of the State and the institutions concerned to provide their share. One of the unfortunate consequences of this stipulation is that a State which has not been able to provide adequate resources to meet the basic deficiencies in colleges and universities owing to resources constraint is unable to avail of the UGC contribution and the backwardness is perpetuated.

(iv) The UGC has not taken adequate steps for promoting and encouraging introduction of courses in new and emerging areas of future manpower requirement. There has been a tendency to support and finance the existing and traditional departments rather than encouraging introduction of courses in new areas which are increasingly acquiring critical importance for future manpower needs.

(v) The inter-institutional and inter-disciplinary allocation of resources has been somewhat desperate and does not reflect any definite scheme of priority.

(vi) The field of higher education presents a picture of un-edifying contrasts. A few peaks of excellence existing in the midst of a vast plateau of substandard and subaverage institutions. There has been no conscious effort to remove this disparity.

(vii) The UGC has in the past financed the improvement in emoluments of college teachers of State Governments. However, the financial assistance has been confined to the pay only and not to DA/ADA. This throws heavy financial burden on State Budget. It is suggested that UGC while suggesting improvement in the emoluments of college teachers should cover both pay and DA/ADA by its financial assistance. It is also suggested that in undeveloped States the UGC should help in all possible ways in bringing atleast one college in every district to the ideal standard.

11.3 There should be a National Policy on education so that there would be some uniformity in educational pattern throughout the Nation and students can move from one State to another. The broad contours of this policy may be evolved by the Government of India in consultation with the State Governments and its execution and details may be left to the respective States. In actual implementation of the policy, frequent discussion and consultation between the State and the Centre should take place.

Conferences of Education Ministers and Education Secretaries of State Governments and Vice-Chancellors of the Universities are held as a regular feature. Owing to large attendance and long list of agenda items it sometimes becomes difficult to arrive at clear cut decisions. These meetings, undoubtedly serve useful purpose by providing a forum for exchanging of views, but have not been very effective in arriving at a consensus on specific issues. It would be desirable to identify specific areas where standardisation or uniformity should be aimed at and where Central intervention is considered necessary. Working groups could be appointed to make in depth study of each area in consultation with various State Governments and Universities and to present their recommendations in a high level conference of Education Ministers for acceptance and implementation.

11.4 Essentially the minorities enjoy the following rights relating to establishment and administration of educational institutions :—

(i) all minorities shall have the right to establish and administer an educational institution of their choice; and

(ii) the State shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority.

Certain doubts have often arisen in connection with the implementation of these constitutional rights. The relevant issues are mentioned below :—

(a) Whether the minorities have an absolute right to establish an institution of their choice even when such institutions do not conform to the normal criteria applicable to similar institutions not established or administered by the minority community. The requirement may relate to criteria such as the minimum educational qualification of teachers, provision of adequate classroom space, provision of playground and other infrastructural facilities considered essential for a school etc.

(b) Whether an institution should be treated as a minority institution even when preponderant majority of the students do not belong to minority community and when an institution has no features which would distinguish it from other educational institutions.

(c) Grant-in-aid is given to non-Government educational institutions subject to their satisfying certain conditions which include appointment of teachers, possessing the requisite minimum qualifications prescribed by Government, recruitment of teachers through the selection board, prior approval of appointments and promotions by the competent Government authority, etc. On a plain reading of the provision under Article 30(2) it would appear that minority institutions would be eligible for grant-in-aid only if they satisfy the conditions subject to which non-minority institutions are given grant-in-aid. A question that arises for consideration is whether insistence of fulfilment of such conditions would contravene the right of the minority institutions to administer educational institutions according to their choice.

(d) Whether the Government can exercise any power for the protection of the employees of the minority institutions in matters such as pay and allowances, security of service, protection against arbitrary or malafide punishment, etc.

11.5 There has not been any specific instance of conflict of issues between the Centre and the State in regard to any problem of educational programme.

12.1 Provisions in the Constitution of India are elaborate and do not leave too many grey areas to comm nd the establishment of an Advisory Commission on the U.S.A. model where the Constitution is short and has been allowed to evolve in the crucible of experience. Research of Centre-State relations on the lines taken up by the National Institute of Public Finance would be a welcome step to sort out many of the irritants.

Statement showing Repayment Liabilities against Central Loans for State Plan Schemes

(Rs. in crores)

(1)	1980-81 (Accts.) (2)	1981-82 (Actts.) (3)	1982-83 (Actts.) (4)	1983-84 (Accts.) (5)	1984-85 (B.E.) (6)
(i) 1980-85 *period*					
(i) Central Assistance	145.26	134.55	145.36	157.93	168.36
(a) Loan of (i) above @ 70%	100.00	94.18	101.75	109.11	117.85
(ii) Repayment due against consolidated loans exhibited at (i) (a) above.					
(a) Rescheduled loans, 1978-79 by (7th F.C.)	17.01	17.01	17.01	17.01	17.01
(b) Loans obtained during 1979-80 to 1983-84	6.38	13.60	19.64	27.08	34.18
(c) Loans for Over-drafts (Rs. 24.43 crores) obtained during 1982-83.	..	..	..	..	4.89
(d) Total	23.39	30.61	36.65	44.09	56.08

(Rs. in crores)

(7)	1985-86 (8)	1986-87 (9)	1987-88 (10)	1988-89 (11)
(ii) 1985-89 *period*				
(iii) Central Assistance assumed Rs. 200.00 crores each year.	200.00	200.00	200.00	200.00
(a) Loan out of (iii) above @ 70%	140.00	140.00	140.00	140.00
(iv) Repayment due against consolidated loan and loan exhibited against (iii)(a).				
(a) Rescheduled loan 1983-84 (by 8th F.C.)	15.30	15.30	15.30	15.30
(b) Loans assumed during 1984-85	7.86	7.86	7.86	7.86
(c) Loans assumed during 1985-86	..	9.34	9.34	9.34
(d) Loans assumed during 1986-87	..	..	9.34	9.34
(e) Loans assumed during 1987-88	..	..	..	9.34
(f) Loans assumed during 1988-89	..	..	..	..
(g) Loans for over-draft obtained during 1982-83, 1983-84.	13.09	13.09	13.09	13.09
(h) Total	36.25	45.59	54.93	64.27

Orissa

Presentation of the case of Government of Orissa before the Commission by the Chief Minister

More than three decades ago, the people of India while giving unto themselves a Constitution had consciously exercised their choice and option in favour of a federal polity with a strong Centre in the light of our past historical experience. Arrangements made then for the governance of the country also envisaged that in times of a grave emergency the Federal Constitution of India can virtually convert itself into a unitary system. Powers were vested under the Constitution in the President of India to proclaim a financial emergency or take over the administration of a State when he was satisfied that either there was a failure of the constitutional machinery in a State or a State failed to comply with or give effect to the directions given by the Union. The considerations which persuaded the people of India to adopt a constitutional system, which was almost a radical departure from the classic model of a Federation were the preservation of the country's unity, integrity, independence and the emergence of a common/political system for the first time in the history of the nation.

The intervening years have witnessed many developments in different directions. The most significant perhaps is introduction of National Planning as an instrument of economic growth which in turn has accentuated the Centre's influence in the spheres of administration and finance. This trend may not be said to be out of tune. With the theories of federalism as it is acknowledged by contemporary constitutional experts that federal centralisation cannot be ruled out in the context of the complexities and pervasiveness of a modern Governmental system. Of late a Federation in political theory has been viewed more a "functional than an institutional concept". It is also said that "any theory which asserts that there are certain flexible characteristics without which a political system cannot be federal, ignores the fact that institutions are not the same thing in different social and cultural environments". The traditional theory of Federalism would appear to have lost much of its ground in the context of modern technological development and the responsibility cast on a national Government to deal appropriately with diverse and multi-dimensional problems facing the country and its people.

The compulsions which weighed with the people of India and the constitution makers to vote for a strong Centre more than three decades ago continue to be valid and relevant even today. The State Government while advocating for a strong Centre in the overall national interest would also urge that federal centralisation in the areas of finance, planning and administration should not be allowed to impinge on the status and position accorded to the States in the basic scheme of our Constitution. The States are closest to the people and they should be enabled to perform as many functions as are in the former's interest.

The State Government's considered views on the wideranging questionnaire circulated by the Commission in relation to administrative, developmental, financial and legislative matters have already been furnished. I wish to briefly dwell on the State Government's approach embodied in the detailed answers to the question.

We have by and large pleaded for the existing scheme of distribution of legislation powers as enumerated in the Union-State and concurrent lists to be maintained. However, the State should be made fully competent to legislate on all matters allotted by the Constitution to the State List. Certain reservations, as manifest in Article 246(1) and 246(2) open up possibility of encroachment in the State list, and it may be difficult for the State to seek judicial redress in such contingency. Therefore the alternative of deleting these provisions may be considered. Further, it is suggested that some of the legislation powers dealing with financial matters and taxation, enumerated in that list may be made free from restrictions of the Parliament, since the States have very limited area of taxation for augmenting their revenues.

As regards assumption of the powers of legislation of the State legislature by the Parliament in "National Interest" or "Public Interest" it should be, in fitness of things, purely temporary in nature and hence of very limited duration.

In regard to role of the Governor, we have held the view that the Governor is the constitutional head and the powers vested in him under Constitution are adequate to enable him to play the envisaged role. Judging by our experience, we have no instance to quote where the Governor has turned deviant from constitutional norms. We therefore, recommend no modification in the powers of the Governor, including that of reserving Bills for consideration of the President. Barring some cases of delay in obtaining the President's approval which can be overcome by alertness, we do not think that the Centre has dictated arbitrary changes in Bills reserved for assent. In order to obviate delay, a binding time-frame (within which such bills shall either be approved or reverted for re-consideration) may be built into the procedure.

Although different Governors have adopted different standards in exercising their discretionary powers, in calling or not calling leaders to form Government in an uncertain situation or in recommending or not recommending action under Article 356, such variations are only inherent in the nature of this exercise. We are therefore, of the opinion that discretionary powers should be left to be exercised by the Governor in the context of the political situation existing at any given time who should exercise them with utmost objectivity. Imposition of any written guideline will not only be not necessary it may even tend to create litigation and constitutional dead-lock.

Consistent with our basic premise that a strong Centre in our country is a historical imperative, we commend the continuation of Article 256 and 257 in the Constitution, while stating, however, that these powers should be exercised most sparingly and only to deal with extraordinary situations. Minor aberrations, if any, and other situations of dissent on the part of the States should be resolved through an appropriate institutional arrangement which will afford opportunities for debate, discussion and consultation.

In our State provisions under Article 356 have been invoked only twice during the last 35 years. While we feel that the exercise of this extraordinary remedial power has been generally appropriate, the actual episodes were not free from controversy. We, therefore, feel that necessary safeguards may be built into Article 356 to prevent recurrence of any distortion.

Disputing opinions have been expressed regarding location and use of Central force in the aid of civil power in any State. We have held the view that although the State should be allowed to play its legitimate role in the area of law and order which is a State subject, the Centre, however, cannot be disabled from acting in situations of grave emergency and threat to the integrity of the country. Ordinarily however, no central force should be deployed in any state unless requisitioned. Similarly, while broadcasting and telecasting are included in the Union List, we feel that the State should have a say in regard to their administration and programming, in view of their vital role as communication media. Further, we would

suggest that an arrangement should be provided under which States are allowed specified period of TV and Radio programmes for their own broadcast subject to central guidelines and direction.

We do not consider that it is necessary to set up an Inter-State Council to iron out Inter-State and Union-State differences as envisaged under Article 263. Besides, such a Council, if constituted, will be too large and unwieldy a body to go into these differences. We feel, it will, not be appropriate to discuss and review the disputes arising out of Constitutional obligations devolving either on the Centre or States in a Council. Instead, we would suggest that inter-State and Union-State differences should be resolved in a forum comprising of representatives from the concerned States and concerned central ministries. Any dispute which cannot be settled through such arrangement may be addressed to judicial or semi-judicial forums.

In the area of financial relations we hold the view that subject to certain modifications suggested by us in our replies to the question in Part V of the questionnaire, the scheme for devolution envisaged by the Constitution-makers has by and large worked well so far as meeting the financial needs of the State Government for providing the basic administrative services is concerned. Similarly the arrangement for closing the gap between the State's needs and their resources through sharing of Central taxes, and making available the grants-in-aid, on the basis of the recommendations of the Finance Commission, has commanded confidence of all. However, in order to stretch these arrangements to their logical conclusion a strong convention has to be established that the recommendations of the Finance Commission will also be accepted by Government of India in its entirety.

So far as the question of meeting the growing needs of the State for financing different developmental activities is concerned, we feel that the present system of resource transfer through the Planning Commission needs to be substantially improved upon. There is need, in our opinion, to lay down strict objective criteria for determining the quantum of Central assistance to States and for its suitable distribution. There is need in view of our avowed commitment to eliminate regional disparities and imbalance for a more progressive policy of resource allocation by the Central Government than has been the case hitherto. In this connection our specific suggestion in reply to questions 5.5 and 6.8 of the questionnaire may be referred to.

The fact that inter-regional disparities continue to prevail and even seem to be on the increase after 35 years of planning itself goes to show that the scheme of transfer of resources has not been effective and calls for urgent action to redress the situation. We believe that a strong Centre is necessary to promote the weaker States of the Union for equitable economic development and reduction of regional disparities. We do not, therefore, favour any large scale transfer in power of taxation from the Centre to the States as this will weaken even the present mechanism for flow of resources from richer to the poorer regions. Nor would we recommend more taxation powers to be transferred to the Centre as this will reduce the State to a position of economic dependence. However, we will strongly plead for greater devolution of resources from the Centre to the State through Finance Commission and Planning Commission. For this we feel that Centre should raise more resources within the present framework whenever feasible.

While our detailed suggestions in regard to the transfer of resources have been given in response to Part-V of the questionnaire, we will draw the attention of the Commission to the very heavy burden of indebtedness devolving upon the State Government on account of loan received by them as part of the Central assistance, leading to huge burden of repayment liabilities and interest. We feel that periodical review of indebtedness and rescheduling of repayment as has been attempted by referred the matter to Finance Commission will not provide a permanent solution, and calls for a more radical remedy. We feel that the grant of loan ratio in the plan assistance should be reserved and 70% of this should be given as grant and 30% as loans particularly to States whose per capita income is below the national average.

Besides, we would recommend that the expenditure on repair, restoration etc. necessitated by natural calamities such as floods and cyclone should be entirely borne by the Centre and expenditure on droughts should also be covered fully by Central grants instead of being treated as advance plan assistance as at present.

Payment of DA and ADA which is a function of the price situation and imposes a heavy burden on the States, should be taken into consideration, when deciding about transfer of resources to the States.

Our response to the question of economic and social planning is based on the premise that in its formulation the Centre may play an advisory role and should not un-necessarily better the State's option in the matter.

We do not advocate any major structural change in the process of Plan formulation. There is neither any particular advantage in giving the National Development Council a statutory basis nor in making the Planning Commission on autonomous, and purely advisory body. The National Development Council should, however, evolve a clear working procedure which may be incorporated in a set of Rules of Business, while Planning Commission should have a more decisive role to play in investment planning.

On the issue of channelising Central assistance, we have observed that while the resources of the Central Plan are increased progressively duirng a Plan period to offset the impact of inflation, there is no corresponding relief available to the State Plans. We will, therefore, plead for a mechanism to be evolved to stop this erosion in the State's resources as also for determination of overall quantum of Central assistance to the States.

While the norms for transfer of Plan resources should be made more progressive, it may also be realised that since Central sector schemes are intended mainly to achieve the National objectives, it is proper that they are fully funded by the Centre, leaving aside the slender resources of the State for other opportune use. Any factor such as matching contribution of the State Government which operates as a fetter on States whose per capita income is below the national level should be done away with.

The *sine quà non* of our Constitutional system is to preserve the unity and integrity of the Nation and to secure for its people in different regions the fruits of rapid and balanced development. Centre-State relations within our federal polity should be designed to subserve this goal. The larger role assigned to the Centre in different spheres of National life should be maintained.

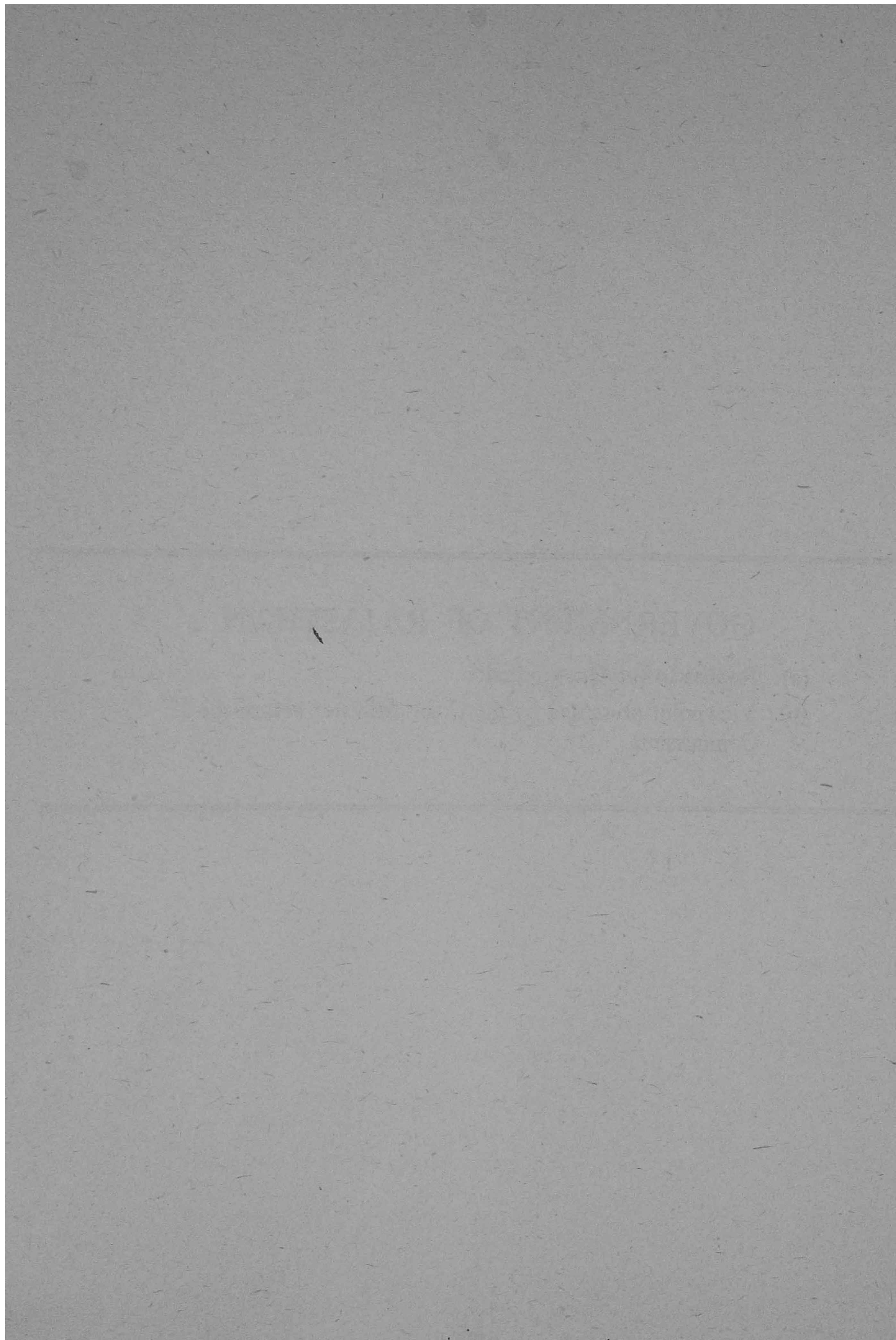
In short we maintain that a strong Centre is essential for a just and fair growth of our nation, for removal of regional disparities and for benefiting large backward populations living in different parts of the country. The original concept of the fathers of the Constitution about a strong Centre should not be diluted in any way. At the same time there should not be any inroad into the well defined autonomy of the States and whatever aberrations have grown in the past should be removed. The unity and integrity of the nation should be held above everything else. The States should play an unfettered role to uphold the ideals of the Constitution so zealously held by our Constitution Makers.

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GOVERNMENT OF RAJASTHAN

(a) Replies to the Questionnaire

(b) Viewpoint presented by the Chief Minister before the Commission.



REPLIES TO THE QUESTIONNAIRE

INTRODUCTORY

1.1 Our Constitution makers adopted what is known as the cooperative system of federation. The Chief characteristics of this system are inter-dependence and administrative cooperation between the Union and the State Government and the partial financial dependence of the latter on the former. Dr. Ambedkar in the course of his speech in the Constituent Assembly observe that "the Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federa ion and that the federation not being the result of an agreement, no State has the right to succeed from it". Both the Union and the States enjoy supremacy within their spheres, subject to the limits and conditions imposed by the Constitution. Residuary powers vest with the Union. One distinguishing feature is that during normal times the cooperative federal character of the Constitution prevails but in time of grave emergency it may convert itself into a unitary system.

1.2 Broadly there does not appear to be any necessity to change the provisions of Articles referred to in the question. However, it may be appropriate, if more items so to enable the States to increase their resources are also added in the State list of the Constitution.

1.3 We agree. Involvement of States be increased in activities and programmes which are of particular significance to States such as expansion of post and telegraph facilities, internal Communication, programming of radio broadcast and television transmission, licencing of industries upto a certain extent, expansion programme of railways etc.

1.4 The system as mentioned above does not exist.

1.5 In our view the Constitution is basically sound and flexible enough to meet the challenges of the changing times.

1.6 Independence, unity and integrity of the country are matters of paramount importance which should override all other considerations. Articles 249, 256, 257 and emergency provisions contained in Articles 352 to 356 and 360 as also Article 365 have been incorporated in the Constitution to achieve these objectives. Historically a weak Centre has given rise to fissiparous tendencies, on the other hand a strong Centre has held the Country together. Now that centrifugal forces and such tendencies in form of linguism, regionalism, religious separatism are rearing their heads, provisions which promote centripetal forces should not only be retained in the Constitution, but be further strengthened.

1.7 We do not propose any change.

1.8 Article 3 does not require any amendment.

PART II

LEGISLATIVE RELATIONS

2.1 There is nothing basically wrong in the scheme of distribution of legislative powers between the Union and States.

2.2 Views have been given while giving replies to the specific questions later.

2.3 Yes. The State Government should be consulted on any legislation undertaken by the Central Government on items contained in the concurrent list or amendment of Seventh Schedule of the Constitution.

2.4 Generally legislation made by Parliament on items within the exclusive jurisdiction of State should be for a prescribed period subject to review after that period is over but certain subjects should be declared of national importance and no time limit be firce for them. The Parliament has inherent power to repeal any law at any time. For example entry No. 56 in Schedule VII List I Union List may be amended to read as under :

> "Regulation and development of water and power between States where such control regulation and development under the control of the Union is declared by Parliament to be expedient in public interest". As a corollary to this amendment Article 262 will have to be amended so as to read as below:
>
> "**Article 262**—Adjudication of disputes relating to water of inter-State rivers or river valleys or basins and regarding power :
>
> (1) Parliament may by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control of waters of, or in, any inter-State river; river valley or if the State or any area thereof falls in the basin of such river; and of any disputes between State regarding power."

The State is of the opinion that recent amendment in Inter-State Water Disputes Act authorising the Central Government to constitute Ravi Beas Water Tribunal is for a particular dispute only and does not cover all disputes.

In case the Commission is also examining the Anandpur Sahib Resolution (as there are no questions on this issue in the questionnaire), the State Government offers its comments as below :—

(a) Resolution No. 1 demands "the recast of Constitutional structure of the country on real and meaningful federal principles". The stand which the State Government has decided to take is that the Centre should be made stronger in the interest of national unity.

(b) Resolution No. 2(b) contains demand for "merger" in Punjab of the Punjabi speaking areas. The State Government may oppose this part as far as it may relate to some evil designs on the part of the authors of the Resolution against any area belonging to Rajasthan.

(c) Resolution No. 2(c) relating to control of Head Works and the demand that such control should be vested in Punjab is totally unacceptable and should be opposed. The demand that States Re-organisation Act (in respect of the present States of Punjab and Haryana) be amended is also to be opposed.

(d) Resolution No. 2(d) demands revision of the Award given by the late Prime Minister Shrimati Indira Gandhi on the distribution of Ravi-Beas waters and accepted by the Chief Ministers of Punjab, Haryana and Rajasthan without reservation on behalf of their States on the ground of its being allegedly "arbitrary and unjust" has to be opposed as far as Rajasthan's share is concerned.

2.5 Water and Power should be declared National Resources and only Parliament should be competent to legislate on them. This would be one of the most important steps to eliminate the fissiparious tendencies and promote the National unity and integrity; the Canals and Power lines should literally keep India bound together.

PART III

ROLE OF THE GOVERNOR

3.1 (a) The office of the Governor is meant for forging an important link between Centre and State. He represents Centre in the State. Constitution makers rightly choose Governor as powerful link between State and Centre.

(b) In our view by and large the Agency of the Governor has acted to the best of ability according to the situation then prevailing in the State.

3.2 The Governor is required to maintain balance between his two capacities *viz.* a representative of the Union Government and as constitutional head of the State. He has to maintain this balance with his impartial attitude and sound discretion. This is the only way for fostering healthy relations between the Union and State. Any tilt in the balance in favour of either of the two may adversely affect their relations.

3.3 The Governor is required to act to the best of his judgement and by and large the Governors have acted fairly and unbiasedly in exercise of powers under Articles 356(1), 164 and 174(2).

3.4 In our view the powers exercised under Articles 200 and 201 should continue to be vested with the Governor and the President of India. However, a reasonable time limit may be prescribed for assent or rejection under Article 201 of the Constitution.

3.5 We agree with the conclusion drawn from the case study made under the auspices of Indian Law Institute that the Centre does not try to dictate its policies to the State in giving Presidential assent and the process of Presidential assent has not acted as substantial threat to State autonomy. It appears from the study that the States' Bill when sent to the President are scrutinised by the Union Government with reference to various matters such as compliance with central statutory requirement, conformity with the policies of the Central Government, *ultra vires* or otherwise with existing central legislation and its constitutionality etc. If any delay is caused in the process it does not reflect the Presidential assent acting as a threat to State autonomy. The cases in which assent has been withheld are very few. Till now no difficulty has been felt in obtaining Presidential assent.

3.6 We subscribe to the view that Governor is neither an agent of Centre nor mere ornamental head of the State but close link between Centre and State.

3.7 We do not agree.

3.8 We do not subscribe to this suggestion.

3.9 It is felt that such a provision may not be feasible in India.

3.10 Constitution does not make any provision for guidelines on the manner in which discretionary powers should be exercised by Governors. Such provision may be incorporated in the Constitution and thereafter if any guideline is formulated as recommended by the Administrative Reforms Commission, it may have some practical utility. It is true that the circumstances and situations facing the Governors may not be identical on every occasion and the Governors have to make the choice of their judgement in each case, yet some broad guidelines may be formulated for guidance of the Governor.

PART IV

ADMINISTRATIVE RELATIONS

4.1 Articles 256, 257 and 365 which confer power on the Union to give directions to the States in the exercise of their executive powers are of vital importance to the smooth day to day working of the Central Government. These articles highlight the efforts of the Constitution makers to create a system of co-operation in the Legislative executive field between the Union and the States. In excercise of the above powers the Union has issued directions from time to time to the States.

There is no known case where a State was compelled to carry out the directions issued under Article 256 and 257 under the threat of invoking of Article 365. But, it cannot be denied that Article 365 provide teeth to the Union for dealing with the situations created by flouting the directions given by the Union to the States.

4.2 We subscribe to the second view that Article 365 should not be deleted and may remain as a reserve provision.

4.3 The recommendations of the ARC is not new. It simply points out to the need for restraint which the Union should always maintain. This recommendation shows that the State autonomy has to be respected. The experience shows that the Union has issued

directions only in necessary cases and instances of mines of powers conferred under Article 256 and 257 are wanting.

4.4 In our view this extraordinary remedial power under Article 356 has been excercised properly.

4.5 No. The limits fixed under clauses (4) and (5) of Article 356 are positive measures to check the misuse of power. The period of six months fixed in clause (4) is very just. The total period for which a State can remain under President rule can extend to three years under Proviso to clause (4). Clause (5) has only placed some riders when the President's Rule cannot be continued for more than one year. The provisions of Article 356 are sufficient for dealing with circumstances envisaged in the question as prevailing for example in Assam and Punjab at present. A perusal of the durations of the President's Rule in more than 60 cases during 1950-84 show that the duration exceeded one year only in 9 cases and in most cases the situation became normal in short periods.

4.6 The existing arrangements for implementation of functions like Census and Election are working satisfactorily.

4.7 Central Agencies have played a vital role in performing the specific functions assigned to them. However, it is suggested that the States may be nominated by rotation in these Corporations and their role and functions should be more explicitly clarified. Where-ever such central bodies are required to give clearances, a time limit should be prescribed.

4.8 The All India Services have fulfilled the expectations of the Constitution makers to a great extent. The All India Services have proved very effective in the administration as well as in national integration. Some more All India Services i.e. Judicial, Engineering and Medical Services need to be created.

At present the control of the Central Government on the All India Services is in the matter of recruitment and disciplinary action. In the interests of Service it is necessary that the Central Government should have such control so that there may be uniformity at All India level and the officers belonging to such services may work more effectively. If the State Governments are given greater control over these Services the very object of creating All India Services will be defeated. Therefore, there appears to be no need to give greater control to the State Governments over the All India Services.

4.9 We agree that the Union Government is competent by virt e of Article 355 to locate and use Central Reserve Police and other Armed Forces in aid of Civil War in any State, even *suo moto*.

4.10 Involvement of States be increased in the programming of broadcasts of All India Radio and Doordarshan transmissions.

4.11 The experience of deliberations of the North Zone Council and its standing committees are indeed servicing a useful purpose of collectively pursuing the Centre-State interests cutting across party lines.

4.12 Yes. The setting up of such an institutions would certainly help in ironing out inter-State and Union-State differences and issues and ensure better co-operation between them if it appears to the President that public interest would be served by the establishment of such a council. The Council should be entrusted with the duties mentioned in Article 263(a) to (c). It should be presided over by the Prime Minister and have as its members two Union Ministers nominated by the Cabinet, Chief Ministers of the concerned States or administrators of the Union Territories. The institution may coopt the concerned Union Cabinet Minister when the matter concerning him is being taken up.

PART V

FINANCIAL RELATIONS

5.1 The Scheme of devolution envisaged by the Constitution makers has not worked well. The mechanism of periodic changes made by the President on the recommendations of the Finance Commission has also failed to adequately appreciate the growing requirements of States. It may be illustrated by the fact that revenue surplus envisaged by the successive Finance Commission has almost been wiped out due to increasing inflation. The States are, therefore, left high and dry not to speak of financing the plan outlay out of the anticipated revenue surplus. In case of Rajasthan, the Seventh Finance Commssion envisaged a revenues surplus of Rs. 220.28 crores where as the figures suggest that there would be a deficit of Rs. 30 crores on this account. Two factors have led to the Five Year period assessment being unrealistic. One is the growing rate of inflation which upsets the estimates of expenditure and the other is the implementation of development plans through the mechanism of five year plans. The Planning process has raised the people's expectations and when there is erosion of resources transferred from centre to state due to inflation, the development programmes suffer but states desire to meet people's expectations at all cost results in huge overdraft. The Sixth Five Year Plan, accounts for huge deficit by the states only for this reason.

The expectation that the fiscal needs of the States to discharge their growing responsibilities will be covered under a scheme of devolution partly by sharing with the States, proceeds of certain taxes and duties and partly by grants-in-aid from the Union has not come out to be true. There are inherent structural shortcomings in the mechanism which need to be rectified and have been spelt out in reply to subsequent questions. This structural imbalance would be clear from the fact that Central Government's requirements both on revenue account and Capital account are much lower than its receipts as would be observed from the following table :

	Percentage share	
	Centre	States
1. Combined revenue receipts of Central & State Govts.	63	37
2. Combined revenue expenditure of Central & State Govts.	45	55
3. Combined Capital Receipts . .	81	19
4. Combined Capital Expenditure .	55	45

It would be apparent from the above table that State's receipts were much lower than their expenditure with the result that they had to depend on Central Government for meeting their requirements.

Further, the Central Government's unilateral and sectional wage policy towards their employees had an adverse effect on State's finance since they had to concede, in sympathy, higher wages to their employees. Since the Constitution makers did not envisage such frequent revisions in pay and/or allowances, a system of automatic adjustment of the States' deficits is sadly lacking.

Similarly, not so well conceived policy of loans and grants to States imposed considerable burden on the States' finances. Financing of relief expenditure in drought years through loans is yet another instance of the increasing burden on States finances normally not accounted for in the assessment of Finance Commission.

Since the recommendations of Finance Commission are not open to review during the quin-quenium the obligation of the Centre to meet the deficit by way of grants is lost sight off, resulting in overdrafts and consequent slowing down of developmental efforts.

The State, therefore, would strongly urge for modification of the existing constitutional arrangements to provide for a year to year review instead of a periodic review after five years of resource transfers from Centre to States and assessment of States finances and making good of the deficit through non-plan grant.

5.2 It is true that the State resources on their own have not been enough to meet all non-plan, expenditure and there is thus heavy and increasing financial dependence on the Centre. The following table wherein figures for Rajasthan are given would support this contention.

(Rs. in Crore)

Year	Non-Plan revenue expenditure	Receipts from State's resource Revenue from				Difference between non-plan revenue expdr. & receipts (Col. 2—6)
		State taxes	Non-Tax items	Non-Plan grants in aid	Total	
1	2	3	4	5	6	7
1980-81	554	230	198	15	443	(—) 111
1981-82	688	312	176	43	531	(—) 157
1982-83	807	389	233	9	631	(—) 176
1983-84	914	430	280	26	736	(—) 178
1984-85	1033	473	254	9	736	(—) 297

The total dependence on Centre is thus obvious. Further even the share of Central taxes does not leave sufficient surplus to undertake a bolder plan. In this context it may be pointed out that there are two types of taxes that are shared between Centre and States i.e. the sharing of which is compulsory under the Constitution (Income Tax under Article 270), and the sharing of which is left to the discretion of Union Government (Union Excise Duties under Article 272).

The contribution of Central taxes is given in the subjoined table :

(Rs. in Crores)

Year	Difference between non-Plan revenue expenditure & receipts	Receipts from Central taxes		Total	Difference between Column 5 and Column 2
		Income Tax	Union Excise Duties		
1	2	3	4	5	6
1980-81	(—) 111	44	130	174	(+) 63
1981-82	(—) 157	44	152	196	(+) 39
1982-83	(—) 176	49	164	213	(+) 37
1983-84	(—) 178	51	191	242	(+) 64
1984-85	(—) 297	53	211	265	(—) 32

The share of taxes which may be shared (Union Excise Duties) as distinguished from statutorily shared (income-tax) being much larger is also indicative of the dependence of States on Centre.

For doing away with the giver-receiver relationship structural changes in the system are needed by adopting a Combination of the approaches suggested above in the question, i.e. trasnfer of elastic resources to States in particular Entry 84 relating to Duties of excise on tobacco and other goods manufactured or produced in India of List I Union, List of Seventh Schedule of Constitution.

In this connection it may be pointed out that there is need for providing adequate and elastic sources of revenue to States to reduce or completely do away with dependence on Centre. For this purpose only

that tax which has resource potential and can be uniformaly better administered need to be assigned to States in full.

Union excise is one such tax which need to be transferred to statutorily fully assignable category to the States like Income Tax although it may be collected by the Centre for the sake of uniformity.

Corporation Tax and customs duties may remain with the Centre.

With regard to surcharge on income tax which is presently wholly appropriated by Union Government under Article 271, the observations of Seventh Finance Commission are reproduce d as under:

"We feel that Article 271 does not in express terms lay down that the Union surcharge should be for meeting the burdens of the Centre arising from any emergent requirements, there is an underlying assumption that a surcharge should only be levied for meeting the requirements of some unexpected events and should only be for the period during which it lasts. In this view a surcharge continued indefinitely could well be called an additional income tax, shareable with the rest of the proceeds of income tax. The surcharge levied on income tax has been progressively increased and has become a permanent feature of income tax levy. It is well known that maximum yield from any tax is determinate. The levy of surcharge reduces the capacity of the yield from the basic tax. Therefore, to be fair either the surcharge should be merged with the basic tax or made shareable with the States."

5.3 The views that giving more financial powers to States will only further tilt the balance in favour of richer States probably envisages transfer of taxing powers only and not devolution of resources in its totality. What the less developed States like Rajasthan need are larger resources out of the total kitty through statutory transfers in which the element of buoyancy is inbuilt rather than transfers that are discretionary. This can be ensured by increasing the list of shareable taxes, share in the surpluses of Central public sector undertakings like railways which would mean substantial increase of the total divisible pool. At the stage of determining the share of the States *inter-se* the needs of backward States have to be kept in view by evolving a necessity oriented formula so that regional imbalance can be removed.

Further, the investment in Central sector projects should be dovetailed in a manner that would narrow down regional inequalities.

5.4 Deficit financing to the extent it does not generate inflationary pressures and is resorted to for financing productive expenditure may be accepted in a developing economy upto a limit.

There is no denying the fact that better control over expenditure both at the Central and State levels is necessary. In addition more revenue raising resources should also be tapped to the extent they do not inhibit investment.

The State Government is of the view that the scheme of devolution and transfers suggested above and in reply to subsequent questions coupled with evolving of a necessity oriented formula giving weightage to poor infrastructural development in backward States would ensfre adequate resources to the States and Centre would not be required to undertake deficit financing for meeting States' requieements. As a result, if at all, deficit financing is to be resorted to it would be wholly for Union purposes which can be contained within manageable limits through control over expenditure.

5.5 The State Government of Rajasthan is of the view that for distribution amongst the States *inter se* the total share attributable to States of the tota. receipts under shareable taxes—the twin criteria to be used should be adequacy and progressivity, Revenues from all taxes should be distributed on the same principles and the proliferation of formula as at present (the criteria for allocating share of income tax, Union excise duties and additional duties of excise etc. and the percentage share of various States for these taxes widely differ) avoided, since it cannot be argued that progressivity should be a feature of inter-State distribution of excise revenue but not of income tax.

With regard to the formula for distribution it may be pointed out that the criteria used are collection, population, per capita State domestic product and poverty proportion.

With regard to collection it may be pointed out that larger tax collection by a comparatively developed States stems from their stronger industrial base which is due to historical and natural factors and due to the fact that in recent years flow of institutional funds has been disproportionately favourable to these States. Collection criteria is particularly unfair because it only perpetuates disparities. The State Government is of the view that it should never be used as a criteria for devolution of funds.

The estimates of State domestic product suffer from serious limitations in view of the weak data base and absence of appropriate norms for estimation particularly for tertiary sector. Poverty ratio had been under severe criticism from various quarters due largely to the use of calorific intake. Both these criteria are thus not appropriate.

The State would submit that levels of development should be considered while recommending distribution of division of divisible proceeds of tax among the States *inter se*. The appropriate formula could be (i) 50 percent on the basis of population weighted by areas and 50 percent on the basis of inverse of index of infrastructure treating all India index to be 100. The element of area has been introduced in the scheme in view of the fact that vastness of area increases the unit cost and constrains the growth of infrastructure which is pre-requisite for the development of the economy. The index of infrastructure would highlight the fiscal needs of States to make more investments in relations with the available infrastructure in order to promote growth. This index of infrastructure is the only index which can take care of the future requirements for developments of infrastructure as well as production.

This formula alone (50 percent on the basis of population weighted by area and 50 percent of infrastructure) appears to be progressive enough to meet the requirements of backward States.

In respect of plan assistance the State Government feels that there is need for restructuring the mechanism of transfer of Central assistance since the formula assistance has not been found to be effective as is revealed by the fact that the regional disparities continue to persist. The State Government would suggest that assessment of funds for raising the levels in key social economic sectors to the levels of developed States be made and the full requirements of funds for this need based plan be met by Central Government after deducting the States own resources.

The balance may be distributed on the same basis as has been recommended for tax devolutions.

Non-Plan assistance need to be given in full for meeting year to year deficits, if any (although with the scheme of transfers suggested above there is little likelihood of deficits) and the expenditure incurred to mitigate the regours of natural calamities and the like. This assistance should be in the form of Non-Plan grant.

5.6 The idea of having a special federal fund for faster development of underdeveloped area relative to other underdeveloped areas of the country is quite laudable. It is true that the recommendations of Commissions and the devolution of plan funds had generally been to the advantage of better off States and the regional disparities persist. In the per capita transfers, Rajasthan State was placed at serial No. Six by Second Finance Commisson. It was relegated to 19th position in per capita transfers by Seventh Finance Commisson. Similar is the case with plan transfers. The State Government may have no objection to the creation of a fund on Yugoslavian pattern provided it is ensured that the entire Central investment is routed through this fund and the Central public sector undertakings would also be governed by this fund. The investments out of the fund in the various States should be made in relation to requirements of each State. This fund should be administered by a statutory body to be defined in the Constitution it self where if all the States cannot be represented then atleast each state should be included on the Governing Council by rotation. A provision for redressal of States grievances through judicial process should also be introduced.

5.7 The State would urge for restoration of powers to levy additional excise duties in respect of commodities liable to sales tax, *viz.* textiles, sugar & tobacco. The logic is quite simple. The total receipts under additional excise duties on all these commodities has not been commensurate to the increase in total tax revenue from other commodities by all the States taken together. This proves the point that administration of a tax by the States which have a direct involvement in revenue is better. It may not be out of place to mention that even the commitments made in respect of the ratio between basic and additional excise duties has not been honoured. The State would prefer the existing arrangements with regard to other taxes. It would however, like to increase the list of wholly assigned taxes as earlier pointed out.

5.8 The State would subscribe to the Central levy of taxes like corporation tax, wealth tax, estate duty and customs duty. Income tax and union excise duties should be assigned wholly to States, although for purposes of uniformity these may be collected by Central Government. It also feels that such a body may be statutorily established whose recommendations should be treated to be final.

The State does not favour Central levy in any term in respect of sales tax.

5.9 The State would suggest for year to year review of the capital and revenue needs of each State. The State would prefer one organisation dealing with all financial transfers both plan and non-Plan on an assessment of capital and revenue resources. This organisation should be statutorily constituted and arrange for providing the full requirements based on physical plan of action.

5.10 Public expenditure is conditioned by the receipts. Narrowing down of disparities in Pubic expenditure among the States is, therefore, also directly dependent on the availability of funds. Since the reports of the successive Finance Commissions have failed to narrow down disparities in resource transfers as much there is no impact of the report on narrowing down of disparities in public expenditure. The non-Plan grants for upgradation have been so inadequate as to make any visible impact on the levels of public expenditure.

Efficiency and economy in expenditure is not related to recommendations of finance Commission.

5.11 The State does not subscribe to the view that present mechanism of transfer of resources has inbuilt propensities towards financial indiscipline and improvidence in terms of exaggerated revenue deficit forecasts of adoption of populist measure resulting in revenue loss, and incurring expenditure unmatched by available resources. The position has been other way round. Finance Commissions have not been fair in assessing the forecast of revenue receipts and expenditure which has resulted in deficit and over drafts as would be evident from the fact that as against the revenue surplus of Rs. 220 crores assessed by the 7th Commission the State would be registering a deficit of Rs. 30 crores. No. populist measures had been taken up by State Government of Rajasthan so far. It is wrong to say that Rajasthan State tend to incur expenditure unmatched by available resources since every penny saved adds to the availability of funds for development since the State is always starved of funds. The stakes of the States are very high since they come directly into contact with the public and can ill afford to be imprudent in spending.

5.12 The State broadly agrees to the views of the Seventh Finance Commission suggesting that the bulk of resource transfers should be done through tax sharing and the role of grants-in-aid, under Article 275 in the scheme of total revenue transfers should as far as possible be supplementary.

5.13 The principles laid down by the Seventh Finance Commission with regard to grants-in-aid under Article 275 appear to be alright, however, in

practice lot of shortcomings have been observed in its application. In the first place the assessment of receipts and expenditure on revenue account to arrive at the fiscal gap was quite off the mark. As against an estimated revenue surplus of Rs. 220 crores, the State had a deficit of Rs. 30 crores from balances of current revenues. The grants-in-aid made to Rajasthan for narrowing disparities in the availability of various administrative and social services between the developed and the less developed States have not been adequate enough to enable the State to come up to the levels of developed States.

Similarly grossly inadequate grants were given to meet special burden on the Finances of the State because of the peculiar circumstances due to drought and scarcity conditions which are, matters of national concern. The total requirements as assessed by the State Government and the assistance given by the Central Government for relief operations differed widely. There had been heavy shortfall and the Union Government had failed to give adequate grants-in-aid as suggested by the Seventh Finance Commission.

The State Government would urge that adequate grants be paid to all States for equalisation of the standards of administrative and social services including municipal services on the basis of nationally accepted programmes and to meet the burdens on the State finances on account of special situations like financing of relief expenditure.

5.14 Government of India had been raising substantial resources by revising the administered prices of item of mass consumption like petroleum products, coal, iron, steel. Since the additional receipts on account of increased prices are wholly appropriated by Union Government because these are outside the excise net, the States are denied a share in it. The rates of cesses which are not shareable with the States are increased to the detriment of States. Instead of increasing the cess if the basic excise duty is increased, the States would have got a share in it.

There is no denying the fact that yield from Special Bearer Bonds Scheme and the revenue accuring from administered prices of items like petroleum, coal, etc. should be brought within the divisible pool of the resources. The logic is quite simple. Special Bearer Bonds were issued to unearth unaccounted wealth or black money which earlier escaped the tax net. Had the Income-Tax Department which is administered and controlled by Union Government been vigilant enough this income would have been added to the total proceeds and formed part of the divisible pool to be shared by the States. It is only a case of bringing income to the taxation field and should be shareable like other receipts under Income Tax Act. The raising of administered prices of item like petroleum products and coal etc. is a subtle attempt to raise revenues which are kept out of the divisible pool although in their very nature and content they are identified with the Basic Union excise duties. If the Union Government had raised the basic excise duties to the level at which it raised the administered prices the additional accretion would have gone to the divisible pool to the extent recommended by the Finance Commission and States would have get a share in it. The entire revenue accruing to the Union Government by raising the administered prices should be added to the divisible pool and allocated to States as per devolution formula for Union excise duties recommended by Finance Commission.

All cesses should be merged with the basic excise duties.

5.15 Obviously the savings of the Community would be shared by the private and the public sectors. The public sector can mop up savings through institutional sources to the extent of its capital requirements and response of the public. The methods through which such distribution is effected are not considered to be satisfactory because the share of less developed States is highly inadequate for undertaking investment expenditure that could uplift their economy. Allowing a 10 percent increase in market borrowings over the preceding year is perpetuating the backwardness. Further, tying up of LIC finance to plan resource does not permit undertaking a bolder plan. Even the bank advances are tilted in favour of developed States.

The share of the States should be in proportion to the capital expenditure, to be worked out on the basis of needs of each State for attaining a particular level in terms of infrastructural development and creation of production potential.

In respect of small savings mobilised in the States the entire sum should be allowed to be used as a plan resource instead of two-third share as at present.

The State would also like to suggest for modification of the present method by allowing an increase in market borrowings over previous years to the extent the economy can absorb. LIC funds should be de-linked with plan resource.

5.16 It is true that the fiscal imbalance of States is on the increase manifesting in their mounting indebtedness. The obvious reason is that the States have been saddled with the responsibilities for economic development and provision of social services besides their normal regulatory functions. In addition, expenditure has to be incurred for relief operations when the State is affected by natural calamities like drought. Unfortunately the State had witnessed severe droughts consecutively for five years begining from 1979-80. In fact there was not a single district which was not affected by drought.

The State is perilously dependent on the Central Government for financing its developmental expenditure and for meeting the non-plan liabilities mainly because of the very limited resource potential because all elastic sources of revenue are with the Central Government. Further, the assessment of Finance Commission for assessing its requirements have been unfair and the devolutions inequitable. The inroads made into State's spheres through the levy of additional excise duty on textile, tobacco and sugar, and the restriction on inter-State trade and the levy of Central Sales Tax etc. have further contributed to erosion of State resources. The inflationary trend witnessed in the economy over which the States have little control because monetary and fiscal policies are determined at the Central level tend to increase the cost of providing services

to the community. It is the liability on account of payment of dearness allowance and other payments including pensionary benefits for which usually the Union Government is the pace setter which further adds to the mounting cost. The States have no other alternative but to seek accommodation from Government of India. The mounting debt burden is thus not due to imprudent spending but because of mechanism of transfer of resources as per the existing scheme of the Constitution and can be reduced by writing off all loans which do not give return adequate enough to repay.

5.17 The most disquieting feature of the Central-State financial relations had been that the reverse transfers from State to Central Government in the form of repayment of loan and interest therein would be larger. Yearwise particulars given below would reveal that over the years the situations had been going from bad to worse.

(Rs. in Cores)

Year	Loan received from Central Govt. (excluding ways & means advance)	Loans repaid to Central Govt. (excluding ways & means advance)			Difference (Column 2—5)
		Principal	Interest	Total	
1	2	3	4	5	6
1977-78	75.68	39.93	40.93	80.32	4.64
1978-79	123.26	40.20	43.17	83.37	39.89
1979-80	114.54	32.50	49.02	81.52	33.02
1980-81	140.32	93.44	46.05	139.49	0.74
1981-82	170.03	56.26	57.30	113.56	56.47
1982-83	524.88	92.90	61.29	154.19	370.69
1983-84	188.40	91.34	72.64	163.96	24.44
1984-85	183.84	141.36	101.36	243.72	(—)59.92

The factors responsible for mounting indebtedness have been indicated briefly in reply to question 5.16. It may be added here that the funding arrangements need to be modified for rectification of a situation where reverse transfers to Union Government exceeds the loan assistance from Central Government.

The imminent modification relates to assistance for State Plan schemes, externally aided projects and financing of relief expenditure. The State Plan assistance stipulates a loan grant ratio of 70 : 30.

This proportion is not based on sound logic and has to be viewed in the background of the end use which is largely meant for infrastructural and social services where the return to State is negligible. To transfer the assistance as loan, therefore, does not appear to be appropriate.

The assistance provided in respect of externally aided projects also add to States indebtedness because the additionality of resources given to States is given in the loan grant ratio of 70:30 like normal State Plan Assistance.

Another contributing factor is the financing of expenditure on account of relief in case of natural calamities since half of the assistance is in the form of loan. The expenditure does not lead to creation of durable assets since the basic objective is also provision of employment that has to be made available in widely dispersed locations. The remedy lies in writing of unproductive loans as suggested by Seventh Finance Commission. On this basis outstanding loans be classified into two categories *viz.* productive and un-productive. Productive loans may be those which yield return adequate to pay principal and interest thereon. Rest of the loans may be treated to be un-productive. The un-productive loans may be written off.

For future also the Central assistance need not be provided on the basis of a fixed loan grant-ratio but should be on the pattern suggested above *i.e.* total plan assistance should be given as grant except that for productive purposes which may be given as loan repayable in fifteen instalments as at present.

5·18 Any major change in respect of the policy of market borrowings is not being suggested.

However, presently restrictions have been placed on State's freedom to borrow which could be relaxed atleast in respect of borrowings from financial institutions like NABARD and LIC for approved plan schemes.

5.19 For most of the projects aid is made available to Government of India at a nominal service charge of 0·75 to 1·25 percent and is repayable in 40 to 50 annual instalments. The State Government however is expected to repay the additional central assistance on account of these projects in 15 annual instalments carrying an interest rate of 5.50 to 6.25 percent per annum applicable to plan assistance which is much higher. Charging of higher rate does not appear to be justified. The State is strongly of the view that loans given as additional plan assistance to States undertaking externally aided projects should be advanced on the same terms and conditions on which the loans are received by the Government of India from the external agencies.

5.20 There does not appear to be any necessity of constituting a Council on Australian pattern. The Reserve Bank of India should coordinate the

entire process of market borrowing of the Centre, States and the private sector. At present the Reserve Bank of India can purchase securities of Central Government only but not of the State Governments. The Reserve Bank of India should be permitted to purchase securities of State Government also.

5.21 The factors contributing the overdrafts are besides inadequate transfers of resources to backward and less population density States like Rajasthan, unrealistic assessment of forecast of revenue receipts and expenditure by the Finance Commissions, mounting interest liability on Loans, Compulsive expenditure on account of dearness allowances and payments to employees for which the Union Government is the pace setter, expenditure on relief operations to mitigate the rigours natural calamities for which the financing pattern is unfavourable to States and inadequate provision for maintenance of capital assets.

The remedy lies in adequate transfer of funds to States through addition of Union excise duties in fully assignable category to States, and bringing in its fold items of like. Surcharge on Income-tax Bearer Bonds, increase on account of raising the administered prices of petroleum and Coal etc. In addition, a mechanism of annual review of States finances would solve the problem since the deficits, if any, on account of compulsive needs would be made good and the ways and means limits modified accordingly.

5.22 The view that States are not exploiting adequately their own sources of revenue cannot be generalised for all the States. So far as Rajasthan is concerned this view is not correct as would be evident from the fact that the target of additional resource mobilisation for Sixth Plan was fixed at Rs. 750 crores by the Planning Commission which has been achieved.

5.23 It is true that inspite of reaching commanding heights as intended the Central Public sector has not yielded the expected returns on investment. Of the 193 running central/sector public enterprises in 1982-83, 110 had made pre-tax profits amounting to Rs. 2520 crores, of which Rs. 1628 crores were contributed by 12 petroleum companies. The remaining enterprises made a loss of Rs. 975 crores. Thus, if petroleum companies are excluded then the operations of public enterprises revealed a loss. Data available for the first half of 1983-84 indicate that all public enterprises taken together had incurred a net loss of Rs. 113 crores. The community expects a financial return comensurate to the sacrifice made to the extent of the investment made. The State Government does not have data to comment about the substantial leakage in Central taxation. However, certain press reports suggest that efforts are being made to plug the loop holes. Further, the realisations from the issue of special bearer bonds point out that there were leakages earlier. The remedy lies in close monitoring and effective tight controls over the functioning of the enterprises as also over tax realisations.

5.24 The State would prefer prior consultation with the State Government before moving a bill to levy or vary the rate structure or abolishing any of the duties and taxes enumerated in Articles 268 and 269. The State would further suggest amendment of Article 274 to include 'states' besides the President for introducing or moving any Bill or amendment in which States are interested.

5.25 Article 269 of the Constitution could be better exploited to augment the resources of the State particularly by reimposition of taxes on railway fares and freights, levy of terminal taxes on goods or passengers carried by railway, sea or air, tax on the sale or purchase of news papers and on advertisements published therein.

The State would also like the pooling of entire net proceeds from any tax to be allocated to States in the ratio prescribed for Union excise duties.

5.26 The grants in lieu of Railway Passenger Fares Tax should be revised enhanced in proportion to rise in collection of railway fares.

5.27 Since the responsibility of entire expenditure of Union territories is that of Central Government there is no question of giving any share in taxes to Union territories.

5.28 The present arrangements with regard to provision of Central assistance to States for dealing with natural calamity are highly unsatisfactory and the quantum given to States for drought relief is highly inadequate. The discriminatory treatment in case of natural calamities due to flood and due to drought is also unjustified. The financial arrangements, suggested by the Finance Commission stipulate that assistance from Central Government is to be made available of which not more than 5 percent of the annual plan could be deemed to be a contribution from plan and balance requirement was to be made available by the Central Governement on the recommendations of the Central Study Team. The Commission had indicated that if the expenditure requirements cannot be adequately met by plan contribution the extra expenditure should be taken as an indication of the special severity of the calamity which could justify the Central Government assisting the State Government to the full extent of the extra expenditure to be made half as grant and half as loan.

It is not appropriate to link the expenditure on relief works to plan. The type of relief works that become necessary in a drought year cannot be said to contribute to durable assets or to be capable of providing any financial return. The compulsion to apportion a large proportion of expenditure for wages and to limit the material component to not more than 40 per cent makes any durable asset formation difficult. Any effort made to link these decentralised employment oriented relief work as plan programmes only disport the plan priorities and cast a future liability on the plan programmes to make investment for completion or improvement in order to make some of these works of permanent benefit. Even this is not possible in most cases, because the type of works that are available in these decentralised locations do not lend themselves to development in a way that may lead to any future economic benefit as visualised in the national or State Plan.

The State Government is, therefore, of the view that Central assistance drought relief should not be treated as plan expenditure. Further, Central assistance in full should be given as non-plan grant since there is no justification for treating its any component as loan as mentioned above. By providing the assistance as loan avoidable burden is cast on the weakness resources of the State on account of expenditure which, in no way, can yield a financial or economic return.

The State would also like to submit that in the assessment of the requirements of expenditure by the Central Study Teams the representatives of the concerned State should invariably be associated.

5.29 The Reserve Bank may continue to play the overall Coordinating role with regard to financing of developmental projects through NABARD and IDBI on which the States should be given representation. The Reserve Bank of India should work under the directions of the National Development Council which should be Statutory body consisting of all Chief Ministers of States.

5.30 There is no denying the fact that the funds are spent prudently and the benefits go back largely to the people. The accountability of public money is well taken care of under the existing provisions of Constitution.

5.31 We agree with the view that the expenditure of the Union should be reviewed every year by the same organisation that would be responsible for annual review of State finances.

Rajasthan State has not incurred expenditure on any measure of populist nature. Whatever developmental expenditure has been incurred has been done as part of plan discussed with the Planning Commission and keeping in view the needs of the State which has an abysmally low level of social services.

National expenditure Commission may create more confusion and is not favoured. Earlier, a Committee was constituted in 1978 for studying public expenditure which was disbanded during 1979, apparently because it was not found to be useful.

5.32 It has been observed that there is delay in rendering of accounts by the Accountant General, with the result that State Government finds it difficult to have an effective system of financial control. The State Government is of the view that there should be separation between audit and accounts. The audit part may continue with the Comptroller and Auditor General of India and the account part should be transferred to the States.

5.33 Voucher audit cannot be completely dispensed with and has to continue. However, the system of evaluation audit should be gradually built up to make audit more meaningful and purposeful.

5.34 Gradually the emphasis should be towards evaluation audit. The existing power of the Comptroller and Auditor General conferred by the Parliamentary Legislation in 1971 are adequate to enable him to discharge his duties effectively.

5.35 The reports of the Comptroller and Auditor General are considered to be comprehensive enough and reasonably accurate.

5.36 The existing arrangements by which Public Accounts Committee alongwith the Public Undertakings Committee examines the reports of the Comptroller & Auditor General are adequte for exercising checks to answer the voiced complaint of insufficent expenditure control.

5.37 Yes, the Estimates Committee acts as a watchdog to give useful legislative and administrative advice to the administration.

5.38 We are not in favour of an Expenditure Commission as already indicated in reply to question 5.31.

5.39 It is true that clearance of the plan of action by administrative machinery concerned is an irritant and a source of considerable delay, The role of the Union Ministry should be confined to laying down broad policy guidelines and assessing the results once expenditure has been incurred. The existing arrangements of audit by the Comptroller & Auditor General can ensure that funds meant for a specific purpose are, in fact, utilized for that purpose.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 For seeking the full commitment of States in the plan it is necessary that the consultation and association of the States is made more meaningful. For this it would be necessary to feed the States with full details of the various alternatives and the models worked out by the Planning Commission before arriving at the suggested model to be placed before the National Development Council. These models should be discussed first at official level with the Planning Secretaries of the States for a meaningful dialogue. Besides the models, the details of the draft proposals contained in the Plan should also be placed before the official level committee consisting of the Planning Secretaries so that the States view could be reflected in the plan proposals to the extent possible where a political decision at that stage is not considered to be necessary.

Sub-committees of the National Development Council may be formed for detailed deliberations on the notes of discussions of the official level meetings and finally the NDC may be approached for decision on the basis of the recommendations of the official level committee and sub-committees to be formed as suggested above.

The client relationship as mentioned in the question is due largely to the fact that central ministries tend to work in isolation for their respective departments. The remedy lies in identifying the needs of various States in the light of guidelines or norms prescribed by the NDC to ensure that the less developed States are provided with adequate funds to come up to the level of their better developed counterparts. This would automatically do away with the needs the building up client relationship since very little discretion would be left with the State or the Union Ministies

The Central role in planning should be to the extent of laying down basic policy framework in close association and consultation with the States and once the key targets are finalised it should be left to the States to decide the modalities of achieving the fixed targets.

6.2 The National Development Council need to be given a statutory status. A system should be evolved through which regular review is done every year to determine the financial needs of the States in the light of their compulsive requirements.

6.3 With the passage of time, the Planning Commission has grown into a Centralised agency for planning, though not a part of the ordinary machinery of the Government of India deciding every programme of work. Both the Central level Ministries and State Level departments have come to depend on the Commission for advice and support increasingly. As regards association of State Governments in the process of planning, not much consultation is made. In fact with the present set up, the Planning Commission functions more in a fashion of an authority than an Advisory body. To make the State feel that they are also very much part of the planning process at the national level, it is imperative that a system is evolved to ensure active and close cooperation of the States at each important stage. It should be enjoined upon the Planning Commission that before taking any decision on matters of national/State importance, views of the States are invariably obtained and given due weight. In matters that are wholly within the State List or even the Concurrent List the views of the States should prevail unless these are against national policy security or international commitments. Further, there should be representation from all the States on each working group constituted by the Planning Commission and Central Ministries.

Representing all the States on the Planning Commission may make its composition too large, but a system need to be devised to have rotation of States on the Planning Commission.

6.4 It should have besides the Prime Minister as the Chairman, the Ministers of Finance, Agriculture, Industry and Commerce as regular members. Administrators, Economists and Technologists should also be represented, besides two or three persons to be drawn from States on the basis of recommendations of State Chief Ministers by rotation.

6.5 Planning Commission may continue to be a department of Government of India as at present.

6.6 Since States are the constituent units, logically national priorities need to be reflected in State Plans. These national priorities should be one of a few broad alternative plans of development worked out by the Planning Commission which has been duly supported by the Government. However, to ensure that national priorities are reflected in State Plans, the Planning Commission should not assume executive and decision making powers in respect of State plans of development. Instead, it may advise States regarding the manner in which State Plans should be formulated and suggest the targets keeping in view the regional disparities and needs of the States, in accordance with the laid objectives, alongwith provision of necessary funds, with due association of the States at the initial stage. This would leave a comparatively larger scope for States to plan ther own priorities on various State matters and the Planning Commission would be looked upon as an important guide, friend and philosopher.

6.7 There are following three types of Central assistance available to States :

(i) Block plan assistance for State Plan.

(ii) Central assistance for externally aided Projects.

(iii) Central assistance for drought relief.

The State debt burden is increasing year after year largely because of the mechanism of transfer of Central assistance for plan, including drought relief. Presently the debt burden of the State is the highest in the country, excepting that of Punjab and Haryana. The transactions in loans and advances involve revenue transfer to Central Government in the form of repayment of principal and interest. The trend that has emerged over the last few years in Rajasthan left very little amount as net accretion in transfer from Government of India.

Presently, the loan-grant ratio for block plan assistance is 70 : 30. This ratio is grossly in favourable to the State, particularly, the less developed States like Rajasthan. In fact the mounting burden of outstanding loans to States call for a fresh look into the problem. It is indisputable that the Union Government also derives a share in the benefit of the development efforts made by the States through increase in its financial resources in the form of taxes etc. The Central Government should, therefore, also logically bear some responsibility. Besides, it is also not justified to treat State investment to yield returns sufficient to recoup the investment made. Considering all these aspects, the State feels that the loan-grant ratio for block plan assistance be revised.

The mode of transferring the assistance received by the Government of India in respect of externally aided projects implemented by States also needs to be modified. These projects are provided for wholly under the State Plan but only 70 per cent of the reimbursement received by the Government of India is transferred to the States in the form of 70 per cent loan and 30 per cent grant. Excepting service charges of about 0.75 per cent the Government of India generally has not to pay any interest charges and usually the repayment period of loan is 40-50 years. The State Government on the other hand, has to repay the loan component within a period of 15 years, on a rate of interest of about 5.25 to 6.5 percent. Further, as the entire project cost of such projects forms part of the State Plan ceiling, a sizeable plan outlay consequently gets tied up to specific projects. The State would, therefore, plead that the entire assistance received from the external agencies against specific projects should be passed on the State Governments on the same soft terms.

By its geographical location, Rajasthan is most vulnerable to drought conditions. The existing financial arrangements include provision for margin money and, in addition, assistance is made available

by the Government of India under Plan. However, it is felt that it is not appropriate to link the expenditure on relief measures to plan because of very nature, these decentralised employment oriented works are not capable of providing any financial return. Their inclusion under plan only leads to distortion of Plan priorities and entail a burden on plan to make further investments on these works for their completion. These works, as such, have to be viewed from the angle of providing only relief and employment to effected population. It is also not justifiable to provide the assistance for expenditure as loan. Therefore, the assistance for drought relief should be provided by Government of India as cent-per -cent non-plan grant.

6.8 & 6.9 One of the prime objectives of planned development is to ensure reduction in the regional imbalances in development. This basically would require concerted efforts and availability of adequate finances to meet gaps in development. Available resources of the State Governments are grossly inadequate to meet their responsibilities. To remedy this, the Centre provides loans and grants from time to time on ad hoc basis. Certain formula evolved for transfer of funds from Central Government to States also affect backward States adversely. The modified Gadgil formula with highest weightage to population factor gives an undue weightage to high density States whereas States with larger area and a higher per unit cost for providing services are put to great disadvantage. The States with larger area have necessarily to spend comparatively larger sum of money for social services. The system of determining of a State Plan size within the scope of availability of resources to finance the State Plan, including Central assistance, do not take into account the relative backwardness of the State, which is mainly on account of their low potential of raising financial resources. If the backward States with poor resources are to plan within the scope of their own financial resources such States being in a disadvantageous position find it rather difficult to gear up the pace of development and regional imbalances are bound to get accentuated, thus defeating one of the basic objectives of planning i.e. reduction in regional imbalances and dispari ies in development.

The pattern of assistance for financing the State Plans should be determined in relation to physical needs of each State, ensuring that each State has adequate funds for achieving the fixed targets. The State, therefore, will favour evolving a formula which would result in considerable higher share of allocations to sparsely populated backward States than that based on population alone. Reasonable weightage is required to be assigned to area of the State by reducing the share of population in the scheme of devolution of Central assistance for plan.

It is also necessary that the total Central assistance is broken into two parts viz., non-formula assistance and formula assistance. An assessment of the funds required for raising the levels in key socio-economic sectors of less-developed States to the levels obtaining in more developed States be made and after deducting the States own resources, the entire requirement should be provided in fnll as Central assistance under the non-formula part,

Under formula assistance population has to be weighted by area and the factor of infrastructure index be introduced for determining the share in devolutions to the various States.

It may be added that poverty has been included as a criteria for devolution of resources in certain cases. The criteria of poverty based on calorific intake is susceptible to totally erroneous estimates because of variations in climate, working conditions and food habits. Further it only takes into account caloric intake but does not consider the off take required. Poverty criteria should not be used for determining devolution to the States.

The special area development programmes have been initated on the logic that certain geographical areas present some very special ecological and social economic feature, which unless specifically taken into account, do not permit the present planning process and the schemes developed within it, to make a sizeable impact. Hill areas have already been recognised to belong to this category. The Desert areas in Rajasthan also square come in this very category and require special attention urgently. Development of desert areas requires large investments which are beyond the means of the State. It is, therefore, absolutely essential that the special development programmes are extended to desert areas and assistance provided on hill areas pattern.

6.10 Basically, the centrally sponsored schemes are floated by the Union Government with an All-India perspective, but for observing a more practical view centrally sponsored schemes should take peculiar problems of regions and all schemes should not be uniformally applicable to all the States. A wide scope should, therefore, be provided in such schemes for suitable accommodation and some of the centrally sponsored schemes should be designed to cater to the peculiar needs of specific regions. So long these schemes are instrumental in bringing about speedy development of backward States and dealing with the local problems effectively, the system is most welcome. On the basis of past experience, it may however, be appropriate not to vest all the powers of sanction and review of such schemes in various central ministries, and allow a mere flexible approach, and the procedure of reimbursement made simpler. Also the pattern of assistance alongwith quantum of assistance likely to be made available for centrally sponsored and central sector schemes may be decided before finalisation of the Five Year Plan. The pattern of assistance including matching contribution should not be changed to the detriment of the States during the course of the Five Ye r Plan, and there should be a preferential pattern for sharing expenditure in the case of backward States.

At least, the important schemes having relevance to backward areas should be centrally funded in full.

6.11 A system of concurrent monitoring needs to be introduced for major project in close collaboration of field officers and economists.

Use of computers and data processing equipment needs to be introduced for expeditious processing and retrival.

Close links need be developed between the Central and State Government for exchange of information having a bearing on programme implementation, monitoring and its evaluation.

6.12 Presently there is not much interaction between the Centre and States in matters of Planning. The draft State Plans as prepared by States in accordance with the policy guidelines from Planning Commission, are examined and discussed by the working groups constituted by the Planning Commission and plan size determined keeping in view the availability of resources to finance the plan. There is not much freedom to the States.

As has been indicated above elsewhere, there is need to have more active involvement of States right from the initial stage of plan formulation through constitution of some sub-committees of the NDC and enjoining upon the Planning Commission to involve the States in preparation of plan. Once the plan is approved, the States should be left free to implement it. The decentralisation of planning process, thus, will no doubt create a sense of active participation and cooperative federalism amongst the States. Adequate financial support needs to be ensured to the States an implementation is to be left to the States without any condition in accordance with the approved plan and the pattern thereunder.

With the last more than three decades of planning in the country, considerable planning experties has been created in the States. Plan formulation is not merely an exercise of putting together the demand of the States at one place, but it is now rather a well conceived and thought out excercise keeping in view the potentialities and the regional requirements in the areea in consideration of the basic objectives and priorities of Plan. In Rajasthan there is a full fledged department at the State level to take of plan formulation, implementation and review. The important Core Sector Departments have their own setup for plan formulation, implementation and review of their sectoral programmes. Concurrent and expost facto evaluation is also undertaken by the separate organisation created in the State for the purpose. The State Planning Board is in the process of reorganisation.

PART VII

MISCELLANEOUS

Industries

7.1 It is agreed that the extension of First Schedule has been much beyond the original scope and as a result industries have become virtually a Union subject. The original idea was to extend the licensing procedures only to core industries which were of vital importance and not that Schedule should cover practically all industries.

It can be argued that industrial licensing is a tool to promote development of backward areas. However, past experience does not show that industrial licensing has been an effective instrument of development of backward areas. In fact most licences have gone to the already developed States and that trend continues even today. It has also been established that incentives offered by Central and State Governments and concessions given by financial institutions are more effective instruments of ensuring industrial dispersal and diversification of industrial units into backward regions. We, therefore, feel that the Schedule should be restricted to only core industries of vital importance to the economy of the country.

Even according to the existing general pattern of licensing adopted by the Government of India, the large scale industries involving an investment of Rs. 5 crores or more are licensed by the Government of India and the medium and small scale industries, not covered by the above-mentioned definition of large scale industries, are left to be handled by the State Governments. But even this general rule is often not adhered to; many of the individual Ministries have acquired the powers of giving the licenses permissions/clearances, even in cases where the investments involved are very small. Some of the instances are wheat-milling, electronic industries and power-looms, which require permission from the Central Ministries or departments. This leads to avoidable delays as also diminishes the role of the States which they should be expected to play.

7.2 (i) The State Government is not in favour of any rigid norms. The term "National Public Interest" should concern only with industries of vital importance to the eeonomy of country. This test should be applied to all legislations which seek to regulate industry.

(ii) Without going into the merits of each entry in the Schedule, we reiterate that the general principle that should govern inclusion of any industry in the Schedule is that it should belong to the core sector and should be important for the economy of the country as a whole. By applying this test the Schedule can be appropriately pruned.

7.3 As explained earlier, industrial licensing should not be a mandatory provision for our industries. Our industry is generally over regulated and better results can be achieved by indirect controls by issuing guidelines to public financial institutions and by offering suitable concessions and incentives. Except for industries in the core sector anybody should be free to establish any industry without a licence provided the State Government concerned can assure him of necessary infrastruture facilities. This would be applicable to industries which do not require imported raw-materials. Central clearance for capital issues, import of capital goods and foreign collaboration should continue to be done as hithertofore as the present procedures are quite satisfactory.

7.4 In the small scale sector, the greatest deficiency is in marketing. Individual units find it very difficult to find their markets and except in a few State support in this regard is nominal. Every State has to organise marketing support for small scale and Village industries in a much more purposive manner there should also be an apex organisation for this purpose at the national level. As far as raw-material is concerned, the existing arrangements made through the Small Industries Corporation appear to be more or less adequate.

However, many of the raw materials like iron-steel, other metals, coal, chemicals and some petroleum products being scarce or which are being produced under Central sector, are allocated to the States by the Government of India. Some of the States which for historical reasons being late starters in the matter of industrialisation, are getting less of allocations. The system should be made more equitable. It sholuld also promote the development of industries in industrially backward regions by giving them adequate scarce raw materials.

7.5 The Central financial institutions are not giving loans to State Plans but to individual industries either directly or through the State finacial institutions. The Central financial institutions have, however, been channelising a major part of their assistance to more developed States from where a majority of the applications emanate. This acts to the disadvantage of the backward States. The Central financial institutions have to take a more active interest for the development of industrially backward States and give priority to the investment proposals for such areas.

They should not merely play the passive role awaiting the applications from the States but should in fact play more positive and promotional role. As an analogy it may be mentioned that as a result of requests of large number of States, RBI has persuaded the banks to play a more active role in bringing the deficient States upto the national average. The same policy presently does not seem to be visible in case of national financial institutions. The Government of India or the IDBI as the apex financial institution, should adopt a similar approach.

The follwing table would statistically indicate the present disparities and high-lights the facts that well-to-do States are getting more assistance and are further improving their economic position whereas deficient States are getting less and are further lagging behind; the gulf between the advanced and the backward States is widening:

Assistance Sanctioned during 1984-85 and Cumulative up to End-March, 1985

(Rupees Crores)

Sl. No.	State/Institution	Cumulative up to end of March, 1985							
		I.D.B.I.	I.F.C.I.	I.C.I.C.I.	L.I.C.	U.T.I.	G.I.C.	Total	P. C. to Total
		1	2	3	4	5	6	7	8
1	Andhra Pradesh	1234.85	248.20	236.83	82.25	62.27	34.80	1899.20	8.28
2	Assam	131.08	25.70	16.56	14.36	1.54	1.15	190.39	0.82
3	Bihar	392.01	63.46	109.98	75.98	33.45	14.21	689.09	3.00
4	Gujarat	1904.18	252.30	425.08	158.89	99.55	56.31	2896.31	12.62
5	Haryana	453.53	77.00	82.64	12.64	22.47	21.14	669.42	2.92
6	Himachal Pradesh	157.08	26.64	18.06	3.47	1.34	2.94	209.53	0.91
7	Jammu & Kashmir	146.36	13.66	7.65	1.70	0.50	0.35	170.22	0.74
8	Karnataka	1052.84	173.06	214.15	67.95	110.63	27.83	1746.46	7.17
9	Kerala	482.31	81.10	56.21	19.21	8.31	4.97	652.11	2.89
10	Madhya Pradesh	597.87	98.30	127.95	32.67	57.60	35.24	949.63	4.14
11	Maharashtra	2029.76	364.79	766.78	357.73	340.37	199.76	4059.19	17.73
12	Manipur	3.54	—	—	—	—	—	3.54	0.01
13	Meghalaya	16.44	2.74	0.54	1.74	—	—	21.46	0.09
14	Nagaland	9.41	0.67	0.17	—	—	—	10.25	0.04
15	Orissa	525.87	87.60	85.65	32.59	21.76	13.89	767.36	3.34
16	Punjab	464.57	100.12	81.65	19.47	24.13	8.80	698.74	3.04
17	Rajasthan	686.29	138.87	127.93	31.21	23.51	14.65	1022.46	4.46
18	Sikkim	4.94	1.00	1.00	—		—	6.94	0.03
19	Tamil Nadu	1520.45	201.91	279.44	119.29	78.62	34.85	2234.56	9.74
20	Tripura	9.93	1.16	0.56	0.36	—	—	12.01	0.05
21	Uttar Pradesh	1491.73	250.55	189.66	98.07	44.67	39.56	2114.24	9.21
22	West Bengal	776.79	137.06	161.29	134.00	104.59	41.61	1355.34	5.91
23	Union Territories	477.44	51.63	80.53	34.55	7.97	18.01	670.13	2.92
	TOTAL	14569.64	2397.52	3070.31	1298.13	1043.28	570.07	22948.95	

7.6 It is true that in the location of Central public sector industries. the States are not always taken into confidence. Also, these decisions are taken apparently sometines on other than purely economic considerations. The instrument of investment in Central public sector should be utilised for developing industrially backward states.

It may be observed that in Rajasthan, covering 1/10th of the country's areas, in last almost two decades, not a single new Central sector project has been set up. The following table would reveal this kind of a trend which needs to be corrected and made equitable.

Percentage share of States in Commulative Investment (Gross Block) in Central Public Undertaking (1963-1983)

Year	STATES							
	A. P.	Assam	Bihar	Gujarat	Haryana	H. P.	Karnataka	Kerala
1963	0.8	1.5	15.9	0	—	Neg.	3.6	0.2
1964	1.0	1.8	16.9	0.1	—	Neg.	3.5	1.5
1965	1.5	2.1	17.7	0.1	—	Neg.	3.0	1.8
1966	2.4	1.5	17.0	1.4	—	Neg.	2.9	2.0
1967	3.0	1.4	17.2	1.4	—	Neg.	2.9	2.2
1968	2.9	2.0	17.8	2.9	0.3	Neg.	2.7	2.6
1969	2.9	2.1	20.8	2.9	0.2	Neg.	2.7	3.4
1970	2.9	2.2	23.0	2.9	0.2	Neg.	2.7	3.4
1971	3.0	2.1	24.9	4.2	0.2	Neg.	2.7	3.4
1972	3.1	3.1	25.9	4.3	0.2	Neg.	2.8	3.3
1973	3.5	3.2	26.9	4.7	0.2	Neg.	2.9	3.2
1974	3.8	3.0	27.8	4.7	0.2	Neg.	3.0	3.3
1975	4.3	3.2	26.8	4.8	0.3	Neg.	3.0	3.2
1976	4.2	3.6	25.1	5.8	0.7	0.2	2.8	3.3
1977	4.2	3.4	27.2	5.7	1.5	0.4	2.9	3.0
1978	4.4	3.3	25.2	5.6	1.3	0.7	3.7	2.9
1979	4.2	3.0	22.6	5.0	1.7	0.8	4.1	3.0
1980	5.1	3.4	20.7	5.8	1.6	0.8	4.9	2.8
1981	5.5	3.7	19.7	6.0	1.5	0.8	4.7	2.7
1982	5.4	5.7	18.0	5.0	1.3	0.7	4.3	2.4
1983	7.5	5.5	16.6	3.9	1.1	0.6	3.7	2.2

Year	STATES							
	M.P.	Maharashtra	Orissa	Punjab	Rajasthan	T.N.	U. P.	W. B.
	1	2	3	4	5	6	7	8
1963	23.7	2.0	21.4	2.8*	0.2	8.3	0.2	19.4
1964	23.8	2.6	19.2	2.6*	0.2	9.1	0.7	17.4
1965	23.9	2.7	17.4	2.4*	0.2	9.3	1.8	16.2
1966	23.3	3.1	15.2	2.0*	0.2	9.1	2.6	27.2
1967	21.8	3.2	14.3	1.8*	0.3	9.3	3.5	17.7
1968	19.6	3.5	14.8	1.2	0.7	8.9	4.8	15.3
1969	18.2	3.4	14.2	1.1	0.9	8.8	4.6	13.8
1970	16.5	3.6	13.4	1.0	1.0	9.2	4.6	13.5
1971	15.5	3.5	12.6	0.9	1.1	8.8	4.3	12.7
1972	14.8	3.6	11.7	0.9	1.4	8.4	4.2	12.6
1973	14.0	3.9	11.0	0.8	1.8	7.5	4.0	12.5
1974	13.8	3.9	10.1	0.8	2.2	6.9	4.1	12.3
1975	13.4	4.9	9.3	1.2	2.6	6.2	4.1	12.6
1976	18.2	5.0	8.3	2.2	2.5	6.7	4.1	7.6
1977	16.2	6.8	7.0	2.1	2.5	5.1	4.1	8.3

	1	2	3	4	5	6	7	8
1978	16.1	8.1	5.9	2.0	2.5	5.1	4.4	9.5
1979	14.5	7.6	5.8	2.7	2.9	4.9	5.2	8.4
1980	14.7	8.6	6.2	2.3	2.2	5.0	5.3	10.2
1981	14.6	10.0	5.8	2.3	2.0	5.1	5.6	9.7
1982	14.2	13.3	5.7	2.0	2.1	4.8	6.0	8.8
1983	13.6	14.1	5.4	1.7	2.0	4.7	8.9	8.5

NOTE : Neg : negligible
*Punjab + Haryana
—Not available.

SOURCE : Bureau of Public Enterprises Annual Report on the working of Industrial and Commercial Undertakings of the Central Government. Government of India, various issues.

7.7 There is ground for criticism that certain States have been neglected in Central public investment. The proportion of Central public sector investment in Rajasthan has been only 2.0 % although it is admittedly an industrially backward State. There is also a tendency for Central public sector investments to divert towards more affluent States which can offer better incentives and concessions.

This tendency needs to be arrested and a more equitable distribution with emphasis on development of backward States should be stressed in location of central public sector industries.

7.8 The methodology adopted for identification of industrially backward areas has become obsolete and requires a careful review. In any case, there has been a major change in the level of development of areas classified as backward and, therefore, reclassification of backward areas is an urgent necessity. The incentives given by Central Government and financial institutions in development of backward areas have been partially successful particularly, where necessary infrastructure facilities were available.

In the present methodology the entire district is identified as industrially backward. In some cases the entire district may not be found industrially backward but a certain pocket/area of the district may be industrially backward. The present methodology may, therefore, be suitably modified to identify and declare industrially backward pockets/areas like development block within the district also.

Trade & Commerce

8.1 There has not been any serious restriction on inter-State commerce and trade nor has there been any charge of discrimination between one State and the other in this regard. In the present circumstances an authority as provided for under Article 307 of the Constitution does not appear to be necessary.

Agriculture :

9.1 The State is strongly of the view that Central attachment in the scope of the assumption of responsibility for substantive activity should not be permissible in agriculture and it should continue to be treated as a State subjet.

9.2 The Centrally sponsored schemes are usually sponsored with an all India perspective in view and quite often without appreciating the specific needs of the States. Further the committed liability after the scheme period is over has got to be borne by the State Governments since the staff cannot be disbanded. The All India pattern also created distortions in the staffing scale because of the insistence by Union Government to provide staff under specific schemes.

The State, therefore, feels that Centrally sponsored schemes should be kept to the minimum in respect of items of basic national importance. These should not be tied to State resources and should be fully financed by Union Government, in case these are sponsored during mid-year or mid Five Year Plan since State Plan funds are already ties to other programmes.

9.3 The required cooperation is lacking. The State would welcome the constitution of Joint Working Groups and a continuous dialogue between Central and State Working Groups.

9.4 The item relating to fixation of minimum or fair price of agriculture items has been dealt with in reply to Question 4.7.

With regard to Irrigation, the State would like to point out that for inter-State waters it is advantageous to retain the need for approval by Central agencies. It may also be added that inter-State disputes over sharing river waters are older than the Constitution. The founding fathers of the Constitution were aware of this problem and, therefore, in Article 262 authorised the Parliament to legislate for inter-State water disputes. This was done by Parliament by enacting the Inter-State Water Disputes Act, 1956.

Over the years the Central Government has preferred to settle inter-State disputes by negotiations, thereby retaining its ability to arbitrate between the disputant States. Delay occurs on two accounts, firstly over reference to the Tribunal and, thereafter in the award of the Tribunal constituted for a particular dispute.

The alternatives to the present arrangements could be to enact legislation for settlement of the disputes by the Supreme Court in the same manner as the provision for the settlement of other disputes is there in Article 131, or transfer of rights in rivers to Centre. In United States of America, Australia and West Germany settlement of inter-State water disputes through judicial process is acceptable.

The State Government would favour tightening of the existing provisions for expeditious disposal of the inter-State water disputes including central of head works so that participant States do not feel aggrieved.

With regard to Forestry policy and administration it may be pointed out that there is too much of centralisation after the enactment of Forest Conservation Law. The State Government would suggest for declaring the Chief Conservator of Forest of the State as the authority responsible for administering the Forest policy in each State for expediting the matters so that reference to Government of India is not necessary in all cases.

9.5 No problem.

Food Civil Supplies

10.1 By and large the present arrangements are consistent with regard to the States obligations for maintaining regular supplies of foodgrains and other essential commodities under the public distribution system.

Consultations while deciding the allocation of the foodgrains and other commodities are not made with the State Governments. It is necessary and should be made on a quarterly basis so that allocattion on a realistic basis could be made. Another area where scope of improvement for Centre-State liaison appears desirable is particularly in regard to movement of foodgrains and sugar. Thus before deciding upon despatches to other States, consultation by the Central Government with the State Government is considered desirable. The Central Government should also consult the States in the matter of movement of levy sugar from factories located outside the State to obviate delay in receipt of consignments.

10.2 This appears necessary so that practical difficulties in the implementation can be sorted out and where deemed necessary, requisite comments/substitutions/ deletions could be considered. To achieve this end yearly meetings should be held at the level of the Central Government.

Education

General

In universalising primary education in backward States and districts there is need for financial role for the Centre. This compensating finance for the educationally backward districts in any State should form part of the total Central assistance.

The Centre has also the responsibility to bring about a technological revolution in education and to facilitate and finance it, as it has done in agriculture. It is true that there is no distinct, visible and immediate pay off for the human and financial investment in educational technology as in the augmented net income per hectare in agriculture. However, the pay off will be in helping education regain its vocation and in raising the labour force skills of the people.

The rational and effective division of the financial resources of the country meant for education must be a function of the size of their, relative responsibilities allowing special weight for the backward States and districts.

11.1 The States have sufficient initiative and authority available for academic growth and development. Important decisions which are taken at the Central level are arrived at after consultation in All India conferences convened by the Ministry of Education. The Centre's efforts at the standardisation of education had been mostly positive and have not stood in the way of States adoption of progressive policies. The criticism with regard to 'Centralisation' and 'Standardisation' appears to be unjustified except in the case of University Grants Commission.

11.2 University Grants Commission has failed in its role of providing lead to the Universities in academic as well as administrative matters by taking arbitrary decisions which create complications for the States. It has not been able to evolve a policy of—

(i) proper coordination between quantitative growth and qualitative excellence,

(ii) determination of optimum size for Universities of different types like unitary, affiliating, etc. and

(iii) laying down proper indices for assessment of financial needs of universities in different regions.

The role of UGC in extending financial assistance had been too faulty and disbursement of grants does not follow any set pattern.

The State Government feels that States should invariably be consulted by UGC before it takes important decisions. Financial assistance should be fairly distributed to all Universities irrespective of the fact whether it is a Central University or not.

11.3 Present institutional arrangements appear to be adequate provided the conferences are held every year. The role of States in affairs of UGC needs to be strengthened. Similarly, the Association of Indian Universities needs to be strengthened.

11.4 No difficulty has been experienced.

11.5 No difficulty has been experienced.

Inter Governmental Coordination

12.1 A separate commission or council is not considered to be necessary.

Views of Chief Minister of Rajasthan presented before the Commission on 19th March, 1987.

Justice Sarkaria and Friends,

I am grateful to you for inviting us to present our views in person on the Questionnaire of the Commission on Centre-State relations. The written reply to the Questionnaire had been sent by us to the Commission earlier. Here I would like to highlight important points which require special emphasis or consideration by the Commission.

2. Our position regarding basic structure of the Constitution is crystal clear. We want a strong Centre. An effective Centre alone can control hydra-headed, fissiparous tendencies like linguism, regionalism and religious separatism etc. which threaten unity, integrity and the common composite culture of the

Country. The long histrory of the Country establishes this fact beyond doubt. The Country had stood united and thrived only with strong Centre. In view of this our views are that—

(a) Article 256, 257, 354 and 357 and 365 which deal with the administrative and emergency powers of the Centre are reasonable and necessary.

(b) The present system of the Union, State and concurrent lists in non-tax matters should continue though with some change which is as follows. Water and power, which, with the process of development have become very crucial, should be declared national resources and only Parliament should be competent to legislate on them. The actual control of all rivers and power projects should be with the Centre. This would be the most important step to promote national interest. In a manner of speaking, the canals and power lines, like ropes, would bind the various States of India together. For this, entry 56 of the list of the VII Schedule and Article 262 needs suitable amendments. There should be a legislation for judicial settlement of disputes relating to power and water by the Supreme Court. Article 131 of the Constitution already provides for similar settlement of disputes relating to other matter by the Supreme Court.

In countries like America, Australia, settlement of Inter-State disputes by their Supreme Court is accepted.

In case our more fundamental suggestion given earlier is not accepted, the State Government would atleast favour tightening of the existing provisions for expeditious disposal of the Inter-State water disputes including Central control of head-works so that participant States do not feel aggrieved.

3. In case, the Commission is also examining the Anandpur Sahib Resolution, we are of the following views :—

(a) In relation to Resolution No. 1, the Centre should be made stronger in the interest of national integrity;

(b) Regarding the Resolution No. 2(b), we oppose any merger of any part of the State of Rajasthan in the State of Punjab. We are totally opposed to any such policy of expansionism and aggrandisement.

(c) The Resolution No. 2(c) relating to the control of the head-works by Punjab is also totally unacceptable to us. We also emphatically oppose the Resolution as far as Rajasthan's share in water is concerned.

(d) We are similarly totally against the Resolution No. 2(d) which demands revision of the Award given by the late Prime Minister Shrimati Indira Gandhi on the distribution of Ravi-Beas waters, accepted by the Chief Ministers of Punjab, Haryana and Rajasthan without reservation on behalf of their States.

Even at the expense of repetition I would say that we should promote centripetal rather than centrifugal forces.

4. The office of the Governor in its present form deserves to be retained as it constitutes an important link between the Centre and the State.

On the basis of the experience, we are also of the the view that Governors have acted fairly and unbiasedly in exercise of their powers under various provisions of the Constitution including those relating to emergency provisions.

The power of inviting particular party leader for forming Government in a disputed situation, has by and large been exercised justly and fairly by the Governors. However, we would like to make the following two points :—

(i) There is no necessity for the Governor to check and verify the number of legislators in a disputed situation. For this, the appropriate and democratic forum is the State Assembly. However in complicated situations the Governor should continue to have his usual discretion.

(ii) A reasonable time limit should be prescribed for giving assent or reject a Bill under Article 201 of the Constitution. The same principle should apply at the national level.

5. In financial matters, we would like to emphasise one particular aspect from which many of our points would flow. Under the present scheme of the Constitution, most of the developmental programmes, directly affecting the common citizens of the Country, are to be funded and executed by the State Governments. On the other hand, the resources available with the States are disproportionate to such developmental needs. Unity and integrity of the country and the Constitutional set up would be properly maintained only if the basic needs of the common citizens of the country are satisfied. But most of the taxes available to the State Governments are inelastic. Thus, there is a need for revamping the fiscal system provided in the Constitution.

It may be added here that, presently, among the States also because of the different levels of development, the availability of resources vary. The result is that the people living in different States have access to different standards in respect of basic needs. Thus, in actual terms, the basic requirements of the people are met on the basis of the domicile in a particular State rather than common citizenship of the country. Our view is that the aspect of common citizenship needs to be promoted and the concept of domicile derated. This would mean that every citizen of the country must have access to basic needs of life irrespective of domicile. In this context, we would like to make the following suggestions for giving more financial resources and powers to the States :—

(i) Under the existing constitutional arrangements the gap between the fiscal needs of States and the resources has widened. Thus, for financing the developmental expenditure, States have to depend more and more on the Central Government. The periodic assessment of revenue gap, made by a constitutional agency like Finance Commission has not been realistic. The forecast of the Finance Commission does not generally take into account the future

increases in the cost of goods and services. On the presumption that these would be fully covered by the buoyancy in the revenue. With tax rate being almost highest in the country and with the slow pace of development, this has not turned but to be true. Consequently, the devolution of Central assistance has been inadequate and even the essential and compulsive expenditure has to be kept low affecting the quality of development and administration. The Government is strongly of the view that constitutional mechanism for transfer of funds should be so revised as to eliminate or atleast to minimise the existing gap between the resources and fiscal needs of the States to be worked out to ensure a minimum level of development and facilities for all the citizens of the country irrespective of the State to which they belong.

(ii) Following are the three ways of bridging the gap between the fiscal needs of the State and the resources available with them :—

(a) Share of Taxes

(b) Plan Assistance

(c) Non-Plan Assistance.

(iii) The present formula of distribution of shareable resources among the States based on the criterion of collectional population per capita domestic product and poverty proportion deserves to be changed. The collection formula favours the developed States with ports and marketing centres wherein most of the industries are set up. The estimates of the States domestic products also suffer from serious limitation in view to weak data base and appropriate norms for estimation particularly, of tertiary sector. Poverty ratio too has been under serious criticism from various quarters because of the use of calorific intake. The unrealism of this criterion is palpable from the fact that the percentage of persons below poverty line in advanced States like Maharashtra and Gujarat is more than that of a poor State like Rajasthan. As a result of the present formula, the rich States have become richer and the poor poorer. In our view, the appropriate formula of sharing should be :

(a) 50% on the basis of population weighed by area and 50% on the basis of inverse of index of infrastructure (treating All India Index to be 100).

The element of the area has been proposed in view of the fact that vastness of the area increases the unit cost and limits the growth of infrastructure which is a pre-requisite and indicator of development of economy.

(iv) The formula for Plan assistance from the Government of India needs to be restructured particularly because it has lead to greater regional disparities. In our view the basic criterion for determining the assistance should be the need for funds for raising the level in key social and economic sectors in all the States to the levels of the developed States. Funds so assessed should be made available in full by the Central Government after deducting the State's own resources. The balance of the Plan assistance may be distributed on the same basis as has been recommended earlier for tax devolution.

(v) Non-Plan assistance needs to be given in full for meeting deficit, if any, (although with the scheme of transfer suggested now, there is little likelihood of deficit) and the expenditure incurred in mitigating the rigours of natural calamity and the like. This assistance should be in the form of Non-Plan grant.

(vi) The State Government welcomes the idea of setting up a special "Federal Fund" for ensuring development in economically under-developed areas.

(vii) The State Government would urge for the restoration of power for levying Sales-tax in respect of commodities presently liable to additional excise duty, namely, textile, sugar and tobacco. The income from such excise duties is proportionately less than the income to the Central Government from excise duties or income to the State Government from Sales-tax on other commodities. Had Sales-tax continued the State Governments would have earned more on these items.

(viii) Union excise should also be statutorily shared like income tax with the States in full.

(ix) The grants in lieu of the Railway passenger fare should be in proportion to the rise in collection of railway fare.

(x) The power to levy royalty on minerals (which belong to State) should be given to the States to be exercised in accordance with the guidelines to be given by the Government of India. Under the present system, the royalty rates cannot be legally increased before four years. In actual practice, the Government of India does not increase it before six to seven years.

(xi) The Central investments in industries lead to the increased production which in turn mean greater tax revenues to the State Governments. Presently, this investment is unevenly distributed among the States. A State like Rajasthan has hardly 2 per cent of the total Central investment. This needs to be increased in accordance with the formula which takes into account both the area and the population of the State. Our logic is simple. All parts of the country are entitled to share the prosperity of the country in an equitable manner.

(xii) The Government of India has been raising substantial resources by revising the administered prices of items like petroleum products, coal, iron, steel etc. The additional revenue so accruing are wholly appropriated by the Union Government being outside the divisive pool. Instead of increasing the administered prices, the excise duties should be raised so that States are also entitled to get share out of the additional revenues. Similarly, the State do not get share out of additional revenue accruing to the Central Government by

revision of rates of cesses. Instead of increasing the cess, if the basic excise duties are increased, the States would also get benefit from additional revenues accruing to the Central Government.

(xiii) The entire sum mobilised by the State Governments as small savings should be allowed to be used as a Plan resource instead of 2/3rd share as at present.

(xiv) The maximum community savings are earnered by the nationalised banks. It is gathered that the present deposits of the banks are over one lakh crores of rupees. Apart from some market borrowings or funds spent in priority sector, underdeveloped States like Rajasthan have limited share in such a substantial community saving. A suitable mechanism should be worked out so that this saving is equitably shared by the States with the Government of India and among themselves.

(xv) Another area in which attention of the Commission is solicited is the existing arrangement in regard to financing of relief expenditure by the States affected by natural calamities. Under the existing arrangement, in case of drought if the expenditure on relief operation is in excess of the margin money the State Government is required to make a contribution from its Plan to the extent of 5% of the Annual Plan Outlay. This Plan contribution of the Government is covered by Advance Plan Assistance and is adjusted against the ceiling of Central Assistance within 5 years following the end of the drought. If expenditure requirement as assessed by the Central Team and the High Level Committee cannot be adequately met in a particular case if the State Plan contribution is taken into account, the extra expenditure is taken as an indication of the special severity of the calamity which warrants assistance from the Central Government to the State to the full extent of the extra-expenditure half as grant and half as loan.

It is not appropriate to relate the expenditure on relief measures with Plan since by the very nature these decentralised employment oriented works are not capable of providing any financial return. Their inclusion under plan distorts the plan priorities and entails a burden on plan to make further investment on these works for their completion.

It will be seen from the above that the financial assistance by the Centre to the States in respect of expenditure on drought relief is largely as loan. This casts a very heavy burden on the States such as Rajasthan where drought is a recurrent feature. The current famine is the third consecutive and eigth famine in the last nine years. From 1st April, 1980 to September, 1986, the State Government has had to avail of Advance Plan Assistance of the order of Rs. 370 crores creating a liability of Rs. 245 crores on the State Government. In addition to this, the State has to provide relief by suspension of recovery of loan and other dues in the drought affected areas. In case of drought; occurring continuously, the calamity should be treated as calamity of rare severity and the entire assistance for relief expenditure should be provided as grant. Besides, such calamities should be a national concern and should be met by national effort rather than by a financial weak State.

6. Regarding economic and social planning, I have to make the following observations:

(i) Rajasthan is in favour of Planning Commission's continuance as a department of Government of India as at present for performing its role towards country's economic and social planning. It is, however, suggested that the five year Plan and Annual Plans should first be discussed at official level with planning Secretaries of States and thereafter a Sub-Committee of the National Development Council may be formed for detailed deliberations on the notes of discussions of official level meetings and finally the National Development Council may consider the draft. It is further suggested that needs of various States in the light of guidelines or norms prescribed by the National Development Council be identified to ensure that the less developed States are provided with adequate funds to come-up to the level of their developed counter-parts. The Central role in planning should be to the extent of laying down basic policy framework and the modalities of achieving the fixed targets should be left with the States. It appears to be imperative to evolve a system to ensure full and close cooperation of the States at each important stage.

(ii) As already stated there is a need for re-structuring the system of channelising Central assistance by way of loans and grants through the Planning Commission to the States. The present system of providing block Central assistance in the loan grant ratio of 70:30 is grossly unfavourable, particularly for backward States like Rajasthan, whose mounting debt burden calls for a fresh look into the problem. It is undisputed that the Union Government also derives a share in the benefit of development efforts made by the States through increase in its financial resources and logically the Central Government should bear some responsibilities. Further, it is not justified to treat the entire investment to yield sufficient returns to repay the loan liability incurred for making the investment in view of the long gestation period and therefore the State feels that the loangrant ratio for block plan assistance be reversed to 30:70.

(iii) For the externally aided projects, the State would plead that the funds received from the external agencies against the specific project should be passed on to the States on the same terms and conditions as are available to the Government of India from these agencies. Atleast the entire amount of assistance received should be passed on to the States. As per the existing pattern only 70% of loan amount received from external agency is passed on to the State Government as Plan assistance in which 70% is loan and 30% is grant.

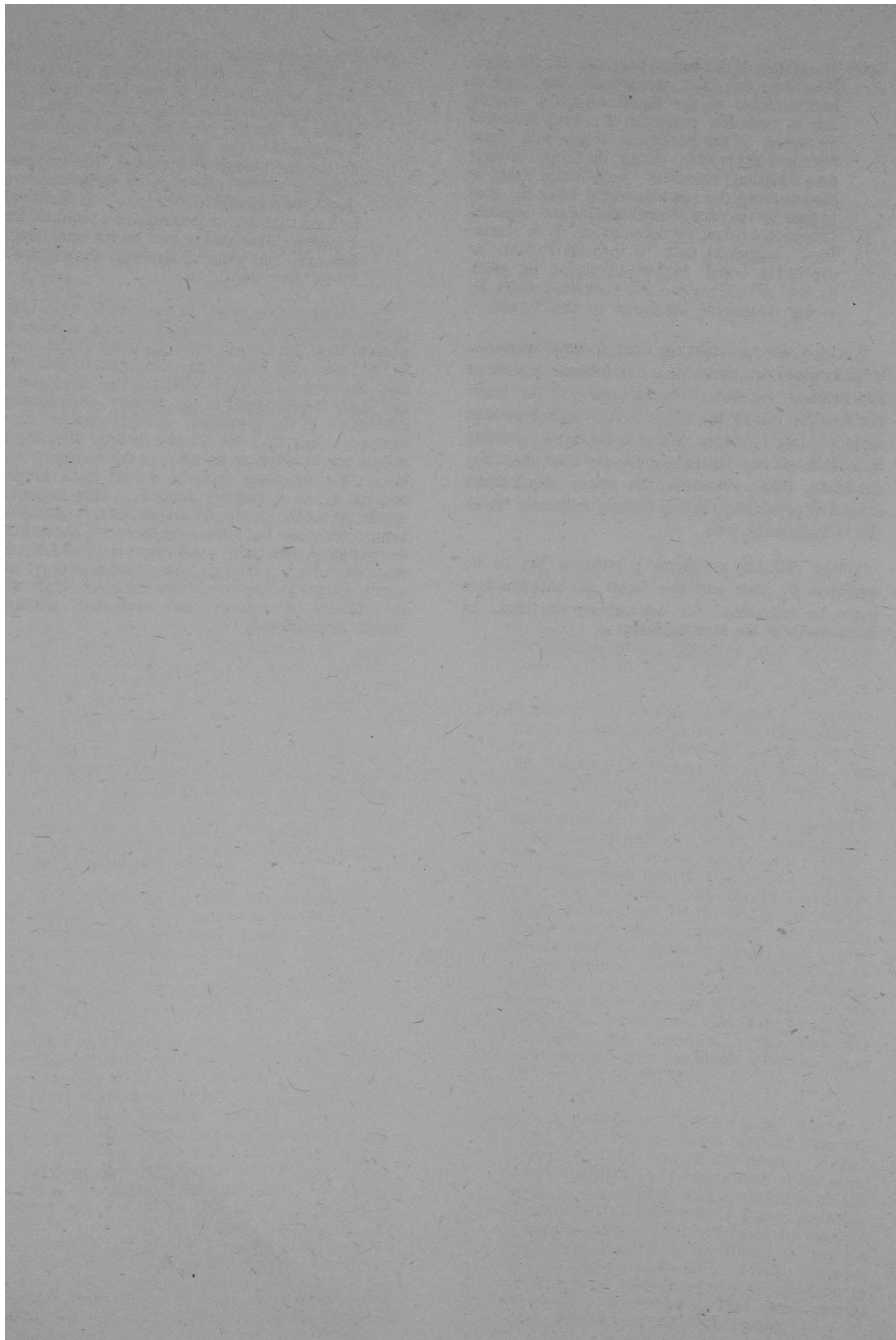
(iv) The system of determining the size of the State Plan does not take into account the relative backwardness of the States which is mainly due to their low potential of raising financial resources. If the backward States with poor resources are to plan within the scope of their own financial resources such States being in dis-advantageous position would never be able to gear-up the pace of development and regional imbalances would get accentuated. It is therefore, suggested that a formula should be evolved in which higher allocation be given to the sparsely populated backward states by giving reasonable weightage to their areas.

It is also necessary that the total Central assistance is broken into two parts *viz.*, non-formula assistance and formula assistance. An assessment of the funds required for raising the levels in key socio-economic sectors of less developed States to the levels obtaining in more developed States be made and after deducting the States own resources, the entire requirement should be provided in full as Central assistance under the non-formula part.

Under formula assistance p pulation has to be weighted by area and the factor of infrastructure index be introduced for determining the share in devolutions to the vairous States.

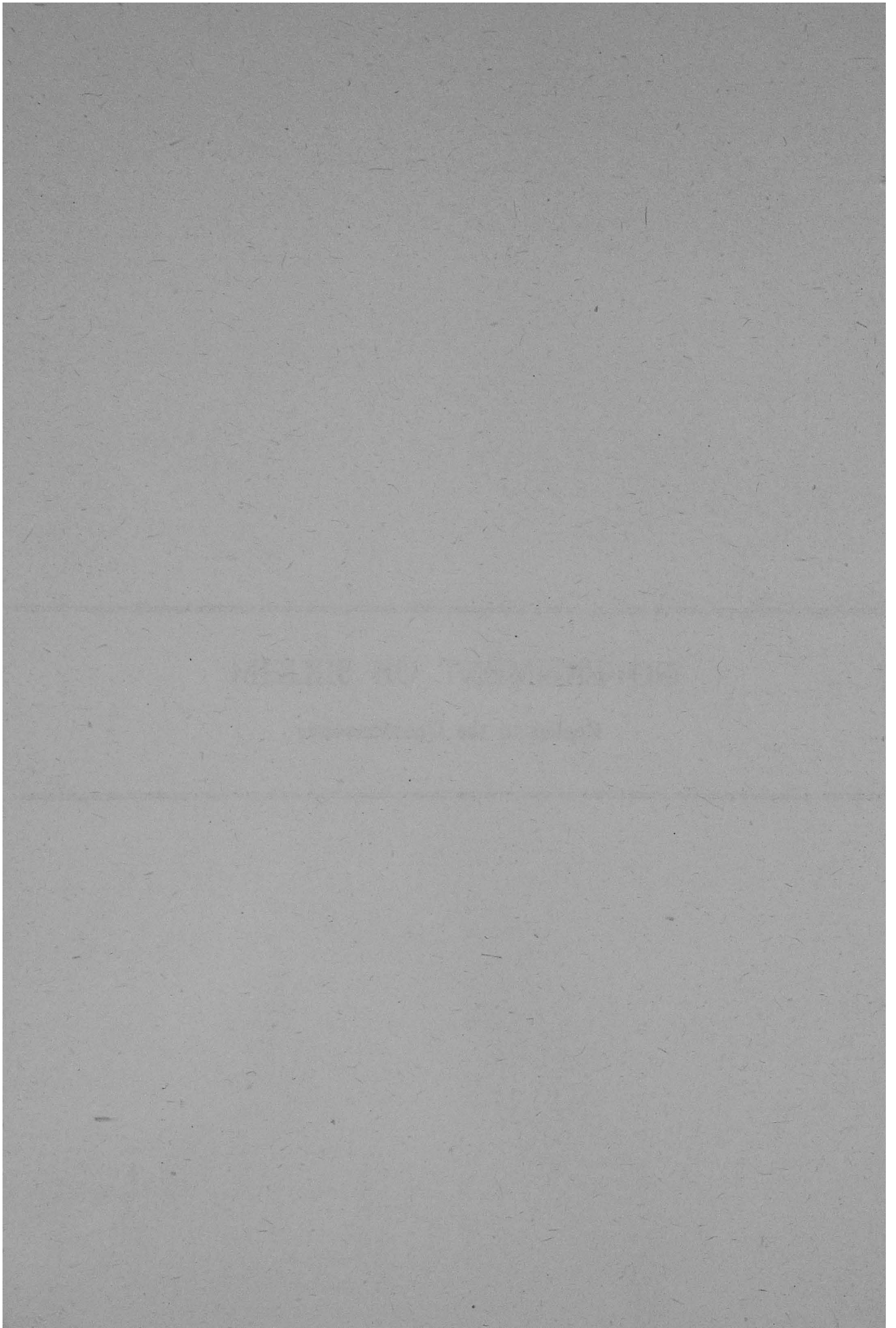
(v) For the Centrally sponsored schemes, it may be pointed out that the pattern of assistance along with quantum of assistance likely to be made available may be decided before finalisation of the five year plans and it should not be changed to the disadvantage of the States during the course of the plan. The important schemes having relevance to backward areas should be centrally funded in full. It should also be seen that the matching share required from a poorer State having per capita state income less than the national average, should not be more than 25%.

To sum up we are firmly of the view that the Union should continue to be strong as nothing is more important than the integrity and the unity of the country. In the States, the office of the Governor should continue. However, keeping in view the need for equitable and faster development of the country, the scheme of devolution of the financial resources should be revamped. Only than the scheme directly affecting the people would be taken up all over the country. Similarly, the recurring drought should be a national concern to be nationally funded. This suggestion would up-set the *status-quo* and as such might attract some resistance. But what is important is the national development and unity. All citizens of the country must have their minimum needs met and must have equal access to the minimum facilities. Only then the concept of common and contented citizenship would be achieved.



GOVERNMENT OF SIKKIM

Replies to the Questionnaire]



REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 The Constitution of India is neither purely Federal nor Unitary. It is a combination of both, with greater weightage given for a strong Centre. The object of the framers of the Constitution has been to build a strong central authority which may resist external aggression and also to check internal disruptive forces that may tend to undermine the nascent state.

1.2 There cannot be two opinions about the need to develope more powers and responsibilities to the States. However, care has to be taken that these do not conflict with the responsibility to maintain national unity and integrity. It is in this context that the views of the Rajmannar Committee have to be examined. The question of deletion, revision or substantial modification of provision mentioned in the aforesaid Articles need to be studied thoroughly and in greater detail before coming to hasty conclusion.

Regarding appeals to the Supreme Court, it is the highest Court in the country and it has so far been functioning with credit and dignity. Hence its powers should not be disturbed.

1.3 It is true that India is a large and heterogenous country. This size of the country and the inherent diversities demand devolution of more powers and responsibilities to States, so as to enable them to develop in all spheres of activities within the parameters of National Unity. It may be mentioned that the Administrative Reforms Commission has also recommended that powers should be delegated to the maximum extent to the States for carrying out projects in which the Centre is directly interested or which are carried out by states as agents of the Centre.

1.4 In theory, a Federal Constitution envisages that the Central and Regional governments are independent in their spheres of activities. But reality of the situation has shown that this compartmentalisation is not there. One can cite the federal constitution of the United States of America, Australia and Canada.

1.5 There is no doubt that the Constitution is basically flexible enough to meet the challenge of the changing times. One should bear in mind that no constitution is perfect and indeed can never be perfect. Hence there are amendments to meet new challenges and new situations. What is important is evolution of healthy conventions and procedures. There is therefore, the need for functional cooperation leading to harmonious Centre-State relationship in accordance with the spirit and intent of the Constitution.

1.6 There can be no two opinious on the overriding importance of protecting the independence and ensuring the Unity and Integrity of the country. This was uppermost in the minds of the founding fathers of the Constitution. Hence there are number of Articles in the Constitution which have made a strong Centre to discharge this responsibility.

1.7 Obligations of the Union and the States need to be carefully reviewed in the light of experience gained in the working of the Articles mentioned in your question. It must however be said that much of the tension in the Centre-State relationship can be avoided if there is trust and confidence between them.

1.8 The Constitution empowers the President to establish an inter-State Council if at any time it appears to him that the public interests would be served thereby. One of the functions of the council would be to investigate and discuss subjects of common interest between the Union and the States or between two or more states. It would be desirable that such a matter as mentioned in your question should be left for the examination of all aspects to the inter-state council.

PART II

LEGISLATIVE RELATIONS

2.1 The subjects is the State List such as forest, education, agriculture have been included in the Concurrent List. In our view Entry in the Concurrent List should be confined to :

(a) National security;

(b) National integrity; and

(c) freedom of trade.

Barring the Entry touching upon these entries the Concurrent List must be reviewed to give more liberal power of legislation to the State.

2.2 It is in the interest of ensuring better relations between the Union and the States that the Central Government consults the State Governments before hand while undertaking legislation of a subject in the Concurrent List. There should be such a provision in the Constitution.

2.3 The Union Government's power to legislate on any subjects within the exclusive competence of the states in 'national interest' or 'public interest' should not be a perpetual nature. A time limit has to be fixed.

2.4 In the legislative sphere the following reference may be considered :—

(a) review of the Concurrent List;

(b) review of articles empowering legislation by the Parliament on the State Subjects;

(c) reviewing the applicability of the proviso to article 254;

(d) the transfer of the Subjects relating to incorporation of association, agriculture, education etc. to the State List.

PART III

ROLE OF THE GOVERNOR

3.1 The role of the Governor in the context of Centre-State relations needs to be reviewed thoroughly. It is true that some governors have acted with utmost impartiality but there were also some Governors whose actions have not been quite in keeping with the spirit of the Constitution. Hence there have been instances of the abuse of powers by governors. Sikkim had a bitter experience of it in May, 1984, Such instances are not conducive to the existence of better Centre-State relations. Hence the case for review.

3.2 The Governor will be a link between the State and the Centre so far the administrative undertaking is concerned. The Governor can not overdo the Council of Ministers.

3.3 These (a), (b) and (c) deal with matters of vital importance to the State. While making report to the President under Article 356(I) the Governor has to be very objective and has to act independently. The Governor should appoint only that person as a Chief Minister who commands majority on the floor of the Assembly in the Legislative Assembly. There should be no two opinions about it. In a situation where no party commands majority of seats, the Governor should ask the leader of that party which has the largest number of members to form the Government. The State Assembly must be convened within a fortnight of the appointment of the Chief Minister.

The words, pleasures of the Governor should mean the ministry remaining in office with full confidence of the legislative assembly. The pleasure of the Governor should not be allowed to be misused so as to enable the Governor to act according to his likes and dislikes.

Regarding Article 174(2) the Governor should be guided by the advice of the Chief Minister.

3.4 These Articles give discretionary powers to the Governor unfortunately some of the Governors have not used these powers independently and objectively. There must be a time limit for the Governnor and the President to make up their minds under Article 200 and Article 201 respectively. Ordinarily bills passed by the Legislative Assembly must be given assent to by the Governor.

We wish to add that article 201 has to be reviewed with specific provision as to what are the circumstances under which a bill is to be reserved for the assent of the President.

3.5 The case study conducted under the auspices of the Indian Law Institute is really revealing and disturbing. This process needs to be checked. A time limit should be there within which the process of consideration of and assent to should be completed.

3.6 As mentioned earlier some of the Governors have not acted impartially and fairly in accordance with the spirit of the Constitution. For them the question of establishing healthy conventions does not arise. Indeed they have gone against the very principles of constitutional democracy. Sikkim is one of the glowing examples of such acts of omission and commission on the part of the Governor in May, 1984. The Governor referred to is Shri Homi J. Talyarkhan.

3.7 The President should straightway remove the Governor as the Governor is appointed by him.

3.8 We agree.

3.9 The procedure postulated in the Constitution of the Federal Republic of Germany is not suitable for us. In a democracy what is important is the quality of a person who holds the high office of the Governor.

3.10 Going by the actions of some of the Governors in dealing with such important matters coming within his perview one is inclined to accept the recommendations of the Administrative Reforms Commission.

PART IV

ADMINISTRATIVE RELATIONS

4.1 The State Government sees no objection for keeping Articles 256 and 257, when powers under 365 are invoked by the Centre. The State concerned must be given an opportunity and powers must be passed on facts and not an imagination.

4.2 State Government is not opposed to retaining Article 365.

4.3 State Government agrees with Administrative Reforms Commission.

4.4 While exercising powers under Article 365 Centre shall not be guided away by the report of government along or its own assessment of the situation. Extreme care should be taken. The manner in which President's Rule was introduced in Sikkim itself is an experience.

4.5 President's rule must be limited to as shorter period as possible.

Clauses 4 and 5 of Article 356 have to be suitably amended so that in no circumstances President's rule in State can be extended for more than one year.

4.6 The present arrangements may continue as they have been working satisfactorily.

4.7 The need for review of the working of these agencies has been felt as there have been inroads in the domain of the state thereby impeding the pace of development. It has been keenly felt that some of their functionings should be vested in the state governments.

4.8 By and large the All India Services have fulfilled the expectations of the Constitution makers. However, it has to be ensured that officers of these services, while serving in the state, must be under the supervision of the concerned State government.

4.9 As a general policy concurrence of the State Government must be there before the use of Central force in the State. Only in cases of extreme situation, the Union Government can take *suo motu* decision.

4.10 One would agree with the view that' Broadcasting should continue to remain in the Union list but as was suggested the broadcasting and television facilities should be shared between the Union and the States on a fair basis, giving equal importance to the social, economic and cultural ethos of the people of each state. The present situation of heavily loaded newscast in favour of some states must go and equal importance needs to be given to news from other regions of the country as well.

4.11 Eastern Zonal Council has not served any purpose.

4.12 As things stand to-day, an Inter-State Council should be established as such a body will be desirable to iron out inter-state and Union-State differences.

About its functions and composition, it can be worked out later after discussions between the Union and the States.

PART V

FINANCIAL RELATIONS

5.1 By and large the scheme of devolution envisaged by the Constitution-makers has worked well However, the need for small and backward state like Sikkim and other North-eastern states has to be considered in proper perspective. While some big states are becoming richer because of their resource mobilisation potential, the backward States sorely lack that potential. Unless the Centre comes to the aid of these States in a big way it will be impossible for them to make progress. Hence this aspect of the situation has to be borne in mind in the process of devolution.

It will be in the fitness of things that Finance Commission must give greater weightage to backward States in the distribution of Financial resources.

5.2 The observation of ARC Study Team on Centre-State Relation would continue to hold good as dependence of States on the Union continues to increase. It is necessary to bring Corporation Tax, Custom Duty and Surcharge on Income Tax into the shareable pool but at the same time backward states should not be discriminated while sharing. The need for fiscal discipline both by the Centre and the States cannot be over-emphasised.

Certain elastic taxation heads should be brought under State so that the State resources increase.

5.3 We fully agree with the above observations and also with the view that regional balance can be reduced by a strong Centre having elastic sources of revenue. It must have discretionary powers to use the funds available with it for the development of poorer States. Only then the Centre can fulfill its obligations and responsibilities as mentioned in the Directive Principles of State policy. Otherwise, the rich States will become richer and the poor States poorer.

5.4 There is no doubt that richer states have to contribute to the Central pool through subvention. There is also no doubt that there is absolute need to have better control over expenditure.

Deficit financing has to be resorted to when it is a must in the interest of developing economy.

5.5 Whereas the Finance Commission assesses the resources and requirement of funds on the non-plan side, the Planning Commission assesses the developmental needs of the States. Both these bodies have to be more objective while assessing the needs of backward and poor States. The growing expectations of the people of backward states have to be given due consideration so that with adequate assistance from both these bodies, these States can accelerate their pace of development to catch up with the rest of the States. It is clear that the pattern of devolution of financial resources has not been equitable.

The criteria laid down should be planned assistance and not merely sharing of taxes.

5.6 State Government is not basically opposed to constitution of special federal fund from which the weaker states can be given aid.

5.7 Certain elastic taxable items need to be changed so that State Governments have good resource mobilisation.

5.8 Federal Taxes and State Taxes should be separate. State governments should be given liberty to have its own taxes. State Government is in favour of having more taxation power.

5.9 As things stand today, the roles of Planning Commission and Finance Commission are complementary. No doubt the suggestion for a Permanent Finance Commission to undertake the duel role of fiscal transfers deserves consideration It is known that some states are not happy with the views of various Finance Commissions. Also some States have opined that the Planning Commission has not been fair to them. Under the circumstances, the constitution of one Body has some merit. In the ultimate analysis it will be beneficial if these two bodies and the States make their assessments objectively and fairly.

5.10 The State Government totally agrees with the view. Transfers, both statutory and discretionary, have narrowed down the disparities in public expenditure.

5.11 We are in agreement with the view expressed in the question. Financial discipline is a must. All progressive schemes have to be implemented within the available financial resources. At the same time,

it is to be ensured that the pattern of allocation between the Centre and the State has to be in such a way as to give greater assistance to backward states so as to help them to accelerate their pace of development. Care also should be taken that these States do not indulge in financial indiscipline.

5.12 The State Government is in agreement with the 7th Finance Commission.

5.13 The State Government agrees with the views.

5.14 There is reasonableness in the suggestions that yield from the Special Bearer Bonds Scheme and the revenue from raising administered prices of items should be brought within the divisible pool of resources. If these were done, the financial resources of the States would have been further augmented to enable them to give more thrust to implement some pressing progressive schemes. Some States are of of the view that all revenues raised by the Centre should be shared with the States. Although we would not fully subscribe to this view, we would like to say that interest of States should be uppermost in the minds of the Centre in the sphere of resource sharing.

5.15 There should be equitable and the rational criteria in the distribution of savings available in the community. The savings belong to the country as a whole and as such the share of States in the sharing should not be guided only by area, population and resource mobilisation potential. Otherwise, small states like Sikkim will be in a terrific disadvantage.

5.16 We are aware of the responsibilities of the State and we are equally aware that the responsibilities are increasing. The centre should also realise that in a democratic socialist Country, the responsibilities of the State are always on the increase as they have to undertake various welfare measures for the well being of the society. Hence this aspect also needs to be considered. Also in times of certain conditions like inflation or any natural calamities it will be difficult for the states to do the job within the financial resources. Consequently deficits do arise but that should not be advanced as an argument for indulging in financial indiscipline resulting to large extent in fiscal imbalance.

5.17 We are in full agreement that a periodical review of the problem of growing indebtedness of the States is absolutely necessary. Perhaps it would be worthwhile to constitute an independent body to look into this matter in depth.

5.18 Sikkim being a small State and its borrowing capacity being negligible we can only suggest that the State should not exceed the limit of sound finance.

5.19 We are of the opinion that on foreign borrowings the Centre should not charge from the state a higher rate of interest than what it pays to the foreign lender. We are also of the opinion that projectied external aid should be passed on to the States. Indeed it would be worthwhile to make a review of the entire present arrangement.

5.20 In view of the different approaches of various States in this matter it would be desirable to have loans council, keeping in view the country's condition. There will be no justification to copy loan council as it exists in Australia. The Reserve Bank of India should be given more freedom in its functioning to fully meet its obligations and responsibilities.

5.21 Since there is no system of over-draft prevailing any more, the State Government has no comments to offer.

5.22 The State of Sikkim has limited areas of resources of revenue hence even if all the areas are exploited it is not possible to find adequate finances.

5.23 There is tremendous scope for improvement in the performance of public sector undertakings as the public sector has so far not yielded the expected returns on capital-investment.

About substantial leakage in Central taxation, the Central authorities should take adequate precautions to close those leakages.

5.24 It will definitely be a healthy convention if the suggestion is given effect to.

5.25 We agree with the suggestion that article 269 should be better exploited to augment the resources of the States.

5.26 No comments.

5.27 No comments.

5.28 It is a fact that this is one of the areas in which States have been experiencing great difficulties. In our State of Sikkim every year there are natural calamities in the form of landslides and hailstorms. Such calamities should be treated as national problem and the Centre must come forward with adequate funds to deal with such situations. The formula suggested by the Seventh Finance Commission seems to be inadequate. It is also necessary that Central officials must visit the areas to ensure that relief assistance is utilised properly and effectively.

5.29 We have no objection to the setting up of National Loan Corporation, National Credit Council and National Economic Council.

5.30 We fully agree that the funds are spent prudently and that the benefits go back largely to the people. At the same time collection of funds and their distribution are also important matters that need consideration.

5.31 (a) We agree that periodical assessment of expenditure of the Union is necessary. Such an exercise will satisfy everyone. We are also in full agreement with the view that additional resources should be found for helping the States, particularly the poorer ones.

(b) What is needed is strict financial discipline. Those States which indulge in Financial indiscipline despite repeated requests should not be bailed out by the Centre.

(c) We are not in favour of a permanent National Expenditure Commission. We believe that both the Centre and the States have the capacity to discharge their respective responsibilities to the satisfaction of the people.

5.32 The present system should continue.

5.33 "Evaluation Audit" at this stage cannot be accepted unless the system is scientifically based. 'Voucher Audit' system is in vogue now and is already under implementation. 'Evaluation Audit' system can be introduced when :—

(1) it is developed as a science of audit.

(2) the method is developed on the basis of accepted scientific norms.

5.34 We believe the Parliament has conferred sufficient powers and enjoined adequate duties on the Comptroller and Auditor General to enable him to keep an effective watch on the expenditure of the Union and the States.

5.35 We are satisfied that the reports of the Comptroller and Auditor General are comprehensive and reasonably accurate. At the same time we feel that if need be some powers may be given to him to enlighten the public on the pattern of and trends in public expenditure.

5.36 We have already expressed our views in reply to Question 5.35.

5.37 The existing arrangements may continue.

5.38 We are of the view that an expenditure Commission is not needed.

5.39 We fully agree with the view that there should be monitoring of accounts of utilisation after the expenditure is made. At the same time in some cases there has been considerable delay in the clearance of the plans of action formulated by the States from the Ministry concerned. Such undue delay which comes as an irritant must be avoided.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 We agree that in the process of planning, the consultation of the State Governments is not adequate and the special needs of smaller States is not really taken full care of. While this is partially dependent on the fact that some of the State Governments have not as yet evolved a full fledged planning and development machinery, a great deal can be achieved by more comprehensive consultation with the State Governments. It is also felt that standards evolved by the Central Government which are applied universally for all States, have to be suitably moderated so that the special requirements of smaller States is fully taken care of.

6.2 We do not see any special advantage in converting the National Development Council as a Statutory Body. The National Development Council as it exists today represents at the highest political level of the Central Government and the State Government and has been given the authority to finally approve development plans for the nation. This arrangement can be allowed to continue provided much more time is devoted to detail consultation with individual State Governments and full consideration by NDC itself of the development plans.

6.3 We are of the view that the composition of the Planning Commission should be that of an independent body and Economists, technologist and management experts as well as administrators who on the basis of a full understanding of the country's economic needs submit recommendations both short-term and long-term in order to see that the country's economic growth takes place at a rapid basis. Such a body may no doubt consult all concerned including the State Governments so that the plans formulated are as realistic as possible.

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6.5 In our view, the Planning Commission should be an autonomous body and should be created as a statutory institution so that the functions it performs have proper legal sanction. At the moment even though the Planning Commission functions in a manner which impinges on both the Union Government and the State Government, there is no proper statutory sanction for such functions.

6.6 We agree that the National priorities must find a place in the State Plans. However, we find that in deciding on national priorities the particular requirements of the State Governments especially those which are small in size are not fully kept in mind. For example, irrigation is considered an important national priority but to apply national standards on a State like Sikkim such a subject becomes an exercise which can result in mis-application of funds. We would advocate that while applying national priorities close consultation should be held with the State Governments.

6.7 While we consider that the present system of advancing central assistance through the Planning Commission to the State is generally satisfactory, we find that in case where a particular State execute schemes which are of benefit to a number of States, the particular State is made to bear a disproportionate burden in terms of interest when loans are sanctioned. For such schemes we advocate that the assistance should be primarily in the form of grants.

6.8 By and large the system of determining the size of the State Plan has been satisfactory except that when due to financial constraints the size of the Plan is sought to be reduced even though an economic consideration the programme defined by the State Government is fully justifiable and sound. We would, therefore, suggest that in the case of more economically backward States much more consideration should be given to accommodating their requirements in full so that the basic plan objective of bringing up the backward States to a level achieved by the advanced States is fully catered to.

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6.10 It is true that large number of Centrally sponsored schemes have to a certain extent distorted plan priorities of States, the situation cannot altogether be changed, we would recommend that before deciding on a subject which will be centrally sponsored close consultation should be held with the State Governments and the possibility of accommodating this item as a priority item within the State sector explored.

6.11 While the monitoring and evaluation machinery in the Planning Commission has been greatly strengthened the machinery at state level needs to be improved to a very great extent.

6.12 While decentralised planning is of great importance, the trend unfortunately has so far been towards more and more centralised planning. This is not only because of the fact that Union Government has an over-whelming share of the resources, but also because of the fact at the State levels, the Planning machinery has not been established in a manner which will enable the State Government to produce plans which are technically of a high quality and which can stand scrutiny. The required expertise consisting of economists and technocrats will have to be built up at the State levels. It is only a few States that have succeeded so far in this regard. Central assistance in helping States to build up such a planning mechanism will go a long way in enabling the states producing plans which can find full acceptability. The States also will have to acquire gradually the capability of finding their plans to a larger extent than at the moment.

6.13 The question whether the national plans should become progressively more indicative plans depends not only on the extent which the State Govt. can effectively participate in the Planning process but also in the areas in which we believe, government intervention is essential. After implementing seven plans the country has reached a state of industrial and agricultural maturity where we need to release a larger area for private initiative so that as has happened in several other countries we can hope to increase the rate of growth of the economy as a whole. This will also help in bringing down the bourgeoning government expenditure which is already proving to be a burden on the country. This especially seems to be of great importance in the context of the fact that at the moment the Central government finds it difficult to meet even its current liabilities out of current revenue and the establishment expenditure has reached a disproportionate share of the national budget.

PART VII

MISCELLANEOUS

Industries

7.1 We are in agreement that the extension of the first schedule to cover a very high proportion of industries in terms of value of their output has gone against the interests of the States. One can imagine the situation in which States are placed if they have to run to the centre for a licence to start a soap factory. One can understand that in respect of core industries related to defence purposes or where massive investment is needed, the Centre's jurisdiction to issue licences is quite understandable. Unfortunately a large number of consumer items as mentioned in the above question are union subjects. Such Industries should be transferred to the States' jurisdiction. Consumer Industries should be left outside the purview of Industries Development and Regulation Act, 1951.

Despite Sikkim Government's repeated requests, Centre failed to issue/renew licences due to mistakes in grant of licences.

7.2 Within the parametres of national public interest, defence industries and core industries and also such other industries, where investments are beyond the financial capability of the State Government should be included. The Union Government at the same time should have confidence in the States. It is therefore felt that a large number of items in the First Schedule to the Industries (Development and Regulation) Act 1951 can be shifted to the States jurisdiction.

1. **Metallurgical Industries :**
   - (i) Iron and Steel Structurals
   - (ii) Iron and steel pipes
   - (iii) Other products of iron and steel
   - (iv) Iron and steel castings and forgings.
2. **Electrical Equipment :**
   - (i) Electrical motors
   - (ii) Electrical lamps
   - (iii) Electrical fans
   - (iv) X-ray equipment
   - (v) Electronic equipment
   - (vi) Household appliances such as electric irons, heaters and like
   - (vii) Storage batteries
   - (viii) Dry cells.
3. **Telecommunications :**
   - (i) Radio receivers, including amplifying and public address equipment
   - (ii) Television sets.
4. **Transportation :**
   - (i) Motor cycles, scooters and the like
   - (ii) Bicycles
   - (iii) Others such as fork lift trucks and the like.

5. **Agricultural machinery :**
   (i) Agricultural implements.
6. **Miscellaneous Mechanical and Engineering Industries :**
   (i) Plastic moulded goods
   (ii) Hand tools, small tools and the like
   (iii) Razor blades
   (iv) Pressure Cookers
   (v) Cutlery
   (vi) Steel furniture.
7. **Commercial, Office and Household Equipment :**
   (i) Typewriters
   (ii) Calculating machines
   (iii) Vacuum cleaners
   (iv) Sewing and knitting machines
   (v) Hurricane lanterns
8. **Medical and Surgical Appliances :**
   (i) Surgical instrumets—sterilisers, incubator and the like
9. **Mathematical, Surveying and Drawing Instruments :**
   (i) Mathematical, surveying and drawing instruments.
10. **Fertilisers :**
   (i) Mixed fertilisers.
11. **Chemicals (other than fertilisers) :**
   (i) Paints, varnishes and enamels.
12. **Paper and pulp including paper products :**
   (i) Paper for packaging (corrugated paper, craft paper, paper bags, paper containers and the like)
   (ii) Pulp-wood pulp mechanical, chemical including dissolving pulp.
13. **Soaps, Cosmetics and Toilet Preparations :**
   (i) Soaps
   (ii) Cosmetics
   (iii) Perfumery
   (iv) Toilet preparations.
14. **Rubber goods :**
   (i) Tyres and tubes
   (ii) Surgical and medical products, including prophylactics
   (iii) Footwear.
15. **Leather, Leather Goods and Pickars :**
   (i) Leather, Leather Goods and Pickars.
16. **Glass :**
   (i) Hollow ware
   (ii) Sheet and plate glass
   (iii) Optical glass
   (iv) Laboratory ware
   (v) Glass wool
   (vi) Miscellaneous ware.
17. **Timber Products :**
   (i) Plywood
   (ii) Hardboard, including firbre-board, chip board and the like
   (iii) Matches
   (iv) Miscellaneous (furniture components, bobbins, shuttles and the like).
18. **Food Processing Industries :**
   (i) Canned fruits and fruit products
   (ii) Milk goods
   (iii) Malted foods
   (iv) Flour
   (v) Other processed foods.

7.3 State Government shall be interested with the function of licensing subject to overall supervision of Central Government.

7.4 There is need to have appropriate planning before hand for the allocation of raw materials. This aspect needs to be streamlined. As things stand today there is ample scope for improvement by bringing out more coordination between various institutions and greater financial support. There is also the need for decentralising the structure of planning to serve the desired objectives.

7.5 Sikkim is the smallest State in the country and its resource generating capacity is insignificant. State plans are financed from the Centre, Therefore. the implementation of the State plans has to be within the Centre's, allocation. As there are no public sector industries in the State worth mentioning, the question of securing loans from Industrial Development Bank or Industrial Finance Corporation for other Centrally controlled financial Institutions has not arisen.

7.6 Hardly there are any Public Sector Industries in Sikkim. Therefore, the question mentioned above has only academic interest so far as this State is concerned. The location of public sector industries is of crucial interest to the States. However, since there are none in this State at the moment, no comments can be offered on this issue.

7.7 So far as Heavy Industries are concerned, Sikkim is out of the picture. As a matter of fact Sikkim wishes very much to have Industries, heavy or medium in public or private sector in the State to exploit its potential. So long such industries are not there. the question is irrelevent.

No heavy industries have been set up in this State so far. As a matter of fact Sikkim wishes very much to have such industries established in the State but till now no Central schemes have been forthcoming.

7.8 It is true that Sikkim has been identified as industrially backward State. But unfortunately the Centre has not come forward to set up industries in

the State to remove its backwardness. The State has very limited resources to go in for setting up of industries on its own. This can alone be done with the Centre's assistance which unfortunately is not forthcoming. The result is there are hardly any industrial units worth mentioning. What is more important is development of infrastructure to attract entrepreneurs from outside. Unless there is investment, either from the public or private it will be very difficult for Sikkim to go in for industrialisation alone.

In land locked hill State like Sikkim the criteria laid down for declaring districts/areas backward shall not be only to declare it backward and leave it. A liberal investment of Central finances in Public Undertaking and extension of soft loans must be considered.

Trade and Commerce

8.1 Yes, State Government is in agreement with setting up of a Inter State Council and implement the clauses (a), (b) and (c).

Agriculture

9.1 The present status of agriculture as far as its placement in the list is concerned it is desirable to maintain *status quo*. The Centre should have equal say in the formulation of Plans and programmes for the development of agriculture in the country. The agriculture development should take place as per the priority fixed jointly by the state and the centre. However, in the recent past the Centre has been playing dominating role in deciding agriculture schemes to be implemented by the State Government. This is not desirable as it is not possible for such a big country to prepare developmental schemes in agriculture in the centralised pattern. The suitability of crops in different regions of the country vary greatly and this holds true even within narrow range making it necessary to formulate schemes on a regional basis. The Centre's role should be confined to formulating strategies, priorities and guidelines. The State Government must be empowered to execute independently within the policies and guidelines of the Centre.

9.2 We have large number of centres and centrally sponsored schemes in operation in the state. Such schemes have been in the increase year after year. The schemes controlled 100% by the Centre are not to be handed ever to the State Government as such schemes have been given to the State based on needs and requirements. The Centre would be in a much better position to operate such schemes directly. In case of other centrally sponsored schemes, it would be more desirable to transfer the same to the State Government. The centraly sponsored schemes, most of the time do not meet the needs of the State. Such schemes have less flexibility resulting into improper implementation by the State Government. Considering the size of the country variation in agro-climatic conditions, tremendous differences in topography etc., we could never have uniform central sponsored schemes for the whole country. Only those centrally sponsored schemes could be retained by the Centre that could be implemented uniformly throughout the country. However, there should be proper assessment of the programme on a regular manner by the centre.

The State Government has been constantly facing administrative constraints in the implementation of Centrally sponsored schemes particularly with the timely release of funds. maintenance of accounts, volume of work involved in preparing reports for submissions to the concerned Directorate. State sectors should be as minimum as possible in reference to centre sponsored schemes.

9.3 (1) In the formulation of Centrally sponsored schemes the State should be associated, while preparing the schemes because the states are the ultimate beneficiaries of such schemes. If this is not done than such schemes may not prove suitable for the States and this may result into unproductive expenditure.

(2) We agree with the suggestion that there should be a continuous dialogue between the Centre and the State Working groups for the purpose. The Cooperation between the centre and the state, has considerably improved in the formulation of Plans and programmes for the development in agriculture. The Centre has been organising regular meetings, conferences etc. not only for increasing crop production but also for arranging and distributing agricultural inputs, besides regular review of progress made by the State. For the north eastern state including Sikkim, such meetings, conferences, etc., should be organised in the state itself on a rotation basis because these states have similar agro-climatic situation topography, backwardness, concentration of tribal population etc. and also these states being at a great distance from Delhi. With minimum number of subject matter species, available in these states it becomes rather very difficult to depute officials to participate in all the meetings organised by the Centre. These States need to be treated on a different footing on account of the reasons already stated above.

9.4 (a) The cost of production of various agricultural commodities vary from states to states, from regions to regions and from blocks to blocks because of which we could never conceive of a uniform price structure for the whole country. The prices for different commodities should be arrived at taking into accounts the production cost and should be based on average but on actual basis for different regions. The agricultural price commission fixes prices only for selected commodities because of which the benefits flow to the farmers of certain state only. The farmers growing commercial or cash crops like ginger, potato, cardamom, oranges, fruits and vegetable etc. should also be brought under the purview of the agricultural price Commission. The centre should arrange procurement and marketing of items in the same manner as has been done in other commodities.

(b) The states having water resources should receive adequate revenue from the benefiting states for sharing the water resources.

(c) The centre has been playing decisive role in supply and managing the vital inputs including credit. Hence the centre's activity in such inputs greatly affect the developmental activities of the state. Here efforts of the centre is very important in timely arrangement of inputs for developmental programmes.

9.5 The central research Institutions and financial Institutions have been discharging their responsibilities satisfactorily. It is, however upto the state government,. to take full advantage of such organisations. The functioning of the ICAR Research Organisation, could be improved upon considerably if these are provided with adequate incentives and physical facilities including mobility. There is need for having better cooperation and coordination between the State and the Central Research Institutions.

Food and Civil Supplies

10.1 There is greater scope for improving Centre-State liaison in the areas of procurement, pricing, storage movement and distribution of foodgrains as well as other essential commodities. There must be prior consultation with State Governments while formulating the policies regarding these matters.

10.2 Periodical review is a must as it is very useful. The present arrangement of prior approval of the Central Government under the Essential Commodities Act needs to be thoroughly reviewed.

Section 5 of the Essential Commodities Act must be amended in such a manner that it is not a case of delegation but it must be a case of either State or Centre.

Education

11.1 We feel that to say there is unnecessary centralisation and standardisation in the field of education amounts to making a sweeping statement which could have been avoided. At least our State has had no experience of Centre interference in the initiative and authority of the State Governments. The proposal to bring Education back to the State list calls for a thorough review.

11.2 The State Government has no comments.

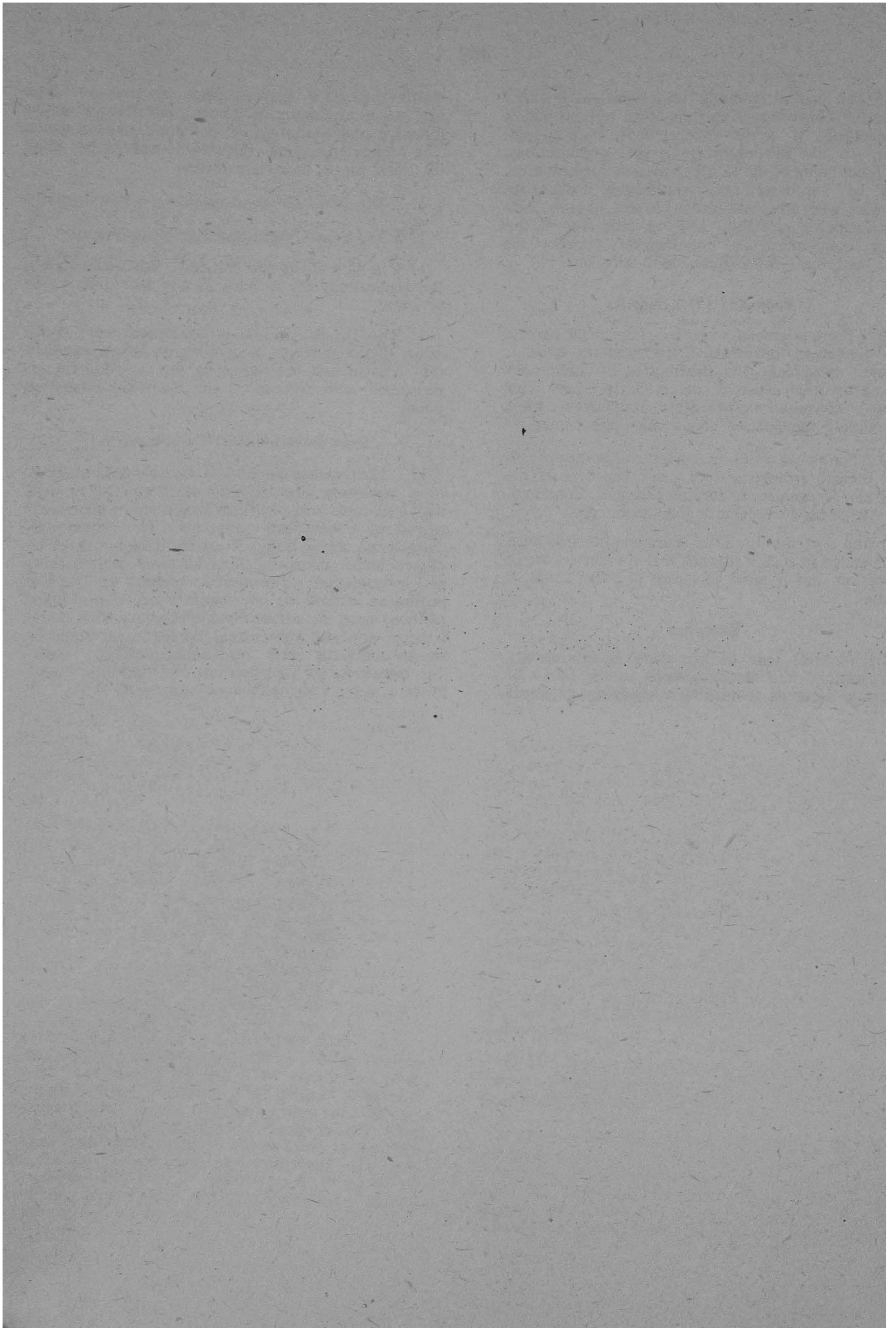
11.3 The State Government has no comments.

11.4 In view of the new National Education Policy, the applications of Articles 29 and 30 require to be reviewed.

11.5 So far as Sikkim is concerned, we are not aware of any instances of conflicts on issues between the Centre and the States so far as education is concerned also because of the National Education policy.

Inter-Governmental Co-ordination

12.1 The time has come when there should be a body or a machinery like the inter-state council to deal with irritations and problems which might arise with regard to Centre-State relations. The recommendations of such a body or an institution would be of great help in improving inter-governmental relations and coordination. The need for setting up such a institution cannot be over-emphasised. Centre-State relations must be constantly monitored. This work is being done to some extent by the zonal councils set up under the State Reorganisation Act, 1956. The setting up of Commissions like Sarkaria Commission at regular intervals is suggested.

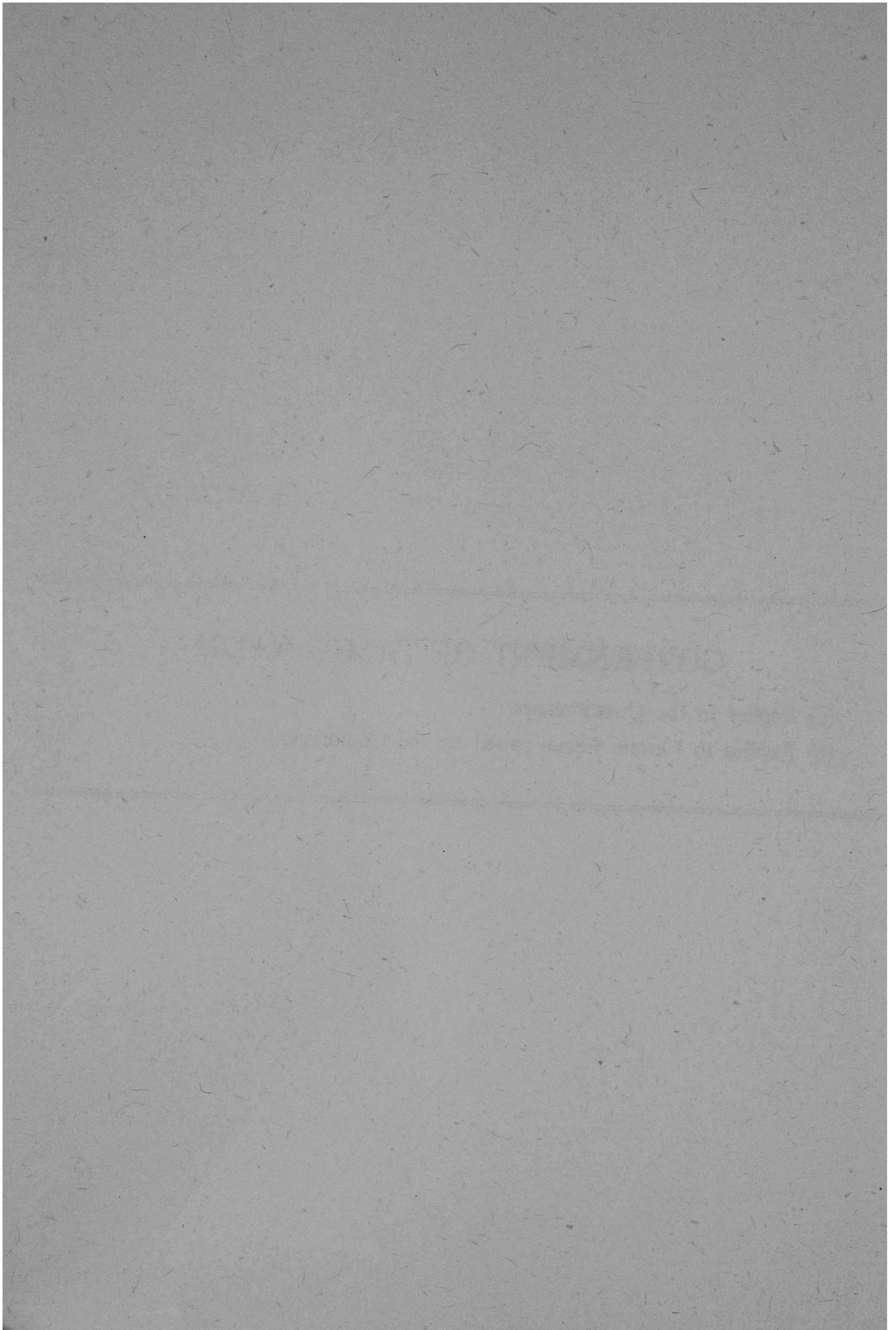


GOVERNMENT OF TAMIL NADU

(a) Replies to the Questionnaire

(b) Replies to Certain Points raised by the Commission

60—288/87



PART I

PRELIMINARY

Dr. C. N. Annadurai former Chief Minister of Tamil Nadu, in his speech in the Legislative Assembly and elsewhere has emphasised the need for a review and reappraisal of the Constitution of India so as to remove the serious imbalance in the distribution of resources and to ensure larger powers to the States in the legislative, financial and other spheres and with a view to achieve true federalism. The present Chief Minister Dr. M. G. Ramachandran has also pointed out the essential need for review of the Constitution in regard to the Centre-State relations and in particular for giving more powers to the States in the legislative, administrative and financial spheres. The Government of Tamil Nadu therefore welcome the constitution of a Commission by the Government of India in June 1983 on Centre-State Relations headed by Justice Sarkaria.

2. According to K. C. Wheare, the federal principle means the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent. (Federal Government-Fourth Edition—by K. C. Wheare).

3. In the United States, the States retain their Constitutions, and the powers of the State are limited only to the extent that certain powers are denied to the States, or have been surrendered to the Federal Government, which is a government enumerated powers. The position of Australia is the same, that is to any the residuary power vests with the States both in the United States and in Australia. In the Swiss Constitution, the powers of the Government have been divided between the national and the Cantonal Governments on the American pattern. The Federal Government has been vested with powers of national importance and the residuary powers have been left to the Cantons. The Cantons, however, enjoy supremacy in their own sphere, though some restrictions have been imposed upon them; (a) they must have Republican Constitutions; (b) their Constitutions must not be contrary to the federal Constitution; (c) they must be subject to revision or amendment by popular vote. The spirit of local autonomy still prevades in Switzerland. The Cantons still possess the residuary powers.

4. In the Objective Resolution which was moved by Pandit Jawaharlal Nehru on 13th December, 1946 in the Constituent Assembly of India, it was mentioned that the provinces should possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom. The following is the text of the Objective Resolution moved by Pandit Jawaharlal Nehru :

I beg to move :—

"(1) This Constituent Assembly declares its firm desire and solemnly resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance of Constitution;

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people ; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes; and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

(8) this ancient land attains its rightful and honoured place in the world and make its full and willing contributions to the promotion of world peace and the welfare of mankind."

5. Thiru L. Krishnaswamy Bharathi (Madras : General) in his speech in the Constituent Assembly on 9th November 1948 has criticised that the Indian Constitution has over burdened the Centre that there is a tendency towards over-centralisation. The following portion of his speech is relevant in this context :

"The Draft Constitution, Dr. Ambedkar said, is the federal in composition. A careful reader of the whole Constitution would find that it is more unitary than federal. If I am to express my idea in terms of percentage, I am inclined to think it is 75 percent unitary and 25 percent federal. Many Honourable Members spoke strongly on the need for a strong Centre. I do not think there was any need for this kind of over-emphasis, for it is an obvious think that the Centre ought to be strong, particularly, in the peculiar context of the circumstances prevailing in the country, but I am afraid they are overdoing it. I feel a strong Centre does not and need not, necessarily mean a weak province. An attempt seems to be made and I find there is a tendency over-burden the Centre and there is a tendency towards over-centralisation. I am glad Dr. Ambedkar has given a kind of warning. I am inclined to think that in actual working of the Constitution this course of taking more powers over to the Centre will be a fruitful source of friction. After all let it be remembered the strength of the chain is in its weakest link and the provinces should not be considered as a rival Governmental organization. The Centre is trying to chew more than it can digest. I find the transitory provision there is an attempt for the first five years to take over even the provincial subjects."

Professor N. G. Ranga (Madras : General), in his speech in the Constituent Assembly on 9th November 1948 has pointed out that he was not in favour of the so called slogan of a strong Centre and that it is superfluous, indeed dangerous, to proceed with this initial effort to make the Centre specially strong and that in the Objectives Resolution, they wanted provinces to have the residual powers. The following is the relevant portion of his speech :

"Mahatma Gandhi has pleaded over a period of thirty years for decentralisation. We as Congressmen are committed to decentralisation. Indeed all the world is today in favour of decentralisation. If we want on the other hand centralisation, I wish to warn this House that that would only lead to Sovietisation and totalitarianism and not democracy. Therefore Sir, I am not in favour of the so-called slogan of a strong Centre. The Centre is bound to be strong, is bound, to grow more and more strong also on the lines of modern industrial development and economic conditions. Therefore, it is superfluous, indeed dangerous to proceed with this initial effort to make the Centre specially strong. In the Objective Resolution that we passed in the beginning we wanted provinces to have the residual powers, but within a short period of two years public opinion rather has been interpreted by those drafters to have swung to the other extreme to complete centralisation at the Centre and strengthening the Centre overmuch.

I am certainly not in favour of having so many subjects as concurrent subjects. As Mr. Santhanam has rightly put it the other day, what you consider to be a concurrent subject today is likely to become an entirely federal subject in another five or ten years. Therefore, although I am quite ready to leave the residual powers to the Central Government, I certainly do not want the provinces to be weakened as this Draft Constitution seeks to do.

Sir, one of the most important consequences of over-centralisation and the strengthening of the Central Government would be handling over power not to the Central Government, but to the Central Secretariat. From the chaprassi or the duffadar, at the Central Secretariat to the Secretary there, each one of them will consider himself to be a much more important person than the Premier of a Province and the Prime Ministers of the provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre. We know in parliamentary life how difficult it is for ministers to have complete control over all that is being done by these various Secretaries at the Secretariat. Under these circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy."

Thiru M. Thirumala Rao (Madras : General), in his speech in the Constituent Assembly on the 9th November 1948, has stated that a strong Centre should not mean weak provinces and that the provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes and that they should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre. The following portion from his speech is relevant :

"We require no doubt a strong Centre, but a strong Centre should not mean weak provinces. The provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes. They should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre."

Thiru Mahaboob Ali Baig Sahib Bahadur (Madras : Muslim), has pointed out in his speech in the Constituent Assembly on 9th November, 1948 that the provisions in the draft Constitution clearly show that the federal system can easily be converted into unitary system. The following is the relevant portion of his speech :

"Now, Sir, with regard to the form of Constitution, I am unable to agree with the Constitution that is embodied in the Draft Constitution. People seem to think that the Centre must be strong and that unless the Centre is very strong

the provinces will always be an impediment in the way of the Centre becoming strong. That is a wrong view. If provinces are made autonomous, that does not necessarily mean that the Centre will be rendered weak. What do we find here ? My view is that the provinces will be nothing but glorified District Boards—Look at Article 275 where in an emergency all powers can be usurped by the Centre. Look at articles 226, 227 and 229. The Centre can legislate for the provinces in all matters; and again look at the long Union List and the Concurrent List. All these clearly show that in the hands of a Central Government which wants to override and convert this federal system into a unitary system, it can be easily done. Now there is a danger of this sort of Government becoming totalitarian. This is the danger in the form of the Constitution that is embodied in the draft Constitution."

Thiru K. Santhanam (Madras : General) has pointed out in his speech on 6th November 1948 that they should reflect whether the Concurrent list was desirable or in alternative they should have to see that the Concurrent List is restricted to the minimum or they should define the scope of the Central and Provincial jurisdiction in regard to the matters mentioned in the Concurrent List. The following portion from his speech will be relevant :

"Sir, Dr. Ambedkar spoke of the dual polity. Now we have got three Lists—the Federal List, the Provincial List and the Concurrent List. The Drafting Committee has expanded the scope of the Concurrent List. We have had experience of the Concurrent List. It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an inevitable political tendency of all Federal Constitutions that the Federal List grows and the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out. Therefore we may take it that in ten years or fifteen years' time the entire Concurrent List would be transferred automatically to the Federal List. We must reflect whether this is what we want and whether it is desirable. If we do not want it we will have to see that the Concurrent List is either restricted to the minimum or define the scope of the Central and Provincial Jurisdiction in regard to matters mentioned in that List."

6. Dr. Anna felt in 1963 that the working of the federal structure as embodied in the Constitution for the past 13 years prior to 1963 had created a sense of frustration in the minds of the States and that the States were fast becoming dole getting corporations. The following portions are relevant in this context. In his speech in the Rajya Sabha in December 1963, Dr. Anna spoke as follows :

"We have a federal structure. That is why framers of the Constitution wanted a federal structure and not a unitary structure, because as many political philosophers have pointed out, India is so vast—in fact it has been described as a sub-continent—the mental health is so varied, the traditions so different, the history so varied, that there cannot be steel frame unitary structure here. My complaint is—and it has been endorsed by the P.S.P. Member Mr. Gurupada Swamy and others—that the working of the federal structure all these thirteen years has created a sense of frustration in the minds of the States. They feel they may not be with me, that the States are fast becoming dolegetting corporations. They feel that they are relegated to the background and there is the very natural instinct in them that they should be given more power..........What I want to say is that the working of the federal structure is in such a way that the States are feeling more and more frustrated, and their demand is to make the Union Government think that there should be a review of the Constitution a reappraisal of the Constitution. And in that I am supported by a very presentable personality, a personality who can, when he wants, get out and get into Cabinet. I am referring to the Hon. Mr. T. T. Krishnamachari, Minister of Economic and Defence Co-ordination. On September 8, 1962, delivering an address in one of the institutions in New Delhi in memory of a great soul, the late lamented Feroze Gandhi, he has stated that as framers of the Constitution they have failed to incorporate a provision for a decennial review of the Constitution. Not only that, he said that public opinion should assert itself for that.................make the Federation become a real Federation."

"I sympathise with his inability but I would like to tell him that I plead for English, I speak for English not because I am enamoured of it, not because I think English ought to be given a higher Place than my own mother tongue but because it is the most convenient tool, it is the most convenient medium which distributes advantages or disadvantages evenly. Very many arguments have been advanced to say that India has got to have a common language and if that base is accepted, one of the Indian Languages alone can become the common language. Nobody doubts it. If India is a unitary State, this argument is logical. India is a federal State. Indian society is plural, our political system is composite and in a plural society and composite political system to plead for a single common language will. I think, create injustice unawares, create handicaps unawares to some section of the society.

"It was stated that Hindi has got the claim to become the official language because it was spoken by 42 percent of the population. If this 42 percent were to be scattered throughout the length and breadth of India, the argument would be logical and it would be ethical also but this 42 percent is concentrated in compact and contiguous areas. It is not spread over. Therefore, if 42 percent is taken into consideration you are conferring a permanent, perennial advantage on a compact and contiguous area in India and conversely a permanent disadvantage to other areas. And therefore it is that this 42 percent cannot be taken into consideration. If Hindi were to be spoken throughout India even by 20 percent of the people, then we can say that of all the languages

Hindi is known from Cape Comorin to the Himalayas. Twenty percent of our population do know Hindi and therefore, let Hindi become the official language. I can understand it, though I cannot support it, I can understand the logic behind it. But what is the logic behind presenting this 42 percent, in a compact area of U.P., Bihar, Rajasthan and Madhya Pradesh as an argument. It was Mr. T. T. Krishnamachari who oncé said 'India, that is Bharat, that is U.P'............

Well, the Prime Minister stated that English would continue. English continues How ? Not as an associate official language along with Hindi, but for some purposes which the Government will decide. But the Prime Minister has stated that English will remain as an associate official language, and if the Prime Minister's assurance is to be fully carried out, I would request the Home Minister to drop this Bill, gird up his loins, take the consequences that may arise out of it because they are courageous people, and bring forward an amendment of the Constitution maintaining the *status quo*, that is keeping English as the official language. Please do not think that because it is foreign we should discard it ....Therefore, I plead before the Home Minister for a reappraisal of the language issue, pending that reappraisal, for an amendment of the Constitution for maintaining the *status quo* and keeping English as the official language."

In his speach in March 1965, Anna spoke in the Rajya Sabha as follows :

"Therefore, till such time we should not disturb the present *status quo* of keeping English as the official language till we arrive at a stage when all the fourteen national languages become the official languages. Perhaps multi-lingualism is the price that we have to pay for keeping India one and united. You can have India disunited through Hindi. But if you want, to have contented India, if you want to have an India which does not feel that one region will dominate over another, if you do not want genuine apprehension to get into the minds and hearts of millions of people, if you want an India about which everyone of us could be proud, you will have to take into consideration the problem of multi-lingualism."

7. In 1965, there was a popular upsurge among the people of Tamil Nadu against the imposition of Hindi on the non-Hindi speaking people in general and on the Tamil speaking people in particular. Several lives were lost in Tamil Nadu in the agitation and thousands of persons were sent to prison in connection with the agitation. There was turmoil in the whole of Tamil Nadu. The imposition of Hindi in 1965 did have an adverse effect on national integration. As a consequence, the Official Languages Act, 1963 was amended in 1968. In the Statement of Objects and Reasons to the Amending Bill, it was specifically stated by the Central Government that it was considered necessary to give statutory recognition to assurances of the late Prime Minister regarding the continued use of English language as long as the non-Hindi speaking people did not desire a change and that it was also proposed to provide for obligatory use of English language in addition to Hindi in certain cases. It is to be noted here that what was demanded by the Non-Hindi speaking people in general and the people of Tamil Nadu in particular was an amendment of the Constitution to give effect to the assurance given by late Pandit Jawaharlal Nehru that English Language shall continue to be used as the official language of the Union as long as the non-Hindi speaking people did not desire a change. But this Constitution amendment was not given effect to. Instead, a statutory amendment of the Official Languages Act, vix. Section 3 was undertaken which can be amended or nullified by a simple majority of those present and voting in the Parliament. Even in that amendment, the use of the word "may" in the expressi n "The English Language may, as from the appointed day, continue to be used, in addition to Hindi" led to different interpretations *viz.*, whether it is obligatory or merely discretionary.

8. In the Governor's speech, when Dr. Anna was the Chief Minister in 1968, it was mentioned as follows :

"5. The language problem is in a sense part of, the bigger problem of evolving a truly cooperative federal polity, in which the States representing different cultures and ways of life are assured of their rightful place. The serious imbalance in distribution of resources, in relation to responsibilities as between Centre and the States, has distorted the healthy relationship which should exist between the Centre and the constituent units in a large federation. True federalism means that the Centre as well as the units should have adequate resources for the discharge of their respective responsibilities, and that discretionary loans and grants from the Centre in respect of matters falling constitutionally within the competence of the State should play only a peripheral role............It is the firm view of my Government that in the light of the experience of the last fifteen years, a high level review of the provisions of the Constitution dealing with the delimitation of resources and powers as between the Centre and the State is essential. Such a review will obviously take a little time and the scope of the review will have to be defined with care in consultation with all concerned."

9. Speaking on this subject in the Legislative Assembly, Arignar Anna spoke as follows :

"In the Governor's address he has specifically placed the views that the relations between the Centre and the States should be reorganised. Inasmuch as it has been indicated in a good manner in the Governor's address, the conveying of gratitude by the members of our party is proper."

If it is argued that integrity would be spoiled if that (Centre-State relations) is spoken, then I expressly state that integrity would be spoiled only if it is screened secretly. Unless there arises an open view in matters such as living together in such and such ways, the ditribution of powers in such and such ways, the screening of it would be as much difficult as the difficulty in residing with a snake put in a vessel, as occuring in Thirukkural. Without rectifying the relationship in regard to the powers

among ourselves after discussing about them: it would not be good to talk about integration and it would not give any benefit. When a resolution in regard to language question based on that was brought, Thiru Ma. Po. Si. has explained that this question would be solved only if there is a decentralisation of all the powers accumulated at the Central Government. The Governor in his address has pointed out that the relationship between the State Government and the Central Government should be reorganised and for that even the Constitutional law should be examined. This is the very policy of this Government. In the Kerala State, where Thiru. Namboodripad was the Chief Minister, this demand has been growing very rapidly. During the Chief Ministers' Conference held two months ago, Thiru. Namboodripad released a book on decentralising powers in such and such ways in economic field and he placed the book for scrutiny in the Chief Ministers' Conference. Likewise, that concept had spread over in many other places and in many other States. As far as I know, I certainly feel that in the next ten years, it would be this issue which would be prevalent predominently in the minds of all people. In view of the fact that I feel it in such a way, I am very much happy as one who expresses the feeling in front of others. In order to strengthen the decentralisation as mentioned in the Governor's address, this Government have rejected the view expressed that Hindi language should be the official language. That is also mentioned in the Governor's address. A false notion —but followed by many with force. To express in English, it is "the inevitability of Hindi". Therefore Hindi must come in any way, we have been ourselves cultivating the idea that Hindi is inevitable.

The Government have not accepted the alarm about "Inevitability of Hindi—Hindi must come". If it is contented that a common language is a necessity then it should also be explained as for whom the Common language ? and for what purpose the common language ? If my mother-tongue is Tamil and my friend Hande's mother-tongue is Canarese and my friend Vinayakam's mother-tongue is Telgu, then, a language for all the three persons cannot be either Canarese or Tamil or Telgu".

(29th February 1968). "Under the Constitution, the expanding revenue opportunities have been assigned to the Central Government and on the contrary, expenditures like education and public health and vast responsibilities of an expanding nature have been assigned to State.

(6th March 1968) When it is said that "I", "Ours", "Ourselves" I request you to kindly forget the political parties and to co-operate in a united manner for pleading with Central Government and not even for fighting in so far as the financial issue is concerned.

(8th March 1968) "He has indicated that whatever be the relief for whatever, issue, there should not be any danger to national integrity and Indian unity, I welcome that very much. I support that. It should not be thought that secession is asked for whenever any grievances are spoken. I had spoken on several occasions that the occurance of such an idea should be avoided. I still say further. I have been examining several issues having regard to and on the basis of national unity and national strength. This is not stated with a view that national strength should be reduced or unity should be destroyed."

10. It may be mentioned that the system of Government enshrined in the Indian Constitution is a democratic form of Government with adult franchise. The members of the Legislative Assembly are elected by the people on the basis of adult suffrage. The person who enjoys the confidence of the Legislative Assembly has to be appointed as the Chief Minister by the Governor. In other words, the Chief Minister represents the people of the State and he is the executive head of the State. So long as the Chief Minister enjoys the confidence of the Legislative Assembly, he is entitled to continue in office.

11. But the unfortunate experience in the past several years has shown that the power conferred under Article 356 to impose President's rule after dismissing the Ministry in office has been excercised indiscriminately and is often politically motivated. The Central Government have invoked the power under Article 356 about eightyseven times against the States in the country. The instances wherein President's rule has been imposed under Article 356 after dismissing the popularly elected Government are illustrative of the point made that Article 356 has been indiscriminately and arbitrarily invoked by the Centre. Such instances have been specified under Part IV Administrative Relations.

The imposition of President's rule in Punjab after dismissing the Ministry led to very unexpected consequences which would have been avoided if the popular Ministry was allowed to continue in office. The dismissal of the N.T. Rama Rao Ministry by the then Governor Thiru Ram Lal in Andhra Pradesh was a destruction of democracy.

12. Though it is stated that Indian Constitution is quasi-federal or that India is combination of federal structure with unitary features, the unitary feature has assumed predominance over the past 35 years and the States have been reduced to the status of mere dole getting corporations or municipal authorities which was not envisaged by the founding fathers of the Constitution. India is a country with people having different cultures, having plural societies predominantly casteridden, with different religions and different languages. India is a country of multi-lingualism and one language of a region, even if that region consists of two or more States, cannot and should not be given a dominance over the other languages of the country. Prior to independence, English was the official language and after the Constitution of India came into force, Hindi has been made the official language. Though English has also been permitted to be used statutorily under the Official Languages Act, for certain purposes specified in that Act, the Constitution as such does not recognise English as the official language. Nor does English find a place in the Eighth Schedule. It is the view of the Government of Tamil Nadu that English should find a place in the Eighth Schedule and all the languages in the Eighth Schedule should be made as the official

languages of the country. Till then, the assurance of Nehru that English shall be continued as the official language so long as the non-Hindi speaking people did not desire a change should be given a Constitutional guarantee and for this purpose, a suitable provision should be incorporated in the Constitution itself by way of an amendment.

13. The Government of Tamil Nadu is headed by Dr. M. G. Ramachandran, founder-leader of the All India Anna Dravida Munnetra Kazhagam Party which adopts as its basis policy the policies of late Dr. Anna as given expression to in the speeches mentioned at pages 3—6 ante. Consistent with this policy, the Tamil Nadu Government is of the firm opinion that the Constitution should be amended making the States and the Union co-ordinate and true f·deration should come into existence both Constitutionally and administratively. While asking for more power for the States, both in the legislative and financial spheres, the Government of Tamil Nadu does not want in any way that the unity and integrity of the nation should be impaired. Whatever suggestions are made by the Government of Tamil Nadu, they are made of the fundamental and basic principle that India is one nation and that under all circumstances, the unity and integrity of the nation should be kept intact and wherever danger arises for the unity and integrity of the nation, the Tamil Nadu Government will fight the danger with all its strength.

14. The Supreme Court in *Satpal* V. *State of Punjab* (1982 1 SCC 12) has held "Ours is a Constitution where there is a combination of federal structure with unitary features". The Government of Tamil Nadu are of the view that these unitary features found in the Constitution have been made use of by the party in power in the Centre to destabilise State Governments in which a party different from the ruling party at the Centre is in power.

15. The Government of Tamil Nadu are of the firm view that India should be made a true federation wherein the Central Government and the State Government will be equal and independent partners and where the residuary legislative powers including the residuary taxing power will vest in the State Government and the Centre should have only limited powers like foreign relations, defence, customs, currency, U.P.S.C. and citizenship. A division of powers should be so made that the general and regional Government should, within their own sphere, be co-ordinate and independent according to the true federal principle enunciated by Prof. K. C. Wheare. But it will take some years in the present circumstances prevailing in India to achieve the true goal of federalism as in the United States of America. Till that goal is achieved, the existing Constitutional set up should be modified so as to ensure decentralisation of the powers which are now in the hands of the Centre and the States should be made more autonomous both in the legislative as well as in the financial and administrative spheres.

16. The Government of Tamil Nadu are of the view that in respect of legislative sphere, the residuary powers including the residuary taxing power should be vested in the State Government.

No Bill falling within the scope of Article 31-A or Article 31-C need be reserved for the consideration of the President, The first proviso to Article 31-A, the proviso to Article 31-C, the two provisos to Article 200 and the proviso to Article 201 should be omitted. The provision relating to the with holding of the assent by the President under Article 201 also should be omitted.

The proviso to Article 304(b) (which requires sanction of the President in the case of certain Bills) should also be omitted.

Article 249 (which empowers Parliament to legislate with respect to a matter in the State List in the national interest) should be omitted.

Article 252 (which empowers Parliament to legislate for two or more States by consent and adoption of such legislation by any other State) should be omitted. Alternatively, the provisions of Article 252(2) should be so amended so as to make the power as between the Centre and the State mutual and not exclusive.

It is also suggested that Articles 154(2)(b) and 258(2) should be so amended that if the Union were to exercise the power as contemplated in both these Articles, consent, of the State should be obtained.

The legislative entries in the Concurrent List should be brought to the absolute minimum and the subjects which now find a place in the Concurrent List should be transferred to the State List as enunciated in the answer to the questionnaire under the legislative relations.

In regard to the administrative relations, the Government of Tamil Nadu suggest that Article 256 (obligation of States and the Union), Article 257 (control of the Union over States in certain cases), Article 356 (Provisions in case of failure of Constitutional machinery in States), Article 357 (exercise of legislative powers under proclamation issued under Article 356) Article 360 (provisions as to financial emergency) and Article 365 (effect of failure to comply with, or to give effect to, directions given by the Union) should be deleted.

Article 263 (provisions with respect to an Inter-State Council) should be deleted.

Article 339(2) must be deleted because the welfare of the Scheduled Tribes in any State is as much the concern of the State Government as that of the Union Government. So, there need be no direction to any State as to how the welfare of the Scheduled Tribes should be promoted.

Article 344(6) must be deleted because the directions issued by the President on such sensitive issues like use of Hindi language, reduction of English language, etc., will offend the dignity and individuality of the State.

In Article 350-A (facilities for instruction in mother tongue at primary stage) the provisions relating to the President's direction to any State must be deleted because it is the duty of the State to provide adequate facilities for instructions in the

mother tongue at primary stage of education to children belonging to linguistic minority groups and the State can be relied on to discharge this duty faithfully without any instruction or direction from the President.

So far as financial relations are concerned, the State should be made more financially autonomous and the taxing base of the State should be increased and the State should not continue to be a mere dole getting corporation. The Government of Tamil Nadu would suggest that Corporation tax as well as surcharges on income-tax should be divisible and ear-marked for the concerned State as in the case of income tax. The power to levy the duties under Article 268 may be given to the States. The Union Government must give a substantial amount to the States in lieu of the non-levy of certain taxes mentioned in Article 269 of the Constitution.

The increase in administered prices actually reduce the revenue and to the extent widen the gap between the resources and commitment and therefore logically speaking, this should be compensated by increasing the devolution in taxes.

So far as Planning Commission is concerned, the present Planning Commission should be replaced by a Central and State Planning Commissions which should be constituted on a statutory basis as in the case of Finance Commission. The present Planning Commission does not fit in within the Constitutional scheme and is an extra consitutional authority and therefore it has to go.

The Constitution will require a review after a period of 10 years to make the States again more independent. For this purpose, a new constituent Assembly consisting of an equal number of representatives for each State will have to be constituted.

17. In the light of the above position, the Government of Tamil Nadu offer the views as in the Annexure of the questionnaire issued by the Sarkaria Commission.

ANNEXURE

PART I

INTRODUCTORY

1.1 to 1.8 This Government prefer to answer the Questions in Part I taking the real purpose of the questionnaire instead of attempting to answer the questions seriatim.

Even though it is declared that the soundest frame work for our Constitution is a federation with a strong centre, yet, such an expressive purpose has not been exhibited in the working of our Constitution, which our Supreme Court in State of West Bengal v. Union of India (AIR 1963 SC 1241) has rightly characterised as not truly federal in character. We respectfully adopt the formula enunciated by Justice Subba Rao, who said in the said case, "the real test to ascertain whether a particular Constitution has accepted the federal principle or not is whether the said Constitution provides for the division of powers in such a way that the general and the regional Governments are each within its shpere substantially independent of the other". Experience has shown that the people of India placed, as they are, in different parts of the country, in different environments, have consciously felt the departure from the true principles of federalism due to consistent creative effort to project a strong Centre making almost incipient and subservient, the States, which are its limbs. On account of such uncertain and visible deviations in the working of the federation in India, Sir Ivor Jennings has described the Indian Constitution as a federation with strong centralised tendency. The essence of federalism lies in the distribution of Governmental powers in their respective spheres between the Centre and the States. Dicey explains that "Federalism constitutes a complex Governmental mechanism for the governance of a country........ Federalism seeks to reconcile unity with multiplicity, centralisation with decentralisation and nationalism with localism. The regionality of the federal system which lies in that power is, at one and the same time, concentrated as well as divided".

Though the basic structure in our Constitution is said to be federal in nature certain provisions which are not found in other Constitutions, do make our Constitution to a certain extent unitary and not federal. Provisions such as Articles 256, 257, 356, 365, 200 and 201, 31-C, 31-A(1); 254(2) and 304(b) proviso, lend support to the perpetual comment by the people and by jurists that our Constitution is not truly federal. A federal State should be a political contrivance intended to reconcile national unity and power with the maintenance of State's rights. It was this essential ingredient in federalism which prompted the 10th Amendment in the Constitution of the United States which enacted that powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the people. National unity can be reconciled with State's independence by division of powers under a common Constitution between the nation on the one hand and the individual States on the other. From this notion flow the three leading characteristics of completely developed federalism, namely the supremacy of the Constitution; the distribution among bodies with limited and co-ordinate authority of the different powers of Government; the authority of the Courts to act as interpreters of the Constitution. A bare expectancy to respect the principle of 'each for all and all for each' is not by itself sufficient. It should be worked in practice and not maintained only in precept.

This Government have in their report, considered in detail how the autonomy of the States has been eroded by the invocation of certain unpalatable Articles in the Constitution introduced by the Founding Fathers nearly 35 years ago. It is therefore clear that our Constitution cannot be called strictly federal and the presence of the rigid provisions in our Constitution and the convenient invocation of those unhealthy Articles which are conspicuously absent in other federations leads us to the conclusion that the absence of the unique features present in other Constitutions is slowly disrupting

the foundation of the federal principle in our Constitution. This Government have elaborately dealt with the subject 're-distribution of legislative powers' either contained in the Articles or Entries in the three Lists while dealing with Part II 'Legislative Relations' and Part IV 'Administrative Relations'. As regards the allotment of more tax revenues in List II of the States we have given our expert comments while dealing with Part V, 'Financial Relations'. The impact of the Centre over matters which are essentially State subjects and within their competence to deal therewith, is being felt. Thiru Setalwad has pointed out that under the stress of changing circumstances, the theoretical barriers erected by Federalism have broken down and the Central and Regional powers have been flowing one into the other.

The Government are of the view that the difficulties issues, tensions, and problems that have arisen in Union-States relationship are due to substantial defects in the schematic plan and the fundamental fabric as envisaged at present in our Constitution. State's autonomy cannot be made to rest on the good-will of the Centre. A declaration flowing from pious intentions on the part of the States to believe in their so-called autonomy on the basis of the doctrine of true spirit and intent of the Constitution is extremely slippery as it is incapable of enforcement. In our discussion in the chapters to follow, we have suggested that it would be salutary to evolve healthy conventions and procedures and time has not come for removing the tensions and frictions between the Centre and the States by suitably amending the provisions of the Constitution wherever necessary and restore the amity and harmony between the Centre and th State to achieve a geometrical progression concerning the prosperity and development of our country. We have also expressed in the views given infra that the consultative body which has to be formed under Article 263 would be ineffective as the very creation of that council is again wrought with irritant controversies. We have touched upon this aspect while dealing with the Chapter on 'Administrative Relations'.

Under Article 3 of the Constituion, Parliament is empowered to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting the territory to a part of any State or to increase the area of any State or to diminish the area of any State, or to alter the bundaries of any State or alter the name of any State. Where the proposed Bill affects the area, boundaries or name of the States, the Bill has to be referred to the Legislature of the State by the President for expressing its views thereon within a specified period. What is now required under the Constitution is only to ascertain the views of the State Legislature. The present scheme under Article 3 militates against the federal structure of the Constitution. Unless the States, whose area boundaries or name, are affected express their consent for the Bill, no Bill should be introduced in the Parliament. Article 3 may, therefore, be amended so as to require the consent of the States concerned, as a condition precedent for the introduction of the Bill in the Parliament.

As far as the abolition of appeals to Supreme Court, except in constitutional matters is concerned, it is a fairly good suggestion because such system is found in the American Constitution. If we are emulating the provisions of the American Constitution in this respect, then we must bring in all the provisions relating to American federal courts into the Indian Constitution. In that case, we have to divide the country into several judicial districts and create a district federal court for each such district. Thereafter we must create a circuit court which will have jurisdiction over specified number of judicial districts and finally at the apex, the Supreme Court may be installed. Besides, the Supreme Court must have a definite Constitutional Bench of nine or eleven judges to decide all constitutional matters as is done in the United States. When such modifications are brought about in the Indian Constitution regarding the federal courts, the existing High Courts will be able to function as the highest court in each State for all purposes as the Supreme Court of every State in the United States does. So, mere abolition of appeals to the Supreme Court, except in constitutional matters is meaningless unless we bring about drastic changes in the structure of the Federal Courts to bring them in conformity with the structure of the Federal Courts in the United States.

An elderly statesman Thiru K. Santhanam has rightly said that the tendency towards vague unhealthy paternalism which has come to envelop Indian Federalism as a result of the dominance of single party during the first two decades of independence is as bad for the Centre as it is unpleasant and provocative to the States.

In the light of our comments and recommendations on the other parts of the questionnaire, this Government are of the view that the adoption of such recommendations would certainly make our Constitution truly federal.

The Governments are of the view that this introductory note answers the purpose of the questionnaire in Part I. As already sta ed, the questions are not answered seriatim in view of the comments and views expressed in the other parts to the questionnaire.

PART II

LEGISLATIVE RELATIONS

2.1 to 2.5 Inter-relationship between the Union and the States contained in Part XI of the Constitution and more particularly in Articles 245 to 255 though laying down a scheme for the demarcation of legislative relationship between the Union and the States, yet, experience dictates that the States have felt in many operational fields difficulties in implementing its policies consistent with the need and requirements of the people of the concerned State. When the ruling party at the Centre and the States were the same, then possibly there cannot be a friction in the matter of the policy decisions and in its implementation. But as matters stand today, several States having diff r nt political ideologies and the springing up of regional parties,

whether at a regional or of a national level, has generated friction and indeed heat in the Centre-State Relations particularly in the legislative field.

The relevant needs of each State in order to make it progressive, varies with its situation, the people's aspirations, the welfare measures required and the socio-economic measures to be thought of. In recent times, when urgent legislation was brought in the interest of State-welfare, the processual mandates under the constitutional law have made it both impracticable and sometimes impossible for the State Governments to adhere to their objectives based on their accredited adopted policies. Instances are not wanting, in which the Central Government delayed the much needed legislation of a particular State over a particular subject.

To cite one instance in respect of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Bill, 1980 which sought to plug the loopholes in the matter of benami transactions solely to implement agrarian legislation, the assent was refused by the Centre. The Industrial Disputes (Tamil Nadu Amendment) Bill, 1981 and the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Bill, 1981, which were sent to Government of India on 10th June 1981 and 23rd September 1981 respectively are yet to receive the assent of the President. Further, the Tamil Nadu Recognition of State Register of Practitioners of Indian Medicine Bill, 1983 and the Tamil Nadu Patta Pass Book Bill, 1983, sent to Government of India on 14th February 1983 and 29th December 1983 respectively and the Tamil Nadu Building and Construction Workers (Conditions of Employment and Miscellaneous Provisions) Bill, 1984 forwarded to the Government of India on 8th November 1984 are still awaiting Presidential assent. These are some instances to justify the apprehension of the States that the Central Government is attempting to sit in appeal or in judgement over the intended legislation, which has the support of both the Houses of the State Legislature. The progress of Legislations undertaken by the State Legislature, which are primarily to obtain certain well-known stated and progressive objectives, has been stalled by the Centre and it is therefore felt that the present role assumed by the Centre in either delaying the Bill sent for assent by the President or rejecting the same, should not be permitted and the Constitution should be specifically amended to the effect that where the State Legislature have passed a legislative measure and it has secured the blessings of both the Houses in the State where both the Houses are functioning, the President should be advised to give his assent to the Bill without any reservation whatsoever. Though in a federal system the territorial nexus theory has to be liberally interpreted, yet, having regard to the past experience and particularly for the reason that the States had not enjoyed the benefit of having the same ruling party, both at the Centre and in the State, the principle of activity within prescribed limit has to be applied in the light of experience and in accordance with the needs and wishes of the people.

It would be convenient at this stage to deal with such of these provisions in the Constitution as to how the Bill passed by the State Legislature should find its level and its course without the present "Democle's Sword" of dissent by the President. Under Article 201 when a Bill is reserved by the Governor for the consideration of the President, the President has the option either to give his assent or withhold the same. It is, however, undeniable that the President while acting in the manner stated, he acts on the advice of his Council of Ministers at the Centre. In the absence of any conventions or guidelines to be followed by the President in refusing to give his assent to the Bill or withholding his assent thereto, it is our view that in certain contingencies as set out hereinafter, such a process need not be adopted.

It is in this context that the principle of prescribed limits of jurisdiction or nexus with such prescribed jurisdiction looms large. If the legislation falls within the State List as provided for in Schedule VII to the Constitution, then there appears to be no necessity to reserve the Bill for the consideration of the President. When, however, the subject falls in the Concurrent List, our view is that the Governor should automatically give his assent to it. As was pointed out in the Report of the Joint Parliamentary Committee relating to the Concurrent List tin the Government of India Act of 1935, "if matters were to stand as they are, then the State Legislature might feel that they are exposed to dangerous encroachment". The Committee went on to say that if the subjects themselves are essentially provincial in character, and would be administered by the Provinces mainly in accordance with the provincial policy, then such an affinity of the State Legislation to the particular subject ought not to be disturbed. In any event our answer to Question 2.3, is in the affirmative.

This Government are of the view that no law should be enacted by Parliament in respect of a matter falling within the Concurrent List except with the concurrence of the State Legislature. If no such concurrence is obtained, then the law made by Parliament in respect of a concurrent subject will not be applicable to that State.

With the above introductory remarks, this Government instead of answering the questions seriatim, are dealing with the Articles in our Constitution and the various entries in Schedule VII List I, List II and List III and are making recommendations in connection therewith as against the relative article or entry.

Article 31-A, 31-C, 200, 201, 246 and 254(2)

In our introductory remarks, we have touched upon the difficulties faced by the State when the assent sought from the President over important and essential legislations undertaken by the State was either refused or unreasonably delayed. The State Legislature being an independent legislative body is in no way subordinate to the Central legislature. It is also equally clear that the State Government is not subordinate to the Central Govenment in respect of matters exclusively allotted to

the State's sphere under the provisions of the Constitution and particularly in the Lists enumerated in Schedule VII. If the Central Government sits in judgement over the policy or the constitutionality or legality of an enactment passed by the State Legislature, that role should not be permitted. For this purpose, the Constitution should be specifically amended to say that

"where the State Legislature have passed legislative measure quite within its competence and consistent with and relevant to the local problems of the State, in relation to entries in List III the President should be advised to give assent to the Bill without a demur".

At this stage, Articles 200 and 201 of the Constitution have to be considered. Article 200 deals with the assent to Bills and vests the power with the Governor either to give his assent or with hold his assent or proclaim that he reserves the Bill for the consideration of the President. Article 201 deals with a situation where Bills are so reserved for the consideration of the President. As both Articles 200 and 201 are intended to serve a common objective, occasions have arisen when neither the Governor at the level of the State or the President at the level of the Union are enjoined to follow a written set of norms while the Governor refuses to give his assent for the Bill and even so the President. The Constitution is silent on this point. There is no provision for the reservation of the State legislation for the consideration of the national executive either in the United States or in Australia. Probably the Canadian Constitution have inspired the induction of such provisions in our Constitution. It is subversive of the true federal principle in as much as it affects the State autonomy in matters of legislations undertaken under the State List. It is not necessary for the Governor to reserve the Bill for the consideration of the President in cases where the legislation undertaken by the State fall exclusively within the State Legislative field.

No Bill falling within the scope of Article 31-A or Article 31-C need be reserved for the consideration of the President. Accordingly, the first proviso to Article 31-A, the proviso to Article 31-C, the two provis s to Article 200 and the proviso to Article 201 should be omitted. The provision relating to the withholding of assent by the President under Article 201 also should be omitted.

The Government suggest that Article 246 should read as follows :

"246, **Subject matter of laws made by Parliament and by the Legislatures of States.**—(1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Parliament and subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). Provided that no such law shall be made by Parliament except with the concurrent of the State Legislature.

(3) The Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters eunmerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the "State List".

The Government are of the view that Article 246 should read as suggested, in order to preserve the prerogative of both the Parliament and the States in their respective legislative fields.

In the light of our recommendations as above, the Government suggest that the proviso to Article 254(2) shall read as under :

"Provided that Parliament shall have no power to enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by Legislature of the State".

Article 246-A—We suggest the inclusion of a new Article 246-A reading as under—Vide our comments on Entry 45 of the Concurrent List.

"246-A. **Parliament to have no power to order a Commission of Inquiry into the conduct of a Minister of a State Government**—Parliament shall not have power to make laws to order a Commission of Inquiry in respect of the conduct of any or all the Ministers of the State Government, while in office or after demitting office".

Article 247—Administration of justice is a matter which the State Government can well be depended upon for the observance of the due process of law. Ever since the birth of the Constitution, the Parliament has not provided for the establishment of additional courts for the better administration of laws made by Parliament. Such exercise of power may be contemplated in cases where the national interest or emergency dictates such a provision for institution of additional courts. This has happened recently in Punjab. But Article 247 is so wide which enable the Parliament to establish additional courts for the exercise of normal civil and criminal jurisdiction also during peaceful times and this is for the purpose of better administration of laws made by Parliament. As such observance of due process of law is also the responsibility of a State, this provision may be omitted. We suggest—

However, a proviso can be inserted enabling the constitution of such courts by the Parliament in cases of national emergency or to subserve national interest provided, however, the expression "national interest" is defined in the Constitution itself. Our primary recommendation is that Article 247 as it stands may be omitted.

Article 248—This Article deals with residuary powers of legislation of Parliament with respect to any matter not enumerated in the Concurrent List or State List. This provision has no parallel

in other important Federal Constitutions. Even in the American Constitution, the federation has got only enumerated powers while the residuary powers are vested in the State. The 10th amendment to the American Constitution provides as follows :

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively".

Even so in the Australian Constitution, the residuary power is vested in the State Legislature. Such a vesting of the residuary power in the Union Parliament ignoring the vested rights of the State Legislatures runs contra to the expected notions of federalism. Consequently Article 248 of the Constitution will have to be substituted vesting the residuary powers of legislation in the State Legislature in matters not enumerated in the Concurrent List or in the Union List. Such power naturally includes the power of making any law imposing a tax not mentioned in either of those Lists. It is therefore necessary to omit Entry 97 in List I also. But a new entry has to be inserted in the State List.

Our recommendations therefore are :

(a) article 248 should be omitted.

(b) entry 97 in the Union List has to be omitted, and

(c) a new entry as entry 67 may be included in List II State List reading as under :

"67. Any other matter not enumerated in List I or List III including any tax not mentioned in either of those lists."

Article 249—This again is an article vesting power in the Parliament. This Article again refers to national interest which has not been defined. It enables the Parliament to legislate with respect to a matter in the State List in national interest. Such Legislation is made conclusive if a resolution by the Council of State is supported by not less than two-thirds of the members present and voting to bring in such legislation in national interest. This is the second condition precedent for the Parliament to legislate as contemplated in Article 249. Such assumed legislative competence is beyond the purview of judicial scrutiny as observed by the Supreme Court in State of West Bengal v. Union of India (AIR 1963 SC 1241). Prominent Indians who dissertated on the induction of this Article did not favour its adoption. Besides, this Article is an unprecedented one and no parallel provision is found in similar Constitutions in the globe. Such a carteblanche power given to the Council of States to circumvent State Legislatures in the name of national interest, which has no definite connotation, is certainly to be viewed as an overriding power over the States which could enact laws as envisaged within the frame-work of the Constitution itself. The retention of Article 249 will result in the perpetuation of the recognition of encroachment by the Council of States in matters exclusively reserved to the State Legislature. This would be so when the Council of States enojys the support of majority of members belonging to the ruling party constituting the Lok Sabha.

We, therefore, suggest that Article 249 may be omitted.

Articles 250 and 251—The Government are of the view that Parliament should not reserve for itself the power to legislate with respect to any matter in the State List if a proclamation of emergency is in operation. Notwithstanding the proclamation of emergency, the State functions through its popular legislatures. If the Parliament reserves for itself the power to legislate with respect to any matter in the State List, during the period of emergency, notwithstanding the availability of popular legislatures in the State, this Government feel it that is necessary that such legislation can be undertaken only if a resolution to that effect is passed by both the Houses of the State Legislature.

In fact, the text of Article 251 contemplates and visualise the possibility of the Parliament making laws during emergency or under Article 249. It may be inconsistent with the laws made by the legislature of the State. This is, therefore, an inbuilt clue to suggest that such laws even during the emergency should not be made by throwing overboard the laws of the State which duly reflect the wishes of the people. Consistency in laws is the touchstone for its continued observance.

Therefore, the Government suggest that Articles 250 and 251 also should be omitted.

Article 252—In the absence of mutuality as regards the power to amend or repeal the Acts made either by Parliament or by the States respectively, this Government feel that Article 252(2) should be altered so as to enable both the Parliament and the Legislature of the State to either repeal such a law or alter the same.

Having regard to the apex position in which the Union is placed under the Constitution, notwithstanding the adoption of the federal system, it will be easy for the Central Government to ask the State Legislatures to pass a resolution to satisfy their intention to legislate for two or more States. If the Central Government wants that any law should be enacted so as to make it uniform for two or more States it is open to the Central Government to send a copy of the model Bill to the State concerned for being enacted by the State Legislature after giving weightage to the opinion of the people and having regard to the welfare of the State and also keeping in view many ideologies which prevade each State in a different manner. In this context it is not even necessary to give power to the parliament to legislate in the State field even if a resolution is passed by the State Legislatures. The primary recommendation of this Government are to omit Article 252. The alternative suggestion is that Article 252(2) should be so amended so as to make the power as between the Centre and the State mutual and not exclusive.

Article 304—The proviso to Article 304(B) which requires sanction of the President in the case of certain Bills should be omitted. Please also see our remarks under Q. 8.1.

Articles 154(2)(b), 258(2) and 164—Legislative power has been conferred by the Constitution either upon the Union or States. Wherever such bi-cameral authorities are vested with the function of legislating then that delegated power cannot be delegated (Delegata potesta non-potest delegari). Thus, the power delegated under the Constitution on the Parliament cannot be redelegated. To this extent Articles 154(2)(b) and 258(2) needs a revision.

Under Article 154(2)(b), the Parliament can confer by law functions on any authority subordinate to the Governor. Even so under Article 258(2), the Parliament by law, can confer powers and impose duties upon a State or Officers and authorities thereof. This would in fact mean an extra-territorial exercise of legislative power by the Parliament. When Article 258(1) expressly provides for securing the consent of the Government of the State, while dealing with the power of the Union to confer powers on States, this provision is conspicuously absent both in Articles 154(2)(b) and 258(2).

We suggest therefore an amendment in both these Articles providing that if the Union were to exercise the power as contemplated in both the Articles, the consent of the State should be obtained.

Regarding Article 164, reference may be made to our recommendation in Part III "Role of the Governor".

The Government suggest additions, modifications and deletions of entries in the Union List (List I) State List (List II) and Concurrent List (List III).

List I—Union List

Entry 2-A—"Deployment of any armed force of the Union or any othe force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers; jurisdiction privileges and liabilities of the members of such forces while on such deployment."

Entry 2-A was actually introduced by the Constitution (Forty-second Amendment) Act, 1976 in order to confer on the Union Government power to control the armed forces of the Union such as BSF, CRP etc., when they are deployed in any State on the request of a State Government in aid of the civil power in such State. The State Government have the right to requisition Central Reserve Police Force when they have reason to believe that the State Police Forces will require to be adequately supplemented to deal with likely situations of serious disturbances. It is only the State Government who may call for the Central Reserve Police Force for the purpose of preserving public order and protecting property and of quelling disturbances. The Government suggests that entry 2-A should be omitted.

Entry 7—"Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war."

The Government suggest that Entry 7 may be modified as follows: "Industries necessary for the purpose of armament."

Entry 24—"Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways."

This entry is widely worded. This entry may take in shipping and navigation on inland waterways of rivers which are completely within a particular State. In other words, it may include shipping and navigation on inland waterways of intra-State rivers. Shipping and navigation on inland water ways intra-State rivers completely belong to the States over which the Union Government or Union Parliament should not have much power to intervene. Therefore, the language of Entry 24 should be modified. Besides, the phrase "declared by Parliament by law to be national waterways" must be deleted.

In the light of what we said here above, we suggest the modification thus: "Entry 24. Shipping and navigation on inland waterways in inter-State rivers; the. rule of the road on such waterways."

Entry 25—"Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies."

In view of the suggestions made by the Government in relation to entry 25 in the Concurrent List, the Government suggest that :—

in the above Entry 25, the expression "provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies" should be deleted.

Entry 30— "Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels".

Since we suggested changes in Entry 24, consequential change is to be made in Entry 30. So the word "national" which is found between the words "by" and waterways must be replaced by the words "inter-State river".

After the amendment, the suggestion is that Entry 30 should read thus :

"Carriage of passengers and goods by railway, sea or air by inter-State river waterways in mechanically propelled vessels.".

Entry 31—"Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication."

Please see our remarks in answer to Question 4.10 in Part IV—"Administrative Relations".

Entry 32—"Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides".

The last phrase "save in so far as Parliament by law otherwise provides" is unnecessary. In fact such provision has been made in Article 285 itself. Article 285 clause (1) reading "The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by State or by any authority within a State" can also be usefully referred to. Independent of this provision, the Government recommend that the last phrase "save in so far as Parliament by law otherwise provides" may be deleted.

Entry 33 : In view of the ambulatory provision regarding the concept of acquisition and requisitioning of property, which were prevailing in the past and particularly as Article 31 of the Constitution has been omitted, this Government suggest the restoration of the Entry as it originally stood reading as follows :

"Acquisition and requisitioning of property for the purposes of the Union".

Entry 40—"Lotteries organised by the Government of India or the Government of a State.

Lottories organised by the Government of a State is purely a local matter. It does not become national in dimension or character. Therefore, there is no ryhme or reason in retaining "lotteries organised by the Government of a State" in the Union List.

The Government th refore recommend that the phrase "or the Government of a State" must be deleted from Entry 40 and a new entry namely, "Lotteries organised by the Government of a State" may be included in the State List.

Entry 45—"Banking"

In other federal countries like United States and Australia, the States also have established banks. Therefore, banking should not be exclusively given to the Union Government. Of course, the Central Banks, that is, the key bank which normally lays down rules and regulations for other banks, which is normally distinguished by the Economists as the Banker's Bank must be in the Union List. So we suggest that in entry 45, the word "Banking must be replaced by words "Central Bank or Reserve Bank".

The Government suggest that the entry "Banking" must be transferred to the Concurrent List.

Entry 48—"Stock Exchanges and futures markets".

Whatever may be said of 'Stock Exchanges', "future markets" which are essentially intra-S ate in character, dealing with local mercantile and commercial subjects, need not be in the Union List.

We recommend that this entry is so far as it relates to "futures markets" be transferred to the State List.

Entry 51—"Establishment of standards of quality for goods to be exported out of India or transported from one State to another".

In Entry 51, the Government recommend the deletion of the expression "or transported from one State to another". This is because each State can independently judge for itself the quality of the goods it is purchasing from the other States and a decision to accept such transportation of goods exported by them has to be left to the discretion of the States concerned.

The Government's view is that entry 51 should read as "Establishment of standards of quality for goods to be exported out of India."

Entry 52—"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

Under entry 52, of List I, 'Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest' come within the exclusive legislative competence of the Parliament. The Industries (Developement and Regulation) Act, 1951 has been passed with reference to this entry. But Parliament has brought many of the items within the scope of the Industries (Development and Regulation) Act, 1951 with the result that the legislative power under entry 24 of List II, *viz.*, Industries subjects to the provisions of entries 7 and 62 of List I, becomes actually ineffective because, to the extent Parliament has included any industry within the scope of the Industries (Development and Regulation) Act, 1951 or any other Act under entry 52 as a controlled industry, the legislative competence of the State Legislature is deprived of. This certainly affects the federal structure of the Constitution in the sense that the State Legislature is made incompetent in respect of controlled industries coming under the Act enacted by Parliament under entry 52 of List I.

Further, the expression "in public interest" is so wide that any and every industry can be brought within the scope of entry 52. The Government of Tamil Nadu are therefore of the firm view that the 'core industry of crucial importance for national development, should be specified in the entry itself, Entry 52 may read as follows :

"52 Industries specified below :

1. Metallurgical Industries

A. Ferrous :

(1) Iron and steel (metal)

(2) Ferro-alloys

(3) Iron and steel castings and forgings.

(4) Iron and steel structurals.

(5) Iron and steel pipes.

(6) Special steels.

(7) Other products of iron and steel.

B. Non-ferrous :

(1) Precious metals, including gold and silver and their alloys.

(2) Other non-ferrous metals and their alloys.

(3) Semi-manufactures and manufactures.

2. **Fuels** :

(1) Coal, lignite, coke and their derivatives.

(2) Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.

(3) Fuel gases—(coal gas, natural gas and the like).

3. **Steam Generating Plants** :

Steam generating plants.

4. **Prime movers (other than electrical generators)** :

(1) Steam engines and turbines

(2) Internal combustion engines.

5. **Telecommunications:**

(1) Telephones.

(2) Telegraph equipment.

(3) Wireless communication apparatus.

(4) Radio receivers, including amplifying and public address equipment.

(5) Television sets.

(6) Teleprinteres.

6. **Transportation** :

(1) Aircraft.

(2) Ships and other vessels drawn by power.

(3) Railway locomotives.

(4) Railway rolling stock.

7. **Fertilisers** :

(1) Inorganic fertilisers.

(2) Organic fertilisers.

(3) Mixed fertilisers.

8. **Chemicals (other than fertilisers):**

(1) Coal tar distillation products like napthalene anthracene and the like.

(2) Explosives including gun powder and safety fuses.

9. **Paper and pulp including paper products** :

(1) Paper-Writing, printing and wrapping.

(2) Newsprint.

(3) Pulp-Wood pulp, mechanical, chemical, including dissolving pulp.

10. **Sugar.**

Sugar

11. **Defence Industries** :

Arms and Ammunition.

Even these specifications should be restricted to industries of crucial importance for national devleopment or the core industries. Consequently, entry 24 of List II will read as follows :

"Industries other than industries specified in entries 7 and 72 of List I."

Entries 53, 54 and 55 :—

Entry 53 :—"Regulation and development of oil fields and mineral oil resources : petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

Entry 54 :— "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest,"

Entry 55 :—"Regulation of labour and safety in mines and oil fields."

It is appropriate that these entries are transferred to the Concurrent list.

Entry 56 :—"Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

This Government have already submitted its views touching this entry. This Government recommend that Entry 56 should read as follows :—

"56. Regulation and development of inter-State rivers and river valleys, diversion of the waters of inter-State rivers to any part of the territory of India and apportionment among the States (but not including the use within the States) of the waters of inter-State rivers, to the extent to which such regulations, development diversion and apportionment under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 58 :—"Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies."

In this entry, "regulation and control of manufacture, supply and distribution of salt by other agencies" are purely local activities. Inclusion of this item in Entry 58 does not conform to the basic principle of distribution of powers. So, this phrase must be deleted from Entry 58.

The Government recommend that Entry 58 will read as follows : "Manufacture supply and distribution of salt by union agencies".

Entry 60 :—"Sanctioning of cinematograph films for exhibition".

This entry should appropriately be in List II enabling the State Legislature to legislate on all intricacies connected with it. The current system of censoring by Board of Censors nominated by the Union which might or might not adequately provide for representation from each of the States, is a feature which has to be borne in mind while considering the real purport of this Entry. India has got now a linguistically based foundation with certain traditions, cultures, practices and habits peculiar to each State. Even the faith are some time radically different.

Cinematograph exhibition has now attained a peculiar position in the field of communication and information. Having regard to the different tastes, varied culture, mosaic habits of the people in each State in our country, the power to sanction cinematograph films for exhibition should be under the supervision and control of the States and should not be the subject matter of Legislation by Parliament.

The Government suggest that this entry, viewed in the light of independent developmental conscience of States, has to be transferred to the State List.

Entry 62 :—"The institutions known at the commencement of this constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by parliament by law to be an institution of national importance."

Keeping in view of our comments made earlier, the Government recommend

the deletion from Entry 62, the last phrase "or in part and declared by Parliament by law to be an institution of national importance."

Entry 63 :—"The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University the University established in pursuance of article 371E; any other institution declared by Parliament by Law to be an institution of National importace."

In Entry 63, the Government recommend the deletion of last phrase "any other institution declared by Parliament by law to be an institution of national importance."

Entry 64 :—"Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

In Entry 64, the Government recommend that the last phrase "or in part and declared by Parliament by law to be institutions of national importance" must be deleted.

Entry 66 :—"Co-ordination and determination of standards in institutions for higher education or research and scientific and Technical institutions."

Entry 67 :—"Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance."

The Government are of the view that these two entries should be transferred to the State List.

Entry 76 :—"Audit of the accounts of the Union and of the States."

Audit of the accounts of the States must be put in the State List. The Government therefore recomment that :

In Entry 76,the words "and of the States, must be deleted.

Entry 84 :—"Duties of excise on tobacco and other goods manufactured or produced in India except

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraphs (b) of this entry."

The power to levy excise duty on medicinal and toilet preparations containing alcohol or any substance including alcohol should appropriately be under the control of the State Legislature. It may be noted that under entry 51 of the State List, the power to levy excise duty on alcoholic liquor for human consumption and opium, Indian hemp and other narcotic drugs and narcotics is exclusively vested in the State Legislature. But that entry excludes medicinal and toilet preparations containing alcohol or any substance included in opium, Indian hemp and other narcotic drugs and narcotics. The exclusion is not necessary. Consequently, the Government recommend that :

the exclusion in entry 51 of the State List should be omitted and the inclusion in entry 84 of the Union List should be omitted.

Entry 85 :—"Corporation tax."

For this entry our suggestions in Part V—'Financial Relations, may be referred to.

Entry 90 :—"Taxes other than stamp duties on transactions in stock exchanges and futures markers."

In view of our comments on entry 48, the expression "and futures markets" should be omitted and "taxes on future markets" should be transferred to the State List.

Entry 97 :—"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

This entry appears to be a corollary to Article 248. We have suggested while dealing with Article 248, that both Article 248 and Entreis 97 should be omitted and a new entry 67 has to be included in the State List—Vide our suggestion under Article 248. In the light of the recommendations and suggestions made while dealing with Article 248, the Government reiterate that both this entry 97 and Article 248 should be omitted.

List II—State List

Entry 1 :—"Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power."

In Entry 1, the entire phrase "or any other armed force of the Union or of any other force subject to the control of the Union" must be deleted. In fact.

much of this provision was introduced by the Constitution (Forty Second Amendment) Act, 1976. After deletion of this phrase, Entry 1 will read thus :

"Public order (but not including the use of any naval, military or air force or of any contingent or unit thereof in aid of the civil power)".

Entry 2 —"Police (including railway and village police) subject to the provisions of entry 2A of List I."

In Entry 2, the phrase "subject to the provisions of Entry 2A of List I" must be deleted. After the deletion of this phrase, Entry 2 will read thus :

"Police (including railway and village Police)"

Entry 12 —"Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance."

In Entry 12 "the phrase declared by or under law made by Parliament to be of national importance" should be deleted. Consequent on the recommendation of this Government to transfer entry 67 from the Union List to the State List, entry 12 will read thus :

Libraries, museumes and other similar institutions controlled or financed by the State; ancient and historical monuments and records and archaeological sites and remains."

New Entry 12-A—Consequent on the recommendation of this Government to transfer Entry 66 from the Union List to the State List, the following entry has to be inserted after Entry 12 :

"12-A. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

Entry 13—"Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I, municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles."

In Entry 13, the phrase "subject to the provisions of List I and List III with regard to such waterways" must be deleted.

Then Entry 13 must be reworded thus:

"Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways; intra-states rivers and traffic thereon, vehicles including mechanically propelled vehicles."

Entry 24—Please see our remarks under Entry 52 of List I.

Entry 26—"Trade and commerce within the State subject to the provisions of entry 33 of List III,"

As regards Entry 26, the Government decided to bring Entry 33 of Concurrent List to State List and that —

Entry 26 must be reworded thus:

"Trade and commerce within the State including trade and commerce in—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oil-checks and other concentrates;

(d) raw cotton, whether ginned or un-ginned, and cotton seed; and

(e) raw jute."

Entry 27—"Production, supply and distribution of goods subject to the provisions of Entry 33 of List III."

In Entry 27 also, it was decided by the Government to bring in the provisions of Entry 33 of List III and it was decided to recast Entry 27 as follows :—

"Production, supply and distribution of goods including the production, supply and distribution of—

(a) the products of any industry and imported goods of the same kinds as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

Entry 33—"Theatres and dramatic performaces cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements."

In Entry 33, the phrase "subject to the provisions of Entry 60 of List I", must be deleted. After the deletion of this phrase Entry 33 will read as follows :—

"Theaters and dramatic performances; cinemas; sports; entertainments and amusements".

Entry 33-A—In view of our remarks under Entry 60 of the Union List this Government suggest, a new Entry 33-A reading : "Sanctioning of cinematograph films for exhibition."

Entry 33-B—In view of our remarks under Q. 4·10 this Government suggest a new entry 33-B reading "Broadcasting and Television".

Entry 36—This Government suggest the restoration of original Entry 36, excepting or the omission of the clause "subject to the provision of Entry 42 of List III".

Entry 36 will read as follows :

"Acquisition or requisitioning of property, except for the purposes of the Union".

Entry 51—"Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactuted or produced elsewhere in India—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparation containing alcohol or any substance included in sub-paragraph (d) of this entry."

In view of our recommendation regarding Entry 84 in List I, Entry 51 should read as follows:

"Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp other narcotic drugs and narcotics."

Entry 57—"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provision of entry 35 of List III."

The expression "subject to the provisions of Entry 35 of List III" may be omitted.

After the above omission, Entry, 57 will read as follows:

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars."

The Government also suggest to add a new entry as follows:

"**Entry 57-A**—Taxes on mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

List III—Concurrent List

The Government are of the view that the Concurrent List, the object of which is to secure uniformity of Legislation and otherwise should be restricted to matters which are of All-India importance and interest to the country as a whole and should be reduced to the minimum and the other entries should be transferred to the State List.

Entry 3—"Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention."

The Government are of the view that except for the paranthesis "or the maintenance of supplies and services essential to the community" the rest of the entry may be transferred to List II. In th State List a new entry will be added as Entry 1-A, which will read as follows :

"**Entry 1-A**—Preventive detention (List II) for reasons connected with the security of a State or the maintenance of public order; persons subjected to such detention."

After the above modification, the existing Entry 3 will read thus :

"Preventive detention for reasons connected with the maintenance of supplies and services essential to the community; persons subjected to such detention."

Entry 4—"Removal from one State to another State of prisoner, accused persons and persons subjected to preventive detention for reasons specified in Entry 3 of this List."

This entry may be transferred to the State List with a condition that transfer of prisoners from one State to another State should be made with the consent of the other State.

Entry 5—"Marriage and divorce; infants and minors adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law".

This entry may be transferred in its entirety to the State List as the subject-matter concerning the entry has a positive impact on the personal law of the subjects of the State which undoubtedly varies from State to State.

Entry 8—"Actionable wrongs."

The Government suggest that this entry may be transferred to the State List for the purpose of greater administrative efficiency.

Entry 10—"Trust and Trustees" and **Entry 11**—"Administrators-General and Official trustees."

The Government suggest that these entries may be transferred to the State List for the purpose of greater administrative efficiency.

Entry 11-A—"Administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts."

This entry was inserted by the Constitution Fourty-second (Amendment) Act, 1976, with effect from 3rd January 1977. This entry should be restored to the State List as Entry 3 as originally found before 3rd January 1977. There is no justification at all for bringing this entry in the Concurrent List. This was done during the Emergency period and it is no longer desirable to have this entry in the Concurrent List. This entry may be transferred to State List and numbered as Entry 3-A.

Entry 15—This entry may be transferred to State List (Entry 9-A).

Entry 16.— "Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients."

This entry contains subject-matters which are purely local in character. So, Entry 16 can be transferred to State List and numbered as Entry 9-B.

Entry 17—"Prevention of cruelty to animals."

This entry deals with "Prevention of cruelty to animals", which is also a local subject-matter. Therefore this entry can be transferred to State List and numbered as Entry 15-A.

Entry 17-A—"Forests".

"Forests" which was inserted in the Concurrent List by the constitution (Forty-second Amendment) Act 1976 with effect from 3rd January 1977 should also be restored to the State List. There is no justification whatsoever for having this entry in the Concurrent List. The position obtaining until 3rd January 1977 was that 'forests' was the subject of State Legislation. The Government therefore recommend that Entry 19 of the State List may be restored therein.

Entry 17-B—"Protection of wild animals and birds."

This entry was inserted by the Constitution (Fourty-Second Amendment) Act, 1976 with effect from 3rd January 1977. Till 3rd January 1977, this subject-matter was exclusively within the competence of the State Legislature with reference to the original Entry 20 of the State List. The Government therefore recommend that Entry 17-B may therefore be restored as Entry 20 of the State List.

Entry 19—"Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium".

We have already expressed while dealing with Entry 52 of List I that even alcohol which is the base for intoxicating liquor should be the State subject. The inclusion of this entry in the State List can also be justified by the fact that the State Government will be in a better position to appreciate the needs in respect of matters covered by this entry.

We therefore recommended that this entry may be transferred to the State List and numbered as Entry 8-A of the State List.

Entry 22—"Trade unions; industrial and labour disputes."

Entry 23—"Social security and social insurance; employment and unemployment."

Entry 24—"Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

The subject-matters of these entries should appropriately be the subject-matter of the State Legislature. As the State Government will be in a better position to appreciate the needs in respect of matters covered by these entries, these entries should be transferred to the State List and numbered as entries 10A, 10B and 10C respectively.

Entry 25—"Education, including technical education, medical education and universities subject to the provisions of Entries 63, 64 and 65 of List I; vocational and technical training of labour."

This entry should be transferred to State List as Entry 11.

The Government further recommend that a new Entry as Entry 11-A should be inserted in the State List reading as :

"**Entry 11-A**—Provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies."

Entry 27—"Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

The Government recommend that—the expression "by reason of the setting up of the Dominions of India and Pakistan" may be omitted.

Entry 28—"Charities and charitable institutions, charitable and religious endowments and religious institutions."

In the State of Tamil Nadu in particular various beneficial legislations are being undertaken and policies laid down in connection with better administration of charitable and religious endowments and religious institutions. Even before the introduction of our Constitution such subjects were within the exclusive sphere of the constituent units. This entry may therefore be appropriately transferred to the State List and numbered as Entry 34-A in that List.

Entry 30—"Vital statistics including registration of births and deaths."

There were independent Acts in Tamil Nadu in connection with the registration of births and deaths. The Centre repealed the local Act to achieve no purpose other than that intended by the earlier Act which was prevalent in the State.

Even before the Constitution this was being legislated upon exclusively by the provinces. The Government therefore suggest that this entry should be appropriately the subject-matter of State legislation. The Government recommend that this entry may be inserted as entry 6-A in the State List.

Entry 31—"Ports other than those declared by or under law made by Parliament or existing law to be major ports."

Apparently this entry refers to minor ports. The Government suggest that—

Minor ports which were prior to the Constitution in the Provincial List may be transferred to the State List and numbered as Entry 13B.

Entry 32—"Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and

the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national water-ways".

This Government recommend that—this entry may by transferred to State List as Entry 13-A.

Entry 33—Please see our remarks under Entries 26 and 27 of State List.

Entry 33-A—"Weights and Measures except establishment of standards".

This entry was inserted by the Constitution (Forty second Amendment) Act, 1976 with effect from 3rd January 1977. This entry was originally found in the State List as Entry 29. The Government therefore recommend that—this entry may be restored to the State List as Entry 29.

Entry 34—Please see our remarks under Part VII Miscellaneous.

Entry 35—"Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied".

While making our comment on the language of Entry 57 of the State List, which is made subject To Entry 35 of the Concurrent List, we recommended Entry 57 may be appropriately amended. Further mechanically propelled vehicles are virtually under the control of the State Government and it is the State administration which is responsible for its licensing, taxes, etc. The Government therefore recommend that this entry may be transferred to the State List and numbered as Entry 57-A.

Entry 36—"Factories".

Entry 37—"Boilers"

These two entries have an impact on the developmental activities of the State including setting up of industries, etc. The Government therefore recommend that these entries should be transferred to the State List as Entries 25-A and 25-B respectively.

Entry 39—"Newspapers, books and printing presses."

Whether it is in the name of public order or from the point of view of educational progress or the general benefit derived by communication and publicity, this entry has to remain in the State List. The administrative machinery for the enforcement of the laws connected with the subject-matter of the entry is with the States. The Government therefore recommend that this entry may be transferred as Entry 25C in the State List.

Entry 40—Please see our remarks under entry 67 of List I.

Entry 42—"Acquisition and requisitioning of property."

In view of our suggestion for re-introduction of Entry 33 in List I and Entry 36 in List II and also in view of the fact that Article 31 is omitted by the Constitution (Forty-fourth Amendment) Act, 1978, the Government recommend that this entry may be omitted.

Entry 45—"Inquiries and statistics for the purposes of any of the matters specified in List II or List III."

This entry has been interpreted by the courts so as to enable Parliament to order a commission of inquiry in respect of matters exclusively falling within the State legislative field. In fact, the validity of the Commissions of Inquiry Act, 1952; (Central Act 60 of 1952) has been justified with reference to this entry. The power under the Commissions of Inquiry Act to order a Commission of Inquiry in respect of the conduct of the Ministers of a State Government even while in Office has been resorted to by the Central Government purporting to, exercise the powers under the Commissions of Inquiry Act, 1952. In a Federal set up, it is inconceivable that the Central Government should have the power to order a Commission of Inquiry in respect of the conduct of State's Ministers while in Office or in respect of the past conduct of the Ministers. It is therefore necessary that Parliament should have no power to order an inquiry in respect of the conduct of Ministers of State Government. This aspect assumes very great importance in the context of different ruling parties at the Centre and at the State level. Almost in all cases, the Central Government has resorted to order a Commission of Inquiry into the conduct of Ministers of the State Government when the State Government is headed by a Chief Minister belonging to a party different from the ruling party at the Centre. This subject 'Inquiries and statistics", should exclusively vest in the State Legislature and it is therefore necessary that this entry should be transferred to the State List. The Government primarily suggest that

Entry 45 is omitted from the Concurrent List.

However, if it is proposed to retain this entry in the Concurrent List, the Government suggest that the entry should be recast as follows :

"Inquiries and statistics for the purpose of any of the matters specified in List II or List III but not including inquiries in respect of the conduct of any Minister of a State Government while in office or after demitting office."

In other words, Parliament should have no power to order a Commission of Inquiry in respect of the conduct of the Ministers of the State Government, while in office or after demitting office. But it shall be open to the State Government to appoint a Commission of Inquiry to enquire into the conduct of the State Minister either while in office or after demitting office. To make this position clear, the Government suggest that a substantive amendment may be made in the Constitution in Chapter I of Part XI as follows :—

"246-A **Parliament to have no power to order a Commission of Inquiry into the conduct of a Minister of a State Government**—Parliament shall not have power to make law to order a Commission of Inquiry in respect of the conduct of any or all the Ministers of the State Government, while in office or after demitting office."

PART III

ROLE OF THE GOVERNOR

So far as the role of the Governor is concerned, the view of the Tamil Nadu Government is that the post of the Governor should be abolished, as the Governor appointed by the President is a legacy of the past. It is an anachronism, owing its existance to the British Colonial system. Further, the recent instances have clearly shown that the Governors do not hesitate to misuse their powers and dismiss the Council of Ministers, notwithstanding the fact that the Council of Ministers enjoy the absolute confidence of the Legislature. In order to avoid repetition of such misuse of power, the post of the Governor may be abolished. The Governors have been acting more as agents of the Centre than excercising the powers strictly in conformity with the provisions of the Constitution. This will also save the huge expenditure incurred from the State Exchequer on the office of the Governor and its attached establishments. There is no need to have an ornamental figure head in the State. In this view, the Tamil Nadu Government are of the firm view that the institution of the Governor should be abolished. For this purpose, Articles 153 to 162 may be omitted and necessary amendments to Articles 153, 164, 166, 167 and other provisions of the Constitution may be carried out.

All the powers now excercised by the Governor shall be exercised by the Chief Minister and any information which the Central Government seeks to obtain from the State shall be obtained from the Chief Minister himself and not through any other agency. However, if the post of the Governor is decided to be continued, then the following remarks are called for :

The Governor may be selected from a panel of four names submitted to the President by the Chief Minister enjoying the confidence of the Legislative Assembly in such a case, if the Legislative Assembly decides that the continuance of the Governor in any stage will not be in the interests of the State, then on a resolution passed to that effect by the Legislative Assembly, the President should remove the Governor on receipt of a copy of the said resolution by the President.

3.1(a) Under the Constitution of India the Governor of a State has to play five roles. First and foremost the Governor is the head of the State and repository of the executive power of the State. This is evident from the provisions of Article 153 and 154 of the Constitution. The extent of the State's executive power is indicated in Article 162 of the Constitution. Since the Parliamentary system of Government has been adopted by the Constitution, the Governor is obliged to excercise his functions on the aid and advice of the Council of Ministers who shall be collectively responsible to the legislative assembly of the State. In consonance with the traditional concept of maintaining the dignity of the high office of the head of the State, a number of important powers have been given to the Governor, which are expected to be exercised on the advice of the Council of Ministers. The business of Government of the State is carried on in the name of the Governor (Article 166) and in relation to Council of Ministers, he exercises his traditional rights, namely, the right to be informed, the right to warn and the right to advice (Article 167).

Secondly, he is an inalienable part of the State Legislature (Article 168) and he is empowered to exercise such important functions as :

(1) the power to summon and prorogue each House of the State Legislature and to dissolve the State Legislative Assembly (Article 174);

(2) the right to address or send messages to the House or Houses of State Legislature (Article 175);

(3) the right to address the State Legislature at the commencement of the First Session of each year (Article 176);

(4) the right to assent to or withhold assent from, the Bill passed by the State Legislative Assembly or, in case of bicameral legislature, passed by both Houses (Article 200); and

(5) the power to promulgate ordinances during recess of Legislature; etc.

Thirdly, in the chain of constitutional activities the Governor has certain reciprocal obligations to perform so as to be an effective link between the State and the Union. The Governor performs certain duties on behalf of the Union Government towards the States. This is evident from the provisions of Article 355 read with the provisions of Article 356. These provisions also give an idea that the Governor is expected to play his role so fairly as to enable the Union Government to discharge its constitutional duty towards the States.

Fourthly, the Governor is an effective link between the State and the Union in the matters relating to—

(1) reservation of State Bills for President's consideration under Articles 200 and 201;

(2) reservation of State Bills under Article 254(2) and Article 288(2);

(3) procurement of sanction of the President under Article 304(b);

(4) getting the assent of the President to the State Act as required under Article 255;

(5) State compliance with the provisions of Articles 256 and 257 and directions issued under Articles 256, 257 and 339(2).

In these matters, the Governor plays a very crucial role.

Finally, the Constitution envisages certain situations in which he has to function as an agent of the President. For instance, Article 239(2) provides that if a Governor of the State is also appointed as the administrator of the adjoining Union territory, he is expected to excercise his functions as such administrator independently of his Council of Ministers Articles 371 and 371-A, which place special responsibilities on the Governor of Maharashtra, Gujarat and Nagaland for certain specific purpose may also be reckoned under this category. Besides, after issue of Presidential proclamation and assumption of all or any of the functions of the Government of a

State by the President under Article 356, the Governor functions as an agent of the President for the period when proclamation is in operation.

(b) Differences seem to have arisen between the Governor and the Cabinet occasionally in the matter of appointment of Vice-Chancellors in Kerala, West Bengal and Andhra Pradesh. Governors in these States seem to think that as Chancellors of the University they had discretionary power to choose the Vice Chancellors. But the cabinet is opposed to the excercise of discretionary power by the Governor. Since the Governor functions here as the head of the State, he appears to have exceeded his functional limit when he appointed Vice-Chancellors against the advice tendered by the State Cabinet.

The Governor, in the excercise of his functions, either under the Constitution or under any Act, passed by the State Legislature or by the Parliament has to act on and accept the advice tendered by the Council of Ministers. In the matter of appointment of Vice Chancellors, the Governor has to act only in accordance with the advice tendered by the Council of Ministers.

Another important function of the Governor as the Head of the State relates to the appointment of Chief Ministers. Of course, when a single party gets a clear mandate from the people, difficulty does not arise. The whole problem arises when there is no single political party with clear mandate from the people to form the Government. The question is how he has to discharge his function in appointing the Chief Minister in such a situation. A number of such situations arose during the last 34 years. During such situations the Governors excercised their discretionary power to call upon persons, who in their view could command majority in the House. to form Ministry.

In the recent past, when similar circumstances arose in States like Kerala, Haryana, Karnataka, etc. the Governors adopted novel methods to satisfy themselves about the majority support to aspirants for Chief Minister's post. Those novel methods are, physical verification of all the members of the State Legislative Assembly, parading the members of the State Legislative Assembly by various leaders, signature verification, etc. These are very unhealthy practices and tell adversely on the high position of the Governor. Such a method has never been used in Britain during similar circumstances. We, therefore, state that when any political party fails to secure clear mandate from the people, to form the Government or in case when a ministry is voted out as a result of a no confidence motion and on such or similar occasions we have suggested amendment to Article 164 of the Constitution hereinafter set out. When no political party enjoys the majority support, the State head should of his own motion summon the Assembly for electing a person to be the Chief Minister and the person so elected shall be appointed by the Governor as the Chief Minister.

As part of the Legislature, the Governor has to discharge certain functions. One such function is, as stated earlier, reservation of State Bills for President's consideration and his assent under Article 254(2) and 288(2). Under these Articles, reservation of State Bills for President's consideration and getting the President's assent are essentially in relation to State's legislation to over-ride the pre-existing Central legislation made with respect to concurrent subject matter under Article 254(2) and to overcome the immunity provisions of Article 288(1). For fuller discussion our comments under Part II—Legislative Relations may be referred to.

Another important function which the Governor performs as part of the State Legislature is summoning and proroguing the House or Houses of the State Legislature and dissolving the State Legislative Assembly. The function of summoning and proroguing the House or Houses of State Legislature is done on the advice of the State Cabinet. But in the last 34 years, on a few occasions a few Governors excercised this power against the advice of the State Cabinet. This happened mainly after the fourth general election in State like West-Bengal, Uttar Pradesh, etc. These are no doubt some of the excesses committed by the Governors.

Thus, it is clear that in the last 34 years in playing the role envisaged in the Constitution, the Governor to a great extent, tried to comply with the provisions and norms of the Constitution but in a few situations, the Governors deviated from such Constitutional norms and acted beyond their functional ambit.

There cannot be any objection to appointing party-members as Governors provided they are competent and command respect and act impartially. If a politician is appointed as Governor he should by convention be above party and political affiliations as in the case of the Speaker of the Lok Sabha. The same convention which governs Speaker of the Lok Sabha ought to have been evolved in the case of politician Governor. But unfortunately no such convention developed and the politician Governor adopted partisan approach and consequently tension developed between the Centre and the States. In a quasi-federal set up like the Indian Constitutional set up, the Central Government must give up partisan approach particularly against Governments of the States who do not belong to the ruling party at the Centre. It is impossible to have smooth Centre-State relationship if the ruling party at the centre does not adopt fair approach to all the State Governments, irrespective of political affiliations. The Central Government's attitude opposition Governments in the States should not be influenced by the partisan priority of the ruling party at the Centre. No healthy convention of the Central Government adopting a uniform non-partisan approach towards the State Governments irrespective of their political affiliation since the advent of the Constitution has been evolved. The party in power at the Centre seeks to advance its party interest in the States and Governors are some times made to too the line of Centre with a view to dismissing the State Governments who do not belong to the party in power at the Centre. The dismissal of the AIADMK Government and others in the past and the dismissal of Sikkim Government are cases in point. The Governor has some times acted contrary to British Constitutional conventions and practices and has acted in a high handed manner without giving a chance to the Chief Minister in Office to convene the Assemble

for testing whether he has lost his majority or not, Sir Ivor Jennings in his 'Cabinet Government' has pointed out :

"If the King believes that the Government has lost is majority, and if it is any concern of his, his obvious step is to ascertain whether his assumption is correct and to insist upon a disolution. If Ministers refused to 'advice' the dissolution in Council they would resign, and if they did not resign, he could dismiss them.

But is it his duty to make such an assumption ? Is he sufficiently in touch with public opinion to be able to form a judgement ? It is suggested that the answer to the second question is in the negative. Though his 'splended isolation' makes him more impartial than most, it also keeps him away from the movement of opinion. He can judge only from newspapers, from by-elections, and from his own entourage. Of the first, it is enough to say that even the unanimous opposition of London newspapers would be no criterion. Of the second it can be said that by-elections (as Mr. Disreli discovered) are apt to prove deceptive, especially to one far removed from them. Of the third it must be asserted that it is always more biased and less well-informed than the King himself."

He has further pointed out :

"Democratic Government involves competing policies and thus the rivalry of parties. The policy to be forwarded is that which secures the approval of the House of Commons, subject to the power of the Government to appeal to the electors. If therefore, the Government is defeated in the House of Commons and does not appeal to the people or if, having appealed to the people, it is defeated, a new Government has to be formed. The Queen's task is only to secure a Government, not to try to form a Government which is likely to forward a policy of which she approves. To do so would be to engage in party politics. It is, moreover, essential to the belief in the monarch's impartiallity not only that she should in fact act impartially but that she should appear to act impartially. The only method by which this can be demonstrated clearly is to send at once for the leader of the Opposition."

The Governor task is only to secure a Government, not to form a Government. It is because Constitutional conventions and practices have not been followed in respect of the excercise of powers by the Governor under Article 164(1) of the Constitution, there is friction and clash between the State and the Centre. It is the duty of the Centre to appoint persons of eminence, calibre and ability as Governors. If Centre appoints persons who will be pliant and willing to do the Centre's bidding there is bound to be friction and clash and tension between the Centre and the States which will result in confrontation between the Centre and the States.

3.2 B. G. Kher, former Chief Minister of Bombay has expressed the view,

*A Governor can do a great deal of good if he is good Governor and he can do a great deal of mischief, if he is bad Governor, in spite of the very little power given to him under the Constitution we are framing." —CAD VIII P. 434.

In order to foster healthy Union-State relations the Governor should discharge his role by correctly interpreting the scope and limits of his various roles. In other words there must be a correct assessment of the scope and limits of the four types of the functions of the Governor and maintenance of clear distinction between the four functions. Apart from that, such a good relationship between the Centre and the States depends very must on the personality of the Governor.

This question has to be considered under the following heads :

(1) the personality of the Governor,

(2) the attitude of the Governor,

(3) the extraordinary circumspection required while exercising his discretionary powers as the executive head of the State as also in the exercise of his power as part of the State Legislature.

No doubt, personality of the Governor depends on the high stature of a person holding the post of Governor, which he might have acquired in one or more fields of human activity. But it also depends very much on the mode of selection or appointment of the Governor, for any selection process or appointment method, which smacks of partisan politics, has an adverse effect on the stature of the person holding the post of Governor. Lingering doubt in the minds of the people about the fairness of the Governor's acts taken under the Constitution, which often arises due to the present method of appointment of the Governors, is detrimental to the maintenance of good and harmonious relations between the Centre and States. The latest opinion expressed by a Chief Minister is "I am afraid we shall all be exposed to constant and unwarranted interference and will of the people will continue to be in danger of being stifled for political purpose". Now the President appoints the Governors after consulting the Chief Ministers. The consultation principle has no support of the Constitution. So failure or refusal to consult the Chief Ministers in the matter of appointment of Governors will not render such appointment invalid. In fact, in few appointments made recently, the Union Government did not consult the concerned Chief Ministers. Naturally, therefore, the States often view the appointment of Governors as a burden imposed on them by the Union Government. Such a view is not very conducive to good Centre-State relations. So, a new method of appointment or selection of Governors has to be devised.

In the interest of securing harmonious relationship between the head of the State and State Cabinet, it is necessary that the State Cabinet should always be consulted and concurrence of the Chief Minister obtained.

We are of the view that the proviso to Article 153 enabling the same person as Governor for two or more States should be deleted as such a concept gives the impression that the States are in effect treated as mere corporations or administrative units rather than as Constitutive entities of the federation. If the proviso to Article 153 is omitted, consequential deletion, is that clause (3-A) of Article 158 should be deleted.

3.3 (a) This question has been answered in full while dealing with Part IV—Administrative Relations.

(b) Further to our view expressed earlier, regarding the appointment of Chief Minister, we have already said hat if a political party obtains absolute majority and a clear mandate from the people in the election, the Governor has no option but to invite the leader of that party. Only in cases of fluid situations where no single party has the support of majority, the Governor has to appoint leader of any one of the political groups, who, in his opinion, is capable of forming stable ministry, as Chief Minister. In discharging his functions in such difficult situation, he is expected to do with great care and intelligence. The practice of physical verification of strength of a particular party or signature verification, etc., are unhealthy practices which will demean the office of the Governor.

(c) As far as prorogation of the House is concerned, it must necessarily be done on the advice of the Chief Minister. Problem however arises in case of dissolution of the legislative assembly. If the Chief Minister, who enjoys support of the majority in the Legislative Assembly, advises the Governor to dissolve the House, the Governor has to accept his advice for the simple reason that if he rejects such advice he cannot nominate somebody else as a Chief Minister to run the Government. But if a defeated Chief Minister advises the Governor to dissolve the Legislative Assembly, the Governor is not duty bound to accept such advice, but he is duty bound to follow the course suggested by us in the proposed clause (1A) of Article 164.

3.4 This question has been answered in Part II—Legislative Relations.

3.5 This question has been answered in Part II—Legislative Relations.

3.6 We do not accept the so called dual role of the Governor. The view that the Governor is neither an agent of the Centre nor a more ornamental head of the State but "a close link" between the Centre and the States represents the correct position. As explained earlier, he plays four important roles under the Constitution. That is the correct position as far as Indian Constitution is concerned. As set out, in playing these four roles, the Governor by and large adhere to the Constitutional provisions. But in a few occasions, the Governor deviate therefrom. It is for these reasons. we are making some recommendations.

3. 7 The Governor's office is a political office. Therefore, it should not be equated with the position of the Judges of the Supreme Court or High Court. The Governor is not expected to function under the Constitution as an arbitrator between the Centre and the States. So guaranteed tenure salary, etc. do not arise in his case as methods to ensure his independence. The present provisions of the Constitution are sufficient enough.

3.8 We do not agree with this view excepting in a situation expressly referred to by us while suggesting below an amendment to Article 164. If such a view is accepted, we will be compelling the Governor to involve himself in day-to-day politics of the State. Such a course will be derogatory to the high position of the Governor. Besides, it will result in usurping the functions of the Speaker in this particular matter.

3.9 Please refer to our recommendations below while suggesting amendment to Article 164.

In this connection we would like to state that Article 67 clause (1) of the Constitution of the Federal Republic of Germany does not in any way offer a good solution. Article 67(1) of West German Constitution states :

> "The Bundestag can express its lack of confidence in the Federal Chancellor only by electing a successor with a majority of its members and by requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint a person elected."

The provisions of the said Article 67(1) are intended to ensure stability of the Ministry and to prevent frivolous no confidence motions. This is clear from the word "only" in Article 67 clause (1) of the West German Constitution. So, in no other way a no confidence motion can be brought in West Germany. In other words, the opposition party can bring a no confidence motion against a ministry in Germany only if it can elect a new leader with majority votes. The idea is in suggesting the incorporation of a similar provision in the Indian Constitution seems to be that if such similar provision is introduced into the Indian Constitution, the legislative assembly of a State can express its lack of confidence in the Chief Minister only by electing a successor and by requesting the Governor to dismiss the Chief Minister. The Governor must in such an event comply with the request and appoint person so elected as Chief Minister. If such provision is introduced in the Indian Constitution, the opposition parties of State Legislative Assembly will loss the right to bring a no confidence motion against a Chief Minister, unless they muster majority support to elect the new Chief Minister in his place. We do not think that political parties in India are prepared to accept such a restriction or their freedom to bring no confidence motion against the Ministry in order to assalt the party of the Government. Apart from that, if the provisions of Article 67(1) of the West German Constitution are going to be introduced into the Indian Constitution, to regulate the relationship between the Governor and the legislature in the State, then we must necessarily bring in also Article 68 of the West German Constitution which is a natural corollary to Article 67(1). Article 68(1) of the West German Constitution states that "if a motion of the Federal Chancellor for a vote of confidence is not assented to by the majority of the members of the Bundestag. the Federal President, may. upon the proposal of the Federal Chancellor, dissolve the Bundestag within 21 days. The right to dissolve shall lapse as soon as the Bundestag with the majority of its members elects another Federal Chancellor". Introduction of these provisions may create more problems than they seek to solve.

3.10 We do not subscribe to the view of the Administrative Reforms Commission. The very idea of issuing guidelines to the Governor, which may not

be exhaustive, as to how he should excercise his discretionary power would mean that the office of the Governor has been treated like office of the Commissioner or Secretary of a municipal body or corporation. The States clamour for autonomy and make the Governor's position independent from any Central interference. So if we accept the view of the Administrative Reforms Commission, regarding the issue of guidelines to the Governor in the name of the President, even after consultation with the Inter-State Council which under Article 263 has certain stated functions to discharge than the entire attempt to make Governor the Constitutional head of the State would be rendered meaningless. It is apposite to quote Pandit Jawaharlal Nehru. Pandit Nehru said "Governor are not political appointees and should not be changed with every new regime. It would be infinitely better if a Governor was not intimately associated with local politics and functions, but was a more detached figure acceptable to the State no doubt but not known to be a part of its party machine". The Supreme Court in Hargovind Pant vs. Raghulal Tilak and others (AIR 1979 SC p. 1109) has laid down that the Governor is not amenable to the directions of Government of India nor is he accountable for the manner in which he carries out his functions and duties. His is an independent Constitutional Office not subject to the control of Government of India. Therefore, we are constrained to say that a move to prescribe guidelines is politically improper and constitutionally untenable. It is not proper to degrade the high office of the constitutional functionary like the Governor by issuing such guidelines. We must allow conventions to develop in this field. This question has also been elaborately dealt with in Part IV—Administrative Relations.

Recommendations besides the Views Already Expressed

(1) The proviso to Article 153 states that "provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States". This proviso must be deleted. The idea of appointing one person as head of State for two or more States creates an impression that the States are, in effect, treated as mere corporation or administrative units without much standing in the Constitution as constitutive entities of the Federation. In no other Federal Constitution, such a provision is found.

Consequent to the deletion of the proviso to Article 153, clause (3-A) of Article 158 must be deleted. Clause (3-A) of Article 158 states that "Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine".

(2) The Governor shall be appointed by the President with the concurrence of the Chief Minister. Consequently Article 155, which relates to the appointment of Governor will have to be suitably amended for this purpose.

(3) Article 160 says that "the President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter". Article 160 is losely worded and gives a wide discretionary power to the President. The phrase "any contingency and not provided for in this Chapter" is wide and gives vast scope for political manoevure in view of the fact that the President has to act on the basis of the advice tendered by the Union Cabinet. It is possible to think that this provision was introduced to enable the President to make rules and lay down guidelines for the Governor for discharging his functions as agent of the President. In fact, as pointed out earlier in this report, the Governor discharges certain functions specified in the Constitution as an agent of the President. But the language of Article is such that it may be stretched to cover even other functions of the Governor. This Article requires modification.

(4) Article 163(1) of the Constitution provides that the Council of Ministers have to aid and advise the Governor in the excercise of his functions, except in so far as he by or under his Constitution required to exercise his functions or any of them in his discretion. It may be relevant to compare this Article with Article 74(1) which relates to the President. In the said Article 74(1), the "expression exc pt in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" does not find a place. The Constitution envisages a Parliamentary system of Government both at the Union and at the State. Therefore, it is necessary to modify Article 163(1) on the lines of Article 74(1) of the Constitution. Article 163(1), may therefore be recast as follows :

> "There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor who shall in the exercis of his functions act in accordance with such advice :
>
> Provided that in respect of the functions expressly conferred on the Governor under Articles 239(2), 371 and 371-A the Governor shall exercise his functions in his discretion".

(5) Article 163(2) says that "if any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion". This provision may not be very conducive, for effective functioning of the Cabinet system of Government in the States. It must therefore be omitted.

(6) Under Article 164(1) of the Constitution the Governor has to appoint the Chief Minister and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers. shall hold office during the pleasure of the Governor. Clause (2) provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

Consistent with the notions of Parliamentary democracy, it is desirable that a specific provision should be inserted in the Constitution as clause

(1-A) after clause (1) in Article 164 of the Constitution specifying in detail the manner in which a Ministry should be formed in a State. Clause (1-A) may be inserted on the following lines :—

'(1A)(a) The Governor should appoint as Chief Minister the leader of the party commanding an absolute majority in the Legislative Assembly.

(b) Where the Governor is not satisfied that any one party has an absolute majority in the Legislative Assembly, he should of his own motion summon the Legislative Assembly for electing a person to be the Chief Minister and the person so elected should be appointed by the Governor as the Chief Minister.

(c) The advice of the Chief Minister to the Governor to dismiss any Minister should be accepted by the Governor.

(d) Where it appears to the Governor at any time that the Chief Minister has lost the confidence of the majority of the Members of the legislative Assembly, the Governor should immediately and of his own motion summon the Legislative Assembly to enable the Chief Minister to secure a vote of confidence in the House.

(e) (i) If the Chief Minister fails to seek the vote of confidence, or having sought it, fails to secure such vote of confidence the Chief Minister shall resign forthwith. If there is any party commanding an absolute majority in the Legislative Assembly at the time of such resignation, the Governor shall, of his own motion, appoint as Chief Minister the Leader of such party.

(ii) Where the Chief Minister fails to resign under paragraph (i), or where there is no party commanding an absolute majority in the Legislative Assembly, then the Governor shall immediately of his own motion, summon the Legislative Assembly, The Legislative Assembly shall elect the person to be the new Chief Minister who should be appointed by the Governor as the Chief Minister or in the alternative, the Legislative Assembly may pass a resolution recommending the dissolution of the Legislative Assembly which shall be binding on the Governor.

(iii) If the Legislative Assembly fails to elect a new Chief Minister or pass a resolution as mentioned in paragraph (ii) within a period of one month commencing on and from the date of seeking the vote of confidence under sub-clause (d), the Legislative Assembly shall stand dissolved on the expiry of the said period on one month.

(f) When the Legislative Assembly stands dissolved under sub-clause (e) and during the period on and from the date of commencement of the Legislative Assembly and ending with the date of election of the new Chief Minister by the new Legislative Assembly, the Chief Minister and the other Ministers who are in office on the date on whioh the Legislative Assembly stands dissolved under sub-clause (e) shall continue in office only as a caretaker Minister.'

(7) The next Article that we have to think of seriously is Article 169, clause (1). This article states "Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting." In this Article, the word "may" after the word "Parliament" must be replaced by the word "shall". It is better to modify it in such a way as to state that "Parliament shall by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of not less than two-thirds members of the Assembly present and voting."

PART IV

ADMINISTRATIVE RELATIONS

4.1 to 4.4 These four questions are to be highlighted according to their purpose, function and use.

Articles 256, 257, 365 and 356 are the four Articles in the Constitution, which have both catalytic and fatalistic effect on the States, in view of the possible unitary exercise of executive power by the Union under those Articles. The hypothesis on which the executive power could be exercised under Articles 256 and 257, the material on which the President could be subjectively be satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the Report of Governor of a State which again bristles with unbridled, naked, arbitrary power to make a report under Article 356 and the residuary provision which is not controlled by any reasonable or acceptable restrictions under Articles 356 and the extreme step which could result by the adoption and implementation of executive power of the Union, whether as a preventive measure or as a curative measure have rightly created apprehensions in the minds of the States in our country, whether such exercise of executive power is at all consistent with and could stand on par with the universally accepted notions of federalism. Instances are not wanting to provoke the States to entertain such fears and apprehensions. The extraordinary use of executive power and the resultant extreme steps taken thereunder affecting the Constitutional status of the States as envisaged and enshirined in the Constitution can be traced from the year 1951.

The following are the instances :—

1. Imposition of Presidential Rule in Punjab in 1951 and Dr. G. C. Bhargara, C. M., resigned.
2. Gyan Singh Rarewala Ministry dismissed in Pepsu in 1953.

3. Dismissal of Assembly in Kerala in 1953.

4. Thiru T. Prakasam Ministry resigned and Presidential rule imposed in Andhra Pradesh in 1954.

5. In Kerala fall of Thiru P. Govinda Menon Ministry and imposition of Presidential rule in 1956.

6. Thiru E.M.S. Namboodripad Ministry dismissed and Presidential rule imposed in Kerala in 1959.

7. Fall of Thiru Mahatab Ministry in Orissa and imposition of Presidential Rule in 1961.

8. In Kerala a no confidence motion was passed against Thiru R. Sankar Ministry and consequently on 10th September 1964 the President took over the administration of the State.

9. In 1966 C. M. of Punjab Thiru Ram Kishan resigned and Presidential rule was declared suspending the power of the State Legislature.

10. The Maharashtrawadi Gommantak party Government resigned in Goa in 1966 and Presidential rule was declared suspending Goa Legislative Assembly.

11. President took over the administration of the State of Kerala in March 1965, since no political party was in a position to form the Government.

12. In Rajasthan, Presidential rule was imposed in 1967, suspending State Legislature.

13. On October 25, 1967 the President suspended the Manipur Assembly and the Council of Ministers.

14. On November 21, 1967, the President dismissed the United Front Ministry headed by Rao Birendra Singh and dissolved the Haryana Assembly.

15. Presidential Rule was imposed in Uttar Pradesh in 1968, suspending the Legislative Assembly and the Council of Ministers, headed by Thiru Charan Singh.

16. Resignation of Thiru Bhola Paswan Shastri Ministry in Bihar and declaration of Presidential Rule in 1968.

17. President dissolved Pondicherry Assembly and introduced President Rule in 1968.

18. West Bengal State Machinery dissolved and Presidential Rule imposed in 1968.

19. Resignation of Thiru Lachman Singh Gill Chief Minister of Punjab and imposition of President Rule in 1968.

20. President suspended the Bihar Assembly and imposed Presidential Rule and after the fall of Thiru Bhola Paswan Shastri Ministry in 1969.

21. In Manipur Koireng Singh submitted resignation of his Cabinet in 1969 and as a result, the Assembly was dissolved and the Presidential Rule was imposed.

22. Imposition of Presidential Rule in Uttar Pradesh in 1970 after the dismissal of Thiru Charan Singh Ministry.

23. Thiru R. N. Singh Deo, Chief Minister of Orissa resigned Assembly suspended on 11th January 1971 and Presidential Rule imposed in January 1971.

24. In Orissa, Assembly was dissolved on 23rd January 1971, Presidential Rule continued.

25. Resignation of Thiru Ajoy Mukherjee as Chief Minister of West Bengal, suspension of Legislative Assembly and imposition of Presidential rule in March 1970.

26. Dissolution of Legislative Assembly in West Bengal on July 30, 1970 and continuance of Presidential Rule.

27. In Kerala Thiru C. Achutta Menon resigned, Assembly dissolved. President's rule declared in 1970.

28. In Mysore, Thiru Virendra Patil resigned. Suspending the Legislative Assembly, the Presidential Rule was imposed in March 1971.

29. In Mysore, Assembly was dissolved in April 1971.

30. Resignation of Thiru Hitendra Desai, Chief Minister of Gujarat, dissolution of Assembly and imposition of President Rule in May 1971.

31. Dr. D. C. Pavate, Governor dissolved the Punjab Assembly and thereafter advised the President to take over the administration. President's Rule was proclaimed in June 1971.

32. In West Bengal, the Governor dissolved the Assembly on June 25. 1971 and on June 29, President took over the administration.

33. In Bihar, Thiru Bhola P. Shastri Ministry resigned and the President took over the administration of the State in January 1972.

34. A Presidential Proclamation dissolving the Assembly was issued in March 1973 when the Satpathi Ministry lost its majority.

35. In Manipur, the Alimuddin Ministry resigned President dissolved the Assembly imposing Presidential rule in March 1973.

36. In January 1974 Thiru M.D.H. Farook Maricar, Chief Minister of Pondicherry resigned, President's rule was introduced.

37. In March 1974, Thiru Ramaswamy Ministry in Pondicherry resigned and President's Rule was introduced.

38. In Tripura, in November 1971, the Sengupta Ministry resigned and President's Rule was imposed.

39. Thiru P. V. Narasimha Rao, Chief Minister, Andhra Pradesh resigned and Presidential Rule suspending the Assembly, was declared in January 1973.

40. Thiru Kamalapati Tripathi, Chief Minister, Uttar Pradesh resigned and Presidential Rule was imposed in Uttar Pradesh in June, 1973.

41. In Gujarat, Thiru Chimanbhai Patel, Chief Minister, resigned and Presidential Rule was imposed in February, 1974, suspending the Assembly.

42. The Gujarat Assembly was dissolved in March 1974, Presidential Rule continued.

43. In Uttar Pradesh in November 1976 when Thiru H. N. Bahuguna was Chief Minister, the Assembly was suspended.

44. In Orissa, Thirumathi Nandini Satpathy, Chief Minister was dismissed in December 1976.

45. Thiru Babubhai Patel, Chief Minister, Gujarat was defeated on Budgetory demand in March 1976, Assembly suspended.

46. In Nagaland, in March 1975, John Bosco Jasokie Ministry was not stabilized because of political defections, Assembly suspended.

47. In Nagaland, in May 1975, the Assembly was dissolved.

48. Dismissal of Thiru Karunanidhi's Ministry in Tamil Nadu and imposition of President's Rule in 1976.

49. Thiru C. Chunga, Chief Minister of Mizoram resigned and Assembly was dissolved in May, 1977.

50. In Tripura, in November 1977 Thiru R.R. Gupta Ministry resigned and Assembly dissolved.

51. The Government of Thiru D. Devraj Urs in Karnataka was dismissed in 1977 by the Jantha Government.

52. In Mizoram when Thiru T. Sailo was Chief Minister the Assembly was dissolved in November 1978.

53. The Government of Pondicherry by Thiru Ramaswamy was dismissed in 1978.

54. In Goa, when Tirumathi S. Kakodkar was Chief Minister in April 1979, Assembly was dissolved.

55. When Thiru Tomo Riba in Arunachal Pradesh was Chief Minister in November 1979, the Assembly was dissolved.

56. In Kerala when Thiru C. H. Mohd Koya was Chief Minister in December 1979, the Assembly was dissolved.

57. to 65. Nine State Governments namely Uttar Pradesh, Bihar, West Bengal, Orissa, Madhya Pradesh, Punjab, Rajasthan, Haryana and Himachal Pradesh were dismissed in 1977 by the Janatha Government.

66. In Manipur, in May 1977, when Thiru R. Dorendra Singh was Chief Minister, the Assembly was suspended.

67. In December 1979, when Thiru J. N. Hazarika was Chief Minister in Assam, the Assembly was suspended.

68. In November 1979 in Manipur when Thiru Y. Sahiza was Chief Minister the Assembly was dissolved.

69. In August 1979 in Sikkim when Thiru Dorji was Chief Minister the Assembly was dissolved.

70. to 78. Nine State Governments, namely, Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Punjab, Tamil Nadu, Orissa, Gujarat and Maharashtra were dismissed in 1980.

79. In Assam in June 1981, when Thiru Anwara Taimur was Chief Minister, the Assembly was suspended.

80. In Manipur, in February 1981, when Thiru Rishang Keishing was Chief Minister, the Assembly was suspended.

81. In Kerala, in October, 1981, when Thiru E. K. Nayanar was Chief Minister, the Assembly was dissolved.

82. In Kerala in March 1982 when Thiru Karunakaran was Chief Minister, the Assembly was dissolved.

83. In Assam, in March 1982, the Assembly was dissolved when Thiru K. C. Gogoi was Chief Minister.

84. In Pondicherry, in June 1983, when Thiru D. Ramachandran was Chief Minister, the Assembly was dissolved.

85. In Punjab, in October, 1983, the Assembly was suspended when Thiru Darbara Singh was Chief Minister.

86. Dismissal of Sikkim Ministry in 1984.

87. Dismissal of Punjab Ministry in 1984.

Introspection over the facts and circumstances governing the above cases gives the impression that extraordinary remedial or alleged curative power springing from the letter and spirit of Articles 256 257, 365 and 356 read together was invoked, that such a power was not used but improperly used, since there had not arisen a situation preventing the Government of a State from functioning in accordance with the provisions of the Constitution. Inter-alia Article 256 purports to ensure States, compliance with the laws made by Parliament and the existing laws. There is no necessity for such an article because the laws made by Parliament and the existing laws which apply to the State are bound to be followed and complied with by the State. This Article is totally unnecessary. When the Administrative Reforms Commission felt that before issuing directions to a State under Article 256 or Article 257, which ordinarily would result in an extreme step and which according to the Administrative Reforms Commission should be taken after exploring the possibilities of settling points of conflict by all other available means, the Commission itself was fully satisfied about the objectionable nature of assumption of executive power under Articles 256

and 257 read with Articles 365 and 356. These Articles, therefore, by precept and practice has the tyranical potential to cause serious inroads into the functioning of the State vested both with executive and legislative powers. In spite of the awareness of the untility of a body like Inter-State Council which the propounders of the Constitution itself comprehended, such a Council has not been established under Article 263 and no attempt has been made for the past 34 years to set up such a Council with an Expert body charged with prescribed duties. The expressions such as :

(a) as to ensure compliance with the laws made by Parliament and for the issue of directions as may be necessary for that purpose (Article 256);

(b) as not to impede or prejudice the excercise of the executive power of the Union and the consequential power to issue directions as may be necessary for that purpose (Article 257(1));

(c) failure to a comply with or to give effect to the directions given by the Union raising a presumption that a circumstance has arisen in which the State cannot be carried on in accordance with the provisions of the Constitution (Art. 365);

(d) the report of the Governor for the satisfaction otherwise by the President for his assumption of all the functions of the governance of the State (Article 356);

comprehend powers reserved by the Union under the Constitution to have an overriding influence over the States bringing down the theory of autonomy of States to a catastrophic minimum. This is so because, the use of such power during the three decades in the past have ex-necessitas demonstrably proves that there has been excessive or misuse of such powers resulting in extraordinary steps being taken and the edifice of State autonomy made to crumble. We have already expressed the view that the chain reaction between Articles 256 and 257, 365 and 356, which is in the nature of catalytic influence is bound to result in a fatalistic intrusion into the autonomy of the State. Our answers, therefore, to Questions 4.1 to 4.4 put together is that Articles 256, 257, 365 and 356 are to be deleted for the hopes of the States in having preserve them as reserve measure have become dupes and as the Administrative Reforms Commission itself said the assumption of governance by the President (under Article 356) has not become exceptional feature but a normal phenomenon and such a drastic medicine prescribed in the Constitution is being administered as daily food as a matter of course instead of being resorted to as a last resort. The Government are also of the view that Articles 357 and 360 should also be omitted.

It may be noted that so far as the Central Government is concerned, there is no provision for President's Rule at the Centre. When a President who is elected has no power to impose President's Rule at the Centre and to act without the aid of the Council of Ministers, there is no justification for imposing President's Rule in the States. In the case of a provision must be made for the Constitutional breakdown in the State, democratic process of holding elections and installing a new Government as in the case of the Centre.

4.5 The answer to this question does not arise in the light of the answers to Q. 4.1 to Q. 4.4. We have no comments to offer.

4.6 This is an area wherein the concept of decentralisation of administrative functions has been given effect to every such attempt of decentralisation must be commended. Besides, States will be in a better position than the Central Government in carrying out the works relating to such subject matters as census and elections.

4.7 First of all we have to divide all these agencies into two categories, namely, (1) agencies relating to subjects in the State List and (2) agencies relating to subjects in the Concurrent List. Central agencies relating to subjects in the State List have no constitutional authority to function and dictate policies and guidelines to the States without their consent or without transfer or entrustment of functions by the State to the Union Government in terms of Article 258A. So any functioning of the Central agency relating to the subjects in the State List would *ipso facto* amount to any inroad into the State's autonomy.

Parliament should not undertake legislation in respect of a subject in the Concurrent List except with the concurrence of the State Legislature. Where the State Legislature has not given its consent for such legislation by Parliament then the legislation made by Parliament should not apply to that State.

But Central agencies relating to subjects in the Concurrent List may function with respect to concurrent subjects, which are not completely occupied by the Union Parliament with the State's representatives in them. Such functioning may be construed as a proper role.

Central agencies relating to Concurrent subject matters which are completely occupied by the Union Parliament may function without State representatives in them because functioning of such agencies in the completely occupied fields cannot be construed as the violation of the federal principle.

In answering to this particular question and in the light of constant differences and misgivings particularly in the southern States, we are provoked to make a suggestion regarding the regulation of Inter-State rivers as envisaged in Entry 56 of list I of Schedule VII read with entry 17 of List II of Schedule VII to the Constitution. In recent times, water disputes including regulation and distribution of water of Inter-State rivers have arisen, particularly between the State of Tamil Nadu on the one hand and the State of Karnataka on the other. A lot of time is taken in exchanging correspondence between one southern State and another in the matter of securing a fair distribution of Inter-State river waters. Notwithstanding the constitution of National Water Resources Council and the National Water Development Agency in the matter of execution of any linking schemes, much depends upon the co-operation of the concerned State Governments. Several seasonal problems arise and no State is able to find an acceptable or co-ordinative solution to the satisfaction of

the problem States. In order to avoid the delay in the matter of exchange of correspondence, we suggest that all disputes relating to inter State Water Dispute should be referred to a permanent Tribunal Constituted by the Supreme Court.

4.8 It is not necessary to have All India Services including IAS and IPS. This Government feel that Officers from other States should not be inducted in this State as they cannot feel the pulse of the people. There should be two services, namely, (1) State Civil Service for the purpose of the State Government and (2) Central Service for the purpose of Federal Government. In the Central Service, regarding the personnel to be recruited by the Centre, due representation be given to the States in the offices of the Central Governments located in the States in the interest of national integration.

4.9 The Central Reserve Police Force is raised by the Government of India under the provisions of the Central Reserve Police Force Act, 1949 (Central Act 66 of 1949). Regarding the deployment of CRP the Government suggest that deployment should be done only with the consent of request of the State. The Government have already suggested that entry 2-A of List I of the Seventh Schedule to the Constitution should be suitably modified so that the federal structure should not be affected.

4.10 Broadcasting and Television should be included in the State List.

4.11 In 1956, five Zonal Councils were created. They were created as instruments of Inter-Governmental consultation and co-operation, particularly in social economic fields. Consequently., their main function is to make recommendations on matters of common interest in the field of economic and social planning. Added to that, they have a duty to discuss and make recommendations with respect to border disputes, linguistic minorities and Inter-State Transport. In other words, the functions entrusted to Zonal Councils are such that the Councils have been endowed with sufficient potentialities, as opined by Durgadas Basu to go "a great way towards eleminating friction among the units which is inherent in the federal system as such". The Government are of the view that it is in the interests of all concerned that the Zonal Councils are to be activised so as to serve the expectations under the State Re-organisation Act, 1956. Any decision of the Zonal Council should be implemented by the State concerned Government of India should be empowered to give directions.

4.12 It must be said at the outset that any Inter-State Council created under Article 263, as it stands today, will have no practical value. It must be remembered that Article 263 speaks about two things, namely, (1) enquiry into and advice upon Inter-State disputes, and (2) investigation, discussion and making recommendations upon subjects of common interest between States or Union and the States. The tenor and language of Article 263 are such that any advice tendered, recommendations made and conclusions arrived by a Council established under it are not binding on any party. At best, such advices, recommendations etc., may have persuasive value. On the other hand, if the Council is not properly constituted, not only its recommendations and advice would fail to impress the parties concerned, but it might prove to be a constant irritant in the body politic of the country as well. So, we suggest that entire Article 263 providing for the establishment of an Inter-State Council may be deleted.

Recommendations besides the Views Already Expressed

(1) In the view expressed by us earlier, Articles 256, 257, 356, 357, 360 and 365 are to be deleted.

(2) Article 263 should also be deleted.

(3) Article 339(2) must be deleted because, the welfare of the Scheduled Tribes in any State is as much the concern of the State Government as that of the Union Government. So, there need be no direction to any State as to how the welfare of the Scheduled Tribes should be p omoted.

(4) Article 344(6)must be deleted because any directions issued by the President on such sensitive issues like use of Hindi language, reduction of English languages, etc. will offend the dignity and individuality of the State.

(5) In Article 350A, the provisions relating to the President's direction to any State must be deleted, because it is the duty of the State to provide adequate facilities for instructions in the mother-tongue at primary stage of education to children belonging to linguistic minority groups and the State can be relied on to discharge this duty faithfully without any instruction or direction from the President.

PART V

FINANCIAL RELATIONS

General Remarks

When the Constitution was ushered in there was no indepth study as to the relative needs between the Centre and the States as regards their then present or future requirements or the conformity variations in financial resources. The same pattern which was conceived at the time when the Constitution was born was continued though with slight modifications which were always in favour of the Centre. By such constant adherence to the financial structure, the Centre has acquired more or less a vested interest in themselves and in course of time acquired a phenomenal grip over the States in the matter of distribution of finances. Notwithstanding Article 269, the Centre for no sustainable reason has not exploited fully the contemplated resources under the Article and the States have thereby suffered by the default of the Centre. Though Finance Commission is a statutory body gaining its strength under Article 280, the Planning Commission which has no such statutory foundation but is a creature of the executive is more or less having the last word on the distribution of finances between the Centre and the States. It is high time that the confusion and duplication in the financial field between these two Commissions are avoided. In the name of uniform distribution and in order to assist the States to plan their own investments with unaided resources, the functions of the Finance Commission and the Planning Commission should be demarcated and harmonised. The Planning Commission excepting

under emergent circumstances and in the name of national interest should accept the schemes formulated by the States for consideration by the Finance Commission. The following suggestion of Thiru K. Subba Rao, former Chief Justice of India, needs weighty consideration :

"It follows that the time has now come when a high power Finance Commission should be appointed to recast the financial relations between the Union and the State and to reallocate the financial resources between the Centre and the States having regard to the requirements of the Union and the States and that steps should be taken to amend the Constitution on the basis of its recommendation."

To quote President Nixon :—

"Let us put the money where they needs are; let us put the power to spend it where the people are; let us share out resources; let us share them to rescue the States and localities from the brink of financial crisis ......

If we put more power in more places we can make Government more creative in more places".

In the ultimate analysis , the Planning Commission also should be established under a statute and their recommendations should be made purely advisory and even so the National Development Council, and the Centre and the State should act without encroaching on each other's powers. The setting up of a High Power Financial Commission appears to be the need of the hour so that there may be a restructuring of the financial relations resulting in the devolution of funds in accordance with well thought of schemes and plans. By way of an illustration the disparity in financial relations between the Union and the State may be brought out by referring to Article 289 of the Constitution. Under Article 289(2), Parliament is empowered to impose any tax in respect of a trade or business of any kind carried on by, or on behalf of. the Government of a State, or any operations connected therewith...... Notwithstanding clause (3) of Article 289 which again gives the power to the Parliament to make law to declare any trade or business as being incidental to the ordinary functions of Government, yet this provisions by itself create discrimination. The Union undoubtedly carries on trade and business and is concerned with many business operations in relation thereto. But no tax is contemplated over the income from such occupational hazards of the Union. But the States are discriminated. The imposition of such tax made by a law made by Parliament has accepted judicial recognition in A.I.R. 1964. S.C. 1486 at 1493. The course therefore appears to be to omit Article 289(2) and (3) so that both the Union and the State can be kept at par in so fa as their occupations, particularly in the matters of trade and business are concerned.

There are three kinds of financial relation of the State. One is through allocation of taxes that they collect here. the second the grants and the third is plan allocation.

In the distribution of resources, the Centre has retained Custom duties, excise duties, other medicine, toilet and alcoholic preparation, Corporation tax, the sharing of Income-tax and also the right to impose a surcharge for its own purposes on Income-tax and thus taxes which, although allocated by the States are levied and collected by the Union.

The main sources of revenue of the States are only Land Revenue, excise on alcoholic preparations, sales tax and a share of Income-tax. The relevant articles are Articles 268, 269, 270 and 271. As regards List I entries 82 to 86. As regards List II entries 45 to 57.

The scheme of distribution is to give the Union more resources of revenue which has created a gap between the needs and resources of the States.

It is an important problem for Federal Finance to bridge this gap between the financec and resources. The Constitution has three point scheme to bridge this gap ——

(1) Firstly the States are entitled to share taxes viz., taxes on income other than corporate tax, Union excise duties on some commodities.

(2) Secondly, the States are assigned the entire proceeds of certain taxes levied by the Union, viz., Estate duty, taxes on Railway fares, additional excise duties levied in lieu of sales tax.

(3) Thirdly, the Constitution provides a system of grants in aid of revenue.

It is now for us to see how far the gap has been bridged.

The power to impose taxes on the sale or purchase of goods where such sale or purchase has taken place in the course of the inter-state trade, has been given exclusively to Parliament — Article 269(1) (g) and entry 92A of List I as inserted by the Constitution (Sixth Amendment), Act, 1956. In the exercise of this power Parliament has enacted section 3 of Central Sales Tax Act of 1956 conferring upon the Parliament the power also to lay down the principles for determing tax on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or Commerce so as to be liable to the Union Sales Tax imposed under Article 269(1) (g).

The experience so far in regard to the distribution of revenues. delimitation of powers and allocation of assistance for plan have been such as to cause bitterness. It has become an urgent necessity to eliminate this bitterness and evolve ways and means by promoting fruitful relation s between the Centre and States.

The main argument of the State is that the State Government should be able to command means of supplying their wants in the same way as the Central Government possesses the means in respect of wants of the Centre. A Federal Government and the State should be empowered with independent sources of income free from mutual interference and the balancing factors should come in only marginally so as to fill the gap. It is felt that the resources for raising funds available to the States are comparatively in elastic and inadequate. There are excessive dependence on the Centre. It is also felt that the constitutional division of finance is not fair to the State and in the distribution of taxes collected on behalf of the States and also in the matter of discretionary grants by the Union to the States. there is scope for discretionary

treatment. The sources of raising funds for the State are comparatively inadequate, resulting in States having to depend on the Centre for grants and overdrafts. The creation of imbalance of States and the resources calls for an amendments of the relevant article of the Constitution so as to get more adequate resources of finance to match their developmental needs and aspirations. The responsibility for development and the power of discharging it would then be matter matched and recourse to grant from the Centre would be unnecessary thus enabling the Centre to reserve their views to a more justifiable cases of contingent assistance.

Having made provisions for federal assistance to the States, both as grants-in-aid and as a share of specified taxes the Constitution visualised the necessity for a machinery independent of Union Government to determine the measure of assistance that should be afforded and also the principles on which this assistance should be made available. This machinery was created in the form of Finance Commission to be appointed by the President every five years so that such periodical adjustments can be made in the Union State Financial relationship as are needed in the light of the emerging situation. The Finance Commission is a unique experiment in the Indian Federal System. It has been envisaged by the framers of the Indian Constitution as "a quasi arbitral body whose function is to do justice between the Centre and the States". It is an authority without parallel in other federations. The only other body which bears some resemblance to it is the Commonwealth Grants Commission of Australia. However, there are significant differences between the two institutions as regards their status and the scope of their competence. The Indian Finance Commission is created by the Constitution and it is not a State-body. It sits only once in five years. On the other hand the Commonwealth Grants Commission was set up in 1933 by the Commonwealth Parliament and it is a standing body and recommends fiscal need grants to the deficit states of Western Australia and Tasmania While in Australia, members are appointed for three years, in India they are appointed for nearly a year and after the commission has completed its assigned task, it becomes functus officio. Thus, there is no continuity in the Commission's work in India. Further, the Indian Finance Commission has larger functions to discharge than its Australian counterpart in that the former has to recommend tax sharing between the Union and the States as well as fiscal need grants to States. In addition, other questions of inter governmental financial relationship are also referred to it from time to time. The provision of Finance Commission is intended to ensure the States that the scheme of distribution will be made not by the Union arbitrarily but will be based on the recommendations of an independent Commission, which will assess the changing needs of the States in making them.

Article 280 of the Constitution which provides for the constitution of the Finance Commission authorised Parliament to determine the qualifications required for appointment as members of the Commission, the manner in which they should be selected and to prescribe the powers of the Commission for the performance of their functions. Accordingly, the Finance Commission (Miscellaneous Provisions) Acts. 1951, was enacted by Parliament. Under the Acts. Commission is to consist of Chairman and four other members. As for qualifications the Chairman is required to be a person who has had experience of public affairs and its members should be persons who (a) are or have been, or are qualified to be appointed as Judges of a High Court for (b) have special knowledge of the finances and accounts of the Government or (c) have had wide experience in financial matters and in administration, or (d) have special knowledge of economics.

Article 280(3) of the Constitution lays down the functions of the Finance Commission. The Commission is required to make recommendations to the President as to (a) the distribution between the Union and the States of the net proceeds of taxes which are to be or may be divided between them and the allocation between the States of the respective shares of such proceeds (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India, and (c) any other matter referred to the Commission by the President in the interests of sound finance. Under the Constitution. the decisions on the Commission's recommendations with respect to income-tax is taken by the President and with respect to other taxes, grants-in-aid, etc., by Parliament.

The Commission is empowered to determine its own procedure of business, and has been given the powers of a civil court in the matter of summoning and enforcing the attendance of witnesses, requiring the production of any documents and requisitioning any public record from any court or office. The Commission is also authorised to require any person to furnish information or such points or matters as in the opinion of the Commission, may be useful for or relevant to in the matter under its consideration.

The Finance Commission can be regarded as the balance wheel of the Indian Federal financial relationship. The basis of transfer of funds from the Centre to the States has not been fixed by the Constitution. This has been left flexible to be adjusted from time to time by the Finance Commission. Since the Constitution came into force in 1950, eight such Commissions have made recommendations on these points. With each Commission, progressively the amount of central funds transferred to the States has been no doubt increasing.

A few examples may be cited here of this process. On the eve of the appointment of the first Commission, 50 per cent of the central income-tax was transferred to the States. In a bid to increase the resources of the States, the first Commission increased the State's share in Central income-tax to 55 per cent., the second Commission increased the same to 60 per cent the third Commission raised this to 66.6 per cent and the fourth Commission enhanced it to 75 per cent. The fifth Commission kept it at that figure, for, it thought that the Central Government, being responsible for the levy and collection of the income-tax should have a signficant interest in it. The eight Finance Commission has raised it to 85 per cent.

The Union excises which under the Constitution are only optionally shareable are now shared between the Centre and the States. The process was initiated on a modest scale by the first Commission, but thereafter, with each Commission the process of sharing the excise revenue between the Centre and the States has been carried further continually. The fourth Commission made the entire excise revenue of the Centre shareable with the States upto an extent of 20 per cent. The fifth Commission maintained that ratio but increased the revenue flowing to the States from the Centre by merging the special excise duties in the divisible pool. As per recommendations of eighth Commission, the State share has been increased to 45 per cent, out of which 5 per cent is earmarked for those States which had revenue deficit even after devolution. These special duties had hitherto been used exclusively for Central purposes. Sharing of central excise duties with the States has been quite helpful in augmenting their financial resources for the excise duties constitute an expanding source of revenue in an economy which is fast becoming industrialised.

It is claimed that in the area of fiscal need grants as well, the revenue flowing to the States have been increased tremendously over the years. The first Commission has recommended these grants for seven States amounting to Rs. 50·5 million a year. The second Commission recommended these grants to 11 States and increased these to Rs. 395 million a year. The fifth Commission suggested fiscal-need grants to Andhra Pradesh, Assam, Jammu and Kashmir, Kerala, Mysore, Nagaland, Orissa, Rajasthan, Tamil Nadu and West Bengal to the tune of Rs. 637·85 crores over a five year period. Eighth Finance Commission has recommended Rs. 2·200 crores as gap filling grant.

In fixing the States, share in the divisible pool of the Central funds, each Commission has sought to reduce regional disparities to some extent, so that the resources of the poor States are strengthened. For example, in fixing the States, share in the divisible pool of income-tax revenue, greater weightage is given to the population factor and much less weightage is given to the collection factor. The first Commission suggested distribution of 80 per cent on the basis of population and 20 per cent on the basis of collection. The third and fourth Commissions had also adopted the same principle but the second Commission while holding the view that the principle of collection was not on equitable basis for distribution and should be completed abandoned in favour of the principle of population, nevertheless gave to collection 10 per cent weightage as against 90 per cent to population. This formula was approved by the fifth Commission as well. The Union excise duties among the States are divided 80 per cent on the basis of population and 20 per cent on various criteria indicating social and economic backwardness. According to recommendations of eighth Finance Commission 25 per cent has to be distributed based on 1971 population, 25 per cent on inverse of per capita income and 50 per cent on distance of per capita income from the affluent States. In giving fiscal-need grants under Article 275, broad fiscal-needs of the States are taken into account, the mechanism for granting fiscal-need grants is some what inadequate and leaves much to be desired.

However in all such formulae which were computed by the eighth Finance Commission, the population as on 1971 was taken into account only in such cases where population occurs as an explicit factor. However, in other cases like the computation of per capita income where population occurs as an implicit factor in the denominator, the current population alone was taken into account. Such methodology militates against the very objective of adopting the 1971 population, *viz*, not to penalise the States which have done well in the field of family planning. It may be emphasised that by adopting the current population the States which have done well in the field of family planning which is the national objective of the highest priority have been adversely affected. The State Government has also been pleading in various forums that this trend should be reversed and the 1971 population should be taken into account even in those items where the population occurs as an implicit factor.

No doubt the recommendations of the Finance Commission are accepted only by convention. In terms of strict law, the Commission's recommendations are not binding on the President. Though Dr. Ambedkar was of the view that any action to be taken by the President he should be guided by the recommendations of the Fiscal Commission and should not act arbitrarily, in practice many of the recommendations were not accepted by the Union Government. It is, therefore, felt that the Finance Commission should be a permanent body with its own Secretariat. It should be expressly provided in the Constitution by an amendment that the recommendations of the Finance Commission should be binding on Centre as well as States. Grants by the Centre to the States for plan expenditure, non-plan expenditure should be made only on the recommendation of an independent and impartial body like the Finance Commission or a similar statutory body.

Besides the fiscal need grants, the Constitution also makes provision for 'specific purpose grants' which are given outside the recommendations of the Finance Commission, at the discretion of the Centre, for such activities as the Centre may want to promote to achieve the desired national goals. These grants have increased under the impact of Planning and have dwarfed the fiscal-need grants. Plan grants are made on the advice of the Planning Commission. A number of grants under Article 282 are given for several State activities outside the Plan programmes.

Although the Constitution devices an elaborate and flexible scheme of Centre-State financial relationship, yet the fact remains that there exist several problems in its actual working. Demands are raised from time to time for greater financial allocations by the Centre to the States.

Such a demand arises because of two main reasons. First, there is imbalance between the functions and resources at the State level. The imbalance has arisen mainly because of planning. Their tax resources are somewhat inelastic while the expenditure on the nation-building activities incurred by them is very large. Inspite of huge central aid being given every year by way of grants and loans, they do not find themselves in a position of being able to meet their commitments.

Further, there exist wide disparities in various social services in the States and adequate steps have not been taken to equate them. According to the statistical data given in the report of the fifth Commission, per capita expenditure on education varied from as low as Rs. 4·98 in Bihar to as high as Rs. 46·08 in Nagaland. The second next was Kerala with Rs. 21·11. Similarly, on public health while the per capita expenditure in Bihar was Rs. 0·23, the highest was in Nagaland at Rs. 4·41 and next in Rajasthan at Rs. 4·29. Such examples can be multiplied.

The ideas of fiscal-need grant and Finance Commission have been borrowed by India from Australia. In Australia, the task of the Commonwealth Grants Commission has been to equate the social services in the deficit States to a national average of social services. In India, the Finance Commission does not perform a similar task. It takes into consideration the present high level of expenditure in some States, on social services, but does not seek to equate with them other States with low expenditure on these social services.

This approach leads to the anomalous situation where the States which have exhibited prudent financial management have been put to disadvantage and there is a premium on extravagant expenditures. Similarly, the approach of gap fiilling adopted by the Finance Commission does not take into account the good efforts taken by some States in taping of all possible avenues of taxation and efficiently gearing up the tax collection machinery to ensure better collection. It is therefore suggested that Finance Commission should adopt a normative approach in assessing the tax receipts of all the States as well as to assess the revenue expenditure so as to ensure a minimum level of service standard for all the States and only then arrive at the deficit/surplus from the current revenue. It may also be pointed out that such a normative approach is already being adopted by the Finance Commission in respect of return from Electricity Boards and other Public Sector Undertakings. It may also be emphasised that there is a need of subjecting the expenditure and tax receipts of the Central Government to a similar scrutiny and normative approach.

The compulsions of planning have cast a shadow on the smooth operation of the Centre-State fiscal relationship as envisaged in the Constitution. There has come to be an overlap of functions between the Planning Commission and the Finance Commission. The truth is that at present larger funds pass to the States under the Planning Commission than under the Finance Commission, and the Finance Commission has thus been overshadowed to some extent, by the Planning Commission. The States are not very satisfied with the arrangement that the plan grants be recommended by the Planning Commission. Their argument is that the Planning Commission is a body established by the Central Government through an executive order, and therefore, the principles governing the allocation of plan grants should be enunciated by a different body created by law of Parliament, and the Finance Commission has been suggested in this connection. The Administrative Reforms Commission in its report on Centre-State Relationships has endorsed this suggestion, The Administrative Reforms Commission has recommended that in future the Finance Commission might be asked to make recommendations on the principles which should govern the distribution of Plan grants to the States, but the application of these principles from year to year might be left to the Planning Commission and the Central Government. In order that the Finance Commission's recommendations might be effectively co-ordinated with the Plans, the Administrative Reforms Commission has also suggested that a member of the Planning Commision may be appointed to the Finance Commission. An argument has been raised over time whether Article 282 was designed to be merely a residuary article or was it meant to be used for transfer of such larger funds as is being done at present for planning purposes. It has thus been argued that funds for planning purposes should also be given to the States under Article 275 through the Finance Commission and not through the Planning Commission. The biggest snag in this arragement is that the Finance Commission meets only once in five years and, therefore, the achievements of plan targets by the States can only be assessed by the Commission once in five years. This will leave the States free to spend the money as they like and on such schemes as they like. The whole of the planning process may thus go away.

A committee of experts may be set up to consider the entire issues relating to the indebtedness of the States. A Committee may also be set up to consider the desirability of constituting an authority of forming a Development Bank on the lines of the World Bank to deal with cases made to the Centre by the State for loan. There should be a fund for each State for relief of distress arising out of natural calamities, the fund also be utilised for marketing measures. Revision of taxes, Corporation Tax, custom including the export duties and the tax in capital value of the assets in the divisible pool should be shared by the Centre and the States.

Excise Duties—All excise duties and cesses, special, regulatory or otherwise, which are shareable at the option of the Union should all be made compulsorily divisible between the Union and the States.

Additional duties of excise should be continued only with the concurrence of the States.

Even if the additional duties of excise are abolished and they are replaced by the levy of sales tax by the States, the restrictions now imposed on the levy of sales tax by Sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) as regards the rate of levy and at the stage of levy should be totally repealed.

The power of Parliament under clause 3 of Article 286 should not be exercised except in consultation with the States.

In future, no surcharge should be levied because it takes away income which would otherwise come to the State by way of share in excess.

Grants—Grants by the Centre to the States, both for plan and non-plan expenditure should be made on the recommendation of an independent and impartial body like the Finance Commission or similar statutory body.

Finance Commission—It should be expressly provided in the Constitution that the recommendations of the Finance Commission shall be binding on all the parties—Centre as well as the States.

Loans and indebtedness of States—A Committee of experts may be set up to consider the entire issue relating to the indebtedness of States.

Relief Fund—There should be a fund for each State for the relief of distress arising out of natural calamities. The fund may also be utilised to ameliorative measures.

We however proceed to answer the questions seriatim.

5.1—It is very well known and well established fact that the scheme of sharing of Financial resources has left the Government of India in a very dominating position. This has been the result of the following factors :—

(a) The revenues assigned to the Centre are far more buoyant and elastic than revenues assigned to the States.

(b) The market borrowings have been centralised and as per the provision of the Constitution of India, the State Government cannot raise any loan without the prior permission of the Government of India to whom they are already indebted.

(c) In practice one may say that the deficit financing is the exclusive prerogative of the Centre. Such an attempt on the part of the State Government will always result in an "unauthorised overdraft" with consequent reprimands from the Centre—vide our comment on Entry 45 of List I in Legislative Relations.

It may also be seen that the scheme of transfer of resources as envisaged in the Constitution has resulted in a vertical gap inasmuch as the money raised by the Government of India is not being shared with the State Government adeputa.ly so as to enable them to discharge their constitutional obligations. The share of State Government in the market borrowings has gone down to 23 per cent (estimated) in the Sixth Five-Year Plan from 62.7 per cent in the Third Plan. Similarly the Government of India have mastered the techniques of circumventing the award of various Finance Commissions. This is quite prominent in the period of the award of seventh Finance Commission, when the terms and conditions of the award had necessitated a transfer of tax revenue to an extent of 28.77 per cent in 1980-81. However, in the subsequent years Government of India followed a conscious policy of increasing the rate of taxation in areas which were not shareable with the State Government like additional Income-Tax, additional excise duty and customs, etc., announcing on the other hand concession in respect of taxes shareable with the State Government. This resulted in a situation where the shareable taxes came down to 25.05 per cent in 1983-84—*vide* Table 1.

TABLE I

Items	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75
(1)	(2)	(3)	(4)	(5)	(6)	(7)
					(RUPEES IN CRORES)	
I. Total Revenue of Government of India	36,89	40,97	49,72	56,45	62,46	77,82
II. Total tax Revenue	28,23	32,07	38,72	45,10	50,73	63,22
III. Transfer to State—Share in Taxes	6,22	7,55	9,45	10,66	11,74	12,24
(a) Income Tax	2,93	3,59	4,62	4,92	5,32	5,12
(b) Estate Duty	7	6	8	8	11	9
(c) Union Excise Duty	3,22	3,90	4,75	5,66	6,31	7,03
IV. Non-Shareable Tax Revenue (II-III)	22,01	24,52	29,27	34,44	38,99	50,9
(a) Corporation Tax	3,53	3,71	4,72	5,58	5,83	7,09
(b) Customs Duty	4,23	5,24	6,96	8,57	9,96	13,33
(c) Other Taxes	14,25	15,57	17,59	20,29	23,20	30,56
A. III÷II×100	22.04	23.55	24.41	23.64	23.15	19.36
V. Non-Tax Revenue (I—II)	8,66	8,90	11,00	11,35	11,73	14,60
VI. Transfer to State Other Transfers	5,32	5,66	8,52	9,26	9,37	10,22
VII. Net Non-Shareable Non-Tax Revenue (V—VI)	3,34	3,24	2,48	2,09	2,36	4,38
VIII. Total—Transfer to State (III+VI)	11,54	13,22	17,96	19,93	21,11	22,46
IX. Net Non-Shareable Revenue Tax+Non-Tax (IV+VII)	25,35	27,75	31,76	36,52	41,35	55,36

TABLE 1—*contd*

Items.	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84 *Revised Estimate*	1984-85 *Budget Estimate*
(1)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
										(RUPEES IN CRORES)
I.	97.67	1,10,03	1,15,90	1,31,97	1,47,46	1,66,20	1,98,49	2,27,31	2,62,10	2,94,82
II.	76,09	82,71	88,58	1,05,25	1,19,74	1,31,80	1,58,47	1,76,96	2,09,46	2,29,92
III.	15,99	16,90	17,98	19,57	34,06	37,92	42,74	46,39	52,46	57,39
(*a*)	7,34	6,52	6,75	7,07	8,65	10,02	10,17	11,32	11,72	12,25
(*b*)	8	10	10	11	11	12	17	16	17	17
(*c*)	8,57	10,28	11,13	12,40	25,30	27,77	32,40	34,91	40,57	44,97
IV.	60,10	65,81	70,60	85,68	85,68	93,88	1,15,73	1,30,57	1,57,20	1,72,53
(*a*)	8,62	9,84	12,21	12,51	13,92	13,11	19,70	21,85	25,65	25,88
(*b*)	14,19	15,54	18,24	24,49	29,24	34,09	43,00	51,19	48,79	66,50
(*c*)	37,29	40,43	40,15	48,68	42,52	46,68	53,03	57,53	72,56	80,15
A	21,02	20.44	20.30	18.60	28.45	28.77	26.93	26.22	25.05	24.96
V.	21,58	27,32	27,32	26,72	27,72	34,40	40,02	50,35	52,54	64,90
VI.	12,18	15,05	18,38	24,73	20,83	26,23	27,82	34,55	42,86	48,19
VII.	9,40	12,27	8,94	1,99	6,89	8,17	12,20	15,80	9,78	16,81
VIII.	28,17	31,95	36,36	44,29	54,89	64,14	70,56	80,94	95,32	1,05,58
IX.	69,50	78,08	79,54	87,68	92,57	1,02,06	1,27,93	1,46,37	66,78	1,89,34

5.2, 5.3, 5.7, 5.8 5.24, 5.25 and 5.26—Fiscal Federalism in a country like India should ideally take into account the following factors :—

(1) Adequacy of resources for Centre and State;

(2) Reducing the regional disparities and imbalances;

(3) Guarantee the Freedom of trade as enshrined in the Constitution;

(4) Ensuring the optimum utilisation of existing resources not only of the Government but of the society as a whole; and

(5) Ensuring the efficiency in tax administration.

It is very difficult to have a structure of Fiscal Federalism which can equally satisfy all these conditions. Even though such a situation would be ideal, such an ideal is almost impossible to achieve. In any practical situation a trade off has to be made between the divergent pulls of each of these factors. The circumstances which prevail at the time of framing of Constitution might have guided the founding fathers of Constitution to arrive at the principles of sharing of resources which are now existent. But it definitely does not mean that such a system would continue to be the perfect and the ideal system for all times to come. Our experience in the past has clearly established that system has outlived its utility and desparately needs a second look. In order to bring out these points we will like to examine briefly whether the present system has so far served the possible objectives for fiscal federalism.

So far as the question of adequacy is concerned it is a well accepted fact that the State Governments are working in close contact with the people and they have been cast with the onerous responsibility of providing sensitive services like education, health, housing, maintenance of law and order, district administration, etc. It is an equally acceptable fact that the expectation of the people in these areas of administration has been rising much faster than in the areas which are the Union subjects. Without denying the importance of communication, defence, etc., it has to be reiterated that elasticity of demand for such services which are State subject is very high. In this atmosphere of rising expectation of the people, the States have become more and more acutely aware of the fact that the resources or revenue available to State Governments have very low income elasticity. Therefore examined on the touch-stone of adequacy of resources it will be easily seen that the States which have been overburdened with functions having high income elasticity have been on the whole constrained by availability of resources which have very low income elasticity. This has over the years increased the dependence of the State Government on the Centre and this unhealthy trend in the federal structure needs to be corrected.

2. Another important principle for the fiscal policy of any federation would be to ensure the reduction, of regional imbalances and promotion of sustained uniform and equitable growth of the States. With reference to our past experience it can be seen that the existing system for reasons that will be dealt with separately, has not really served this purpose too well. From table 1 it can be seen that in the period 1974-75 to 1980-81 the per capita income

of the State as percentage of per capita income of the whole country remained more or less stagnant for a State like Tamil Nadu. On the other hand, the same ratio for Punjab rose from 150 per cent to nearly 200 per cent and for Haryana from 140 per cent to nearly 165 per cent. Even for a backward State like Uttar Pradesh ratio increased from about 70 per cent to about 80 per cent. This is just to illustrate that the existing system either did not have the potential or did not recommend sufficiently strong measures to carry out the function of removing the regional disparities. The worst sufferer in these cases were the middle income States which were allowed to languish. The States like Punjab and Haryana which had already reached the take off stage further enhanced this relative affluence. Probably the system benefited some of the poorer States but this benefit can also be shown to be only marginal as can be seen in the case of Uttar Pradesh. Quite obviously the Finance Commission in the past have not taken the radical stand which could have the differential devolution progressive enough to cause an impact on the existing disparities.

3. So far as the freedom of trade as enshrined in the Constitution is concerned we only have to submit that it is quite possible to devolve the taxing powers even for all the taxes to the State Governments without affecting this freedom.

4. It is very often argued that the fiscal federalism should not lose sight of the fact that in a vast country like India inter-State trade plays an extremely important role in the building of the economy and that any fragmentary approach, which will necessarily result if the taxing powers in respect of many of the existing taxes are given to State, will essentially militate against optimum utilisation of resources. It is probably felt that in a vast country like India where the equation of supply and demand are criscrossing the whole length and breadth of the country, the optimum utilisation of resources will only be possible if the taxes which relate to any inter-regional transaction are all brought as Union subjects. We feel that this presumption has to be examined with great care and a systematic effort should be made to clearly specify the taxes which can be brought within the purview of the State Governments without effecting the optimum utilisation of resources considerably. We may also assert here that slight dislocation can even be sacrificed on the alter of more efficient administration of taxes by the State Governments in respect of certain heads which will be examined in details subsequently. But in the meanwhile we will like to draw the attention to Articles 268, 269 and 270 of the Constitution Article 268 deals with the duties levied by the Union but collected and appropriated by the States. This includes items such as stamp duties and duties of excise on medicinal and toilet preparations. It is quite obvious that these duties do not form a part of inter-State transactions to any large extent. It will not be anybody's case that variation of rates, in case of making the States competent to levy, collect and appropriate this tax in respect of these is likely to effect the optimum utilisation of resources in any way. On the other hand, it will give more and more freedom to the State Governments to raise additional resources for developmental work. We do not find any justification in including these duties under Article 268 and they can be straight away delegated to the States for levy.

5. Article 269 deals with the taxes levied and collected by the Union and assigned to the States. We feel that the duties in respect of succession to property other than agricultural land and estate duty in respect of other than agricultural land can also be delegated to the States for levy for the reasons cited in the preceding paragraph. Terminal taxes on goods or passengers carried by railway, sea or air, taxes on sales or purchase of newspapers and on advetisements published therein; taxes on sale or purchase of goods which takes place in the course of inter-State trade, etc., can all be brought under the purview of Article 268.

6. So far as the efficiency of tax administration and collection is concerned in our view the efficiency is highest when the tax is administered and collected by the same authority which has the powers to appropriate it. We also feel that efficiency goes down considerably if the tax is administered and collected by one authority but has to be appropriated by some other authority. Although it may not be easy to give an irrefutable proof for such assertion, there are number of indications which are available to point towards this. This tendency exhibited in the past by the Government of India to give various reliefs in respect of Income-Tax which is shared to an extent of 90 per cent with the State Governments and at the same time increase the rates for additional surcharge or income-tax which is entirely appropriated by Government of India is an example that immediately comes to mind. Even if one study Table 3 put up below one will arrive at a similar conclusion. It may be seen that for a period over 1973-74 to 1981-82 the growth of sales tax (administered and appropriated by the State Government) and the customs duty (administered and appropriated by Central Government) have both shown a growth of over 300 per cent as against that excise duty which is collected by Government of India but shared with the State to an extent ranging from 25 per cent to 40 per cent (depending upon the award of the particular Finance Commission) has shown a growth of 180 per cent over the same period as against above 300 per cent for custom. This is to be viewed against the background of increasing import substitution on the one hand and also the fact that the industrial development should have resulted in at least comparable rates of growth for these tow taxes. An even more obvious indication is available in respect of income-tax since income tax has to be shared at an even higher level with the States. It has shown the growth of less than 100 per cent. At the same time additional surcharge on income-tax has shown the growth of over 150 per cent. In the above comparisons to the extent possible we have tried to compare the taxes which are comparables because quite admittedly the elasticity of different taxes differs. However, taxes which relate to industrial production and trade are comparable and have therefore been compared and similarly the taxes which relate to income are comparable and have been compared with each other. From the foregoing discussion it may quite easily be seen that the efficiency of tax administration is closely related with the fact as to which authority is going to appropriate the proceeds and therefore it will be in the

interest of tax administration to progressively allow the State Governments to levy and administer the taxes which have till now been included under Article 268 and Article 269 of the Constitution.

An alternative suggestion can possibly be made in this situation. Out of the eight taxes mentioned in Article 269, only certain taxes are levied and others are not levied. As a result of this, the States could not realise the revenues from these unlevied taxes. It appears that the Finance Commission itself after making a thorough study of these taxes came to the conclusion that some of these taxes could not be levied because of administrative inconvenience, lesser yields and present economic situations. Notwithstanding the view of the Finance Commission, it must be admitted that non-levy of some of these taxes mentioned in Article 269 would deprive the States of their revenue. *So the Government suggest that the Union Government must give a substantial amount to the States in lieu of the non-levy of certain taxes mentioned in Article 269.*

We would also add that the Centre should exploit to the fullest extent those taxes which have not been touched upon for the purpose of better acquisition of finance and utilisation of such resources.

While summing up it may be reiterated that even if the 5 cardinal principles of fiscal fedrealism are kept in mind it can be seen that the existing arrangements have not served those purposes very well and that there is a need for some restructuring. It can also be asserted that the taxes included under Article 268 can be left to the State Government to levy and administer. Certain other taxes which have been included in Article 269 such as taxes on succession of non-agricultural land and the estate duty in respect of non-agricultural land may all be delegated to the State Government for levy. These are in any case being appropriated by the State Government and therefore there will be no net loss for the revenue of Government of India. All other taxes now covered under Article 269 can be brought under Article 268 with the exception of taxes on stock exchanges. This will also not affect the resources of Government of India. So far as income-tax and additional surcharge on that is concerned that can be brought within the purview of Article 269. It will also not affect the objective of correcting the regional disparities. As around 85 percent of the resources of Government of India come from Corporation taxes, customs duty and union excise duties, it is felt that the scheme of division of powers of taxation now suggested will not adversely affect the financial position of the Government of India for any corrections that it wants in the regional imbalances. At the same time it will give the State Governments some more flexibility to raise additional resources and will also bring some more sources of revenue for the State Governments. But even as an interim arrangement the powers now suggested should definitely be given to the State Governments so as to enable them to carry out their constitutional liabilities more effectively. So far as sharing of other taxes is concerned it may be mentioned that to begin with Corporation Tax was also included in Income-Tax. The Finance Act of 1959 excluded this and caused perceptible shrinkage in the divisible pool to which the States were constitutionally entitled. The Corporation Tax has now become a significant source of Revenue and the State Governments are being denied their due share in this. It should, therefor be stressed that Corporation Tax as well as the surcharge on Income-tax should be specifically made shareable with the States.

Our suggestion is that Corporation Tax as well as surcharges on Income-Tax should be divisible and earmarked for the concerned State as in the case of Income-tax.

TABLE I

Per Capita Net State Domestic Product

States (1)	1974-75 (2)	1975-76 (3)	1976-77 (4)	1977-78 (5)	1978-79 (6)	1979-80 (7)	1980-81 (8)
Haryana	1,400	1,514	1,761	1,935	1,990	1,923	2,335
Maharashtra	1,435	1,455	1,535	1,677	1,797	2,021	2,277
Punjab	1,585	1,688	2,050	3,217	2,382	2,611	2,768
Tamil Nadu	964	997	1,066	1,203	1,225	1,274	1,269
All India	1,006	1,024	1,082	1,198	1,250	1,316	1,537
Uttar Pradesh	740	727	819	896	894	962	1,272
Bihar	796	669	716	759	791	795	870
Madhya Pradesh	825	790	807	951	927	877	1,177
Orissa	780	834	797	912	1,045	931	1,147

TABLE 2

Statement showing the Tax Receipts of Government of India and Trend of Growth

(Rupees in Crores)

Items (1)	1973-74 (2)	1974-75 (3)	1975-76 (4)	1976-77 (5)	1977-78 (6)	1978-79 (7)	1979-80 (8)	1980-81 (9)	1981-82 (10)
1. Income Tax (including Surcharge)	7,45.16	8,74.41	12,14.36	11,94.38	10,02.02	11,73.39	13,40.31	15,06.39	14,75.50
Percentage of growth		17.34	38.87	(—)1.64	(—)16.10	17.50	13.83	12.39	(—) 2.05
2. Surcharge on Income Tax (Union Special and Additional).	41.96	47.65	62.69	63.53	74.77	1,15.92	1,83.61	1,22.42	1,07.96
Percentage of growth		13.56	31.56	1.33	17.69	55.03	58.39	(—)33.32	(—)11.81
3. Income Tax (excluding Surcharge)	7,03.20	8,26.76	11,51.67	11,30.85	9,27.25	10,61.47	11,56.70	13,83.97	13,67.54
Percentage of growth		17.57	39.29	(—)1.80	(—)18.00	14.47	8.97	19.64	(—)1.18
4. Corporation Tax	5,82.60	7,09.48	8,61.70	9,84.23	12,20.77	12,51.47	13,91.90	13,10.79	19,69.97
Percentage of growth		21.77	21.45	14.21	24.03	2.51	11.22	(—)5.82	50.28
5. Customs Duty	9,96.43	13,32.90	14,19.40	15,53.70	18,24.10	24,48.74	29,24.16	24,09.28	43,00.46
Percentage of growth		33.76	6.48	9.46	17.40	34.24	19.41	16.59	26.13
6. Union Excise Duty	26,02.13	32,30.52	38,44.78	42,21.45	44,47.51	53,41,95	60,11,09	65,00.02	74,20.74
Percentage of growth		24.14	19.01	9.79	5.35	20.11	12.52	8.13	14.16
7. *State Sales Tax—*									
Sales Tax	1,32.25	1,88.00	2,09.00	2,29.00	2,42.00	2,94.00	3,25.00	4,57.00	5,44.00
Percentage of growth		42.16	11.17	9.57	5.68	21.49	10.55	40.62	19.04
8. *Tamil Nadu's Share of Additional Excise—*									
Duty in lieu of Sates Tax	15.00	13.00	18.00	22.00	22.00	26.00	29.00	35.00	
Percentage of growth		(—)13.34	38.47	22.23	..	18.19	11.54	20.69	

TABLE 3

Statement showing the Tax Receipts of Government of India and Trend of Growth

(Rupees in Crores)

Items (1)	1973-74 (2)	1974-75 (3)	1975-76 (4)	1976-77 (5)	1977-78 (6)	1978-79 (7)	1979-80 (8)	1980-81 (9)	1981-82 (10)
Income-tax (including Surcharge)	7,45.16	8,74.41	12,14.36	11,94.38	10,02.02	11,73.39	13,43.31	15,06.39	14,75.50
Percentage of growth		17.34	38.87	(—)1.64	(—)16.10	17.50	13.83	12.39	(—)2.05
Surcharge on Income-tax (Union, Special and Additional)	41.96	47.65	62.69	63.53	74.77	1,15.92	1,83.61	1,22.42	1,07.96
Percentage of growth		13.56	31.56	1.33	17.69	55.03	58.39	(—)33.32	(—)11.61
Income Tax (excluding Surharge)	7,03.20	8,26.76	11,51.67	11,30.85	9,27.25	10,61.47	11,56.70	13,83.97	13,67.54
Percentage of growth		17.57	39.29	(—)1.80	(—)18.00	14.47	8.97	19.64	(—)1.18
Corporation-tax	5,82.60	8,09.48	8,61.70	9,48.23	12,20.77	12,51.47	13,91.90	13,10.79	19,69.97
Percentage of growth		21.77	21.45	14.21	24.03	2.51	11.22	(—)5.82	5.28
Customs Duty	9,96.43	13,32.90	14,19.40	15,53.70	18,24.10	24,48.74	29,24.16	34,09.28	43,00.36
Percentage of growth		33.76	6.48	9.46	17.40	34.24	19.41	16.59	26.13
Union Excise Duty	26,02.13	32,30.52	38,44.78	42,21.45	44,47.51	53,41.95	60,11.09	65,00.02	74,20.74
Percentage of growth		24.14	19.01	9.79	5.35	20.11	12.52	8.13	14.16

5.4 It is an undisputable fact that reducing the regional imbalances should constitute an important objective in a diverse country like India. However, it will have to be pointed out the even the existing powers with the Centre to raise resources are enough to achieve this bojective. For the purposes of giving a Fillip to the development efforts of the backward States it is more important to use the existing resources judicially rather than that of raising fresh resources and again distributing it among various States in a manner which further aggravates the existing disparities as has already been brought out. Here it may also be pointed out that after making devolution to the State Governments as recommended by the Finance Commission and the Planning Commission if the Government of India finds itself short of funds, deficit financing is hardly and ideal solution to meet this problem. To the extent possible, the Government of India can try to meet the situation by reducing its outlay on Centrally sponsered schemes. We may also point out that if the Government of India, does insist on resorting to deficit financing, then it should also recognise that the consequent increase in Money Supply will also lead in substantial measure to inflation and should come forward to meet substantially the commitments of the State Government on increased number of instalments of Dearness Allowance and cost escalations especially for works coming under the Five-year Plan or under the upgradation grants of Finance Commission.

In the absence of such an inflation linked scales of devolution, it may be asserted that deficit financing is an indirect way of diluting the award of Finance Commission.

5.5 While reacting to the roles played by the Finance Commission and Planning Commission in bridging the gap between the rich and the poor States we would like to differentiate between the two bodies, Our stand has consistently been that more and more resources should be transferred through the Finance Commission which is a statutory body. The Commission works as a quasi judicial body and in view of its very nature it is more likely to raise above the political consideration and unhealthy regional chauvinism which are hitting at the roots of our federal democracy. In consistence with above stand, we advocate that the transfer of resources should be through the Finance Commission only.

We would like to bring out the fact that the present system of transfer of resources from Centre to States has only widened the gap in economic status of the various States. The worst affected States belong to the middle income group, who are unfortunately starved of resources under the mistaken impression that they have already reached the stage when they can take care of themselves. In fact they had reached a stage where one 'big push' would have put them in the orbit of self-sustained prosperity as has happened in the case of States like Maharashtra and Punjab. But, the system of transfer of resources has been so unfair to the middle income States that in a number of cases such States have started gradual descent down the path of deterioration in relation with other States. From the Table 'A' it may be seen that the per capita resources transfer for Tamil Nadu through Union Planning Commission has been only Rs. 161 for the period of 1980-85.

TABLE 'A'

Per Capita transfers for 1980-84

States	(1979—84) Through VII Finance Commission	(1980-85) Through Union Planning Commission	Total
(1)	(2)	(3) (Rupees)	(4)
Andhra Pradesh . .	340	208	548
Assam	355	..	355
Bihar	393	223	616
Gujarat	361	225	586
Haryana	307	234	541
Karnataka . . .	343	184	527
Kerala	361	202	563
Madhya Pradesh . .	383	243	626
Maharashtra . . .	340	174	514
Orissa	449	301	750
Punjab	310	221	531
Rajasthan . . .	350	243	593
Tamil Nadu . . .	365	161	526
Uttar Pradesh . . .	375	218	593
West Bengal . . .	360	153	513

However, the same per capita transfer for Maharashtra, Punjab and Haryana has been Rs. 174, Rs. 221 and Rs. 234 respectively. It will clearly bring out the fact that the Planning Commission has not transferred the resources among the States in a manner conducive to bridging the gap between the States. On the contrary, we find that Finance Commission has been more progressive in its approach even though that has also not been progressive enough. The net result of all these is that the States which were poor continue to be so and the richer States are prospering perhaps, even at the cost of the poor. In this regard we would like to draw the attention to the Table 'B' below. It may be seen from this table that the per capita net State Domestic product for the country as a whole rose by about 50 per cent in the period 1974-75 to 1980-81.

TABLE 'B'

Per Capita net State Domestic Product

States (1)	1974-75 (2)	1975-76 (3)	1976-77 (4)	1977-78 (5)	1978-79 (6)	1979-80 (7)	1980-81 (8)
Haryana	1,408	1,514	1,761	1,935	1,990	1,923	2,335
Maharashtra	1,435	1,455	1,535	1,677	1,797	2,021	2,277
Punjab	1,585	1,688	2,050	3,217	2,382	2,611	2,768
Tamil Nadu	964	997	1,066	1,203	1,225	1,274	1,269
All-India	1,006	1,024	1,082	1,198	1,250	1,316	1,537
Uttar Pradesh	740	727	819	896	894	962	1,272
Bihar	706	669	716	759	791	795	870
Madhya Pradesh	825	790	887	951	927	877	1,177
Orissa	780	834	797	912	1,046	931	1,147

But for a prosperious State like Punjab, it rose in the same period by over 75 per cent and for Haryana by about 65 per cent. At the same time for a middle income State like Tamil Nadu it rose by only about 30 per cent. On the other hand even for low income States like Uttar Pradesh and Orissa the rate of growth has been better and works out to about 60 per cent and 45 per cent respectively. From the foregoing, it is quite obvious that the present system of transfer of resources has not worked satisfactorily.

We are outlining below an alternative scheme regarding transfer of resources in a more just and equitable manner. Broadly speaking we would suggest that there should be three different kinds of approaches to sharing of resources. There can be one formula for devolution of all kinds of taxes and there need be no differentiation on the ground of the sources of each of these taxes. With one proviso that, in case, Central tax is introduced to replace some existing taxes, a separate formula can be evolved for the distribution of this Central tax so as to protect the revenue which the State would have derived by leving the tax directly. Similarly, to meet developmental needs of the State Governments, there should be one formula and no assitance for developmental purposes should be given outside the purview of this formula. There can be one separate formula for distribution of market borrowings amoung the States. So far as the devolution of tax is concerned it may be emphasised that ever zealous efforts to reduce disparities between various States has often resulted in a situation where incompetence and ineffective management of existing resources has been put at a premium. The devolution of taxes should effectively try to balance quite often conflicting pulls of reducing disparities and of encouraging efficient management. We suggest that together with the criterion of backwardness it will be desirable to take into account the efforts taken by the State to raise fresh resources and to meak it best use despite constraints on natural resources should also be considered. It is felt that the formula intended to serve this purpose should be simple and effective. And therefore rather than taking into account too many factors, we would like that the formula should be based on limited number of factors which can effectively reflect the two factors of poverty and States resources correctly. So far as the plan assistance is concerned an equitable formula will have to be evolved which gives 50 per cent weightage of population on basis that is adjusted with a overall growth-rate. The remaining weightage can be for tax effort in relation to backwardness and natural resources in Governments. indicators of backwardness, etc.

5.6 As expressed briefly already, the Planning Commission which is a non-statutory body has considerably encroached upon the duties of the Constitutional Commission contemplated under Article 280. The result appears to be that the Planning Commission's recommendations on non-statutory discretionary grants are, on more than one occasion, without appropriate sanction. The National Development Council which is again a non-statutory body, though created for the purposes of equitable distribution of finances, is unable to achieve its real objective. It is in this sense this Government recommended a High Power Finance Commission as envisaged in Article 280 of the Constitution with representatives from the Union and the States to provide for the distribution of finances including taxes and grants to the States. In this sense the Government are of the view that the present working of the Finance and Planning Commissions are not adequate for the purpose.

5.9 In paragraph 13 of Chapter 1 of the Memorandum to the Eighth Finance Commission (Volume I) this Government has observed "we feel that the Finance Commission need not confine itself to the non-plan revenue gap as assessed by it. It is our view that the interest of State will be served only if the Finance Commission takes an overall intergrated view of the whole problem of financial imbalances of the States in relation to the total needs. This can be done only if the Finance Commission considers the totality of the non-plan and the plan requirements." By an extension of this stand it will only be logical to say that preferably only one organisation, that is, Finance Commission, should deal with all financial transfers (plan and non-plan). The role of the planning

Commission will then be confined to establishing priorities among the various schemes so as to make best possible use of the available resources.

It has been observed that over the years Union Planning Commission's autonomous status has been eroding. It will not be long before U. P. C. will become a mere appendage to Government of India. On the other hand, Finance Commission has a constitutional origin and it can be expecetd to be more unbiased in discharge of its functions as stipulated in Constitution, rather than having any other bodies like U. P. C., Loan Council, Expenditure Commission, etc. It will be desirable to take a stand that Finance Commission can itself go into the entire gamut of distribution of resources.

5.10. The methodology adopted by the Finance Commission and the short time at its disposal makes it very difficult for the Commission to promote efficiency and economy in expenditure. Even if a standing Finance Commission is appointed it may be very difficult to have light monitoring or efficiency audit which can help the Finance Commission to meaningfully promote efficiency and economy in expenditure. Moreover, it will in future lead to great interference in the affairs of the State Governments and will probably militate against the concept of greater autonomy for the States. Even now a half-hearted efforts is made by Finance Commission to get over this problem by fixing certain normative returns for State Electricity Boards, Transport Corporations and other Public Sector undertakings and also by fixing certain norms for maintenance of existing assets. But this exercise is not taken to its logical conclusion and large chunk of both expenditure and receipts of all State Governments is not at all tested against any yard stick of desirable norms. For this part of receipt and expenditure the Finance Commission simply adopts the actuals of the past years and projects on this. This will doubtlessly promote a tendency forwards reckless financial management. It is, therefore, felt that it will be more desirable if the Finance Commission could prescribe certain norms for all important items of receipts and expenditure. Such norms can be fixed on certain relevant factors like State Domestic Product, availability and exploitation of resources, tax effort, population, literacy, etc. If that is done, it will probably be possible to provide through the Finance Commission for reasonable and uniform level of expenditure for all the States and at the same time compel them to make reasonable efforts towards raising their own resources.

5.11. It is true that the present mechanism of transfer of resources might thave created a propensity towards exaggerated revenue deficit forecast. But the Finance Commissions are also adequately equiped to suitably moderate the forecast and bring it more in line with reality.

As regards the allegation of wasteful expenditure it may be reiterated that the duly elected State Government in its sphere of action is the best judge to decide what Schemes to implement for the welfare of its people. It will not be fair for the Centre or the other State Government to criticise some of the schemes as populist measures.

At the same time we may accept the need to award good fiscal management. It may be emphasised that there should be adequate award for good tax efforts made by resource constrained States like Tamil Nadu by building sufficient weightage to this factor in resource transfer formula.

5.12 and 5.13 This question has been discussed in paragraphs 10,11, and 15 of Chapter I of the Memorandum to the eighth Finance Commission (Volume I). Broadly speaking our stand was that at least 90 per cent of the transfer should be by way of devolution and only the remaining by way of grants-in-aid. Another point to be kept in mind is that after devolution the per capita surplus of middle income State should be more or less equal to that for the affluent States as the middle income States will need it to meet special problems.

Our stand was guided by the consideration that the grants-in-aid will be primarily discretionary, in nature and will probably give too much of latitude to the Central Government to favour some States. Therefore, this aspect needs to be emphasised again and if we want to restrict the grants-in-aid to the lowest possible level we will have to say that the grants-in-aid should be given only in order to fill the fiscal gaps if any left after devolution of taxes and duties.

We suggest that the Revenue gap formula now adopted must be replaced by fiscal deficiency formula.

Even though, it will be a little different from the stand which this Government have taken before the eighth Finance Commission, there is no contradiction in terms. In the Memoranda, we had to take into account the fact of existing dichotomy between the Planning Commission and Finance Commission which precluded the Finance Commission from taking into account the plan expenditure while arriving at its formula for fiscal devolution. In the scheme of things that we are going to suggest, the Finance Commission should be in a position to take into account not only the non-plan requirements but also the overall plan requirements of the State Governments and therefore it should be well within its means to build a formula that will take care of plan, non-plan requirements and any other special burden of the State Government. This will ensure that the Central Government cannot play the game of favouritism to any large extent.

So far as the grants for upgradation of standards of administration is concerned, it will have to be done away with. Once the Commission is allowed to go into the entire gamut of plan and non-plan expenditure of the State Governments, the need for making any special provision for the upgradation will not be there.

5.14 The views of this Government have been expressed in paragraphs 26.1 and 27 of Chapter I of the Memorandum to the eighth Finance Commission (Volume I) presented by this Government. However, we may reiterate that Government of India should share the yield from special bearer bonds scheme as well as the revenue derived from raising the administered prices on items like petroleum, coal, etc. We feel that it is justified on the following grounds:—

So far as the special bearer bonds are concerned this money in any case ought to have come to the

Government of India as income-tax which is shareable with the State Governments. It is only because the Government of India have not been able to collect that revenue at the time when it should have normally been collected that a scheme like the special bearer bonds has to be devised which is nothing but regularisation of the black money on which payment of income-tax was evaded. In principle this should be viewed as arrears of income tax and it should be made shareable with the State Governments. We would like to amply assert that not only special bearer bonds but also other bonds like Rural Reconstruction Bond, etc., should be made shareable with the State Governments.

In so far as the raising of administered prices is concerned, similar logic can be applied to that also. We may emphasise that there are no justifiable factors which prevent the Government of India from raising these resources by way of increase in the excise duties. In our view the purpose sought to be served by the rise in administered prices can be served equally well by increasing the excise duties which is subsequently shareable with the State Governments. Even if the Government of India have a fundamental objection to follow such a course of action it should still be possible for them to devise a mechanism which can compensate for the additional expenditure which is incurred by the State Government, because of the increase in administered prices. The sectors which have been worst hit by such arbitrary increases are Electricity Board, Transport Corporations and Highways Department. We will like to point out that when the Finance Commission finalises its award it takes into account a certain fixed return on the investments made on Electricity Boards and Transport corporations. However, once the cost of inputs is arbitrarily increased by the Government of India all these calculations are totally upset. It is just not possible for the State Governments which have a direct contact with the people to pass on the increase of the input cost to the consumers. In fact in many cases it is not possible to do so in view of the multiplier effect which such increase will have on prices in all sections of economy. In this regard we will like to point out that the additional commitment for the past 10 years to Tamil Nadu Electricity Board on account of revision of coal prices and furnace oil and freight rates in the period of 1974-75 and 1983-84 worked out to around Rs. 350 crores and we do not have to assert that increase of this order if passed on to the customer specially the farmers would have resulted in inflationary pressure of a high magnitude. Thus in the end, the States have no option but to absorb increased burden with their own meagre resources.

Similarly, in the same period the cost of bitumen has gone up by 5 to 6 times resulting in additional commitment of the order of Rs. 60 crores to the State exchequer (*vide* Table I). The burden has to be borne entirely by the State Governments as the roads form back bone of Transport Sector which is so crucial to the industrial development. Price hike of diesel has also resulted in an additional expenditure of Rs. 215 crores —Vide table II below.

From the above it is quite obvious that, so far as the State Governments are concerned the additional burden due to increase in administered prices cannot be passed on to consumers and it ultimately erodes the meagre resourcers of the State. This, in turn, has an effect on the overall economy. The devolution of the taxes is decided by the Finance Commission taking into account both the tax and non-tax revenue. The non-tax revenue includes the contribution of the Electricity Board and Transport Corporations also. Increase in administererd prices actually reduce this revenue and to the extent widen the gap between the resources and commitment and therefore logically speaking this should be compensated by increasing the devolution in taxes.

TABLE I

(Rupees in lakhs)

Year	Length of Government Roads in K. M.	I. S. D. rates of Bitumen/M.T. Packed	Bulk	Average cost	Bitumen consumed/required (approx.)	Cost of bitumen consumed at I.S.D. rates (average) in lakhs	Cost of bitumen consumed without admitting the sudden spurt in price of bitumen after 1978-79
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1974-75	29,248	615	..	..	46,200	2,84·13	2,84.13
1975-76	31,444	1,070	..	..	48,400	5,17.88	5,17.88
1976-77	31,906	1,070	..	..	49,000	4,24.30	5,24.30
1977-78	32,582	1,070	..	..	54,000	5,35.00	5,35.00
1978-79	33,331	1,070	850	960	54,000	5,18.40	5,18.40
. . . . . .							

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1979-80	33,556	1,622	1,313	1,468	adopting average rate of Rs. 960/mt.		
1980-81	33,960	2,450	2,150	2,300	60,000	8,80.80	5,76.00
					75,000	17,25,00	7,20,00
1981-82	35,607	2,759	2,462	2,611	90,000	23,49.90	8,64.00
1982-83	36,264	2,851	2,329	2,590		24,86.40	9,21.60
1983-84	38,607	2,851	2,329	2,590	98,000	25,38.20	9,40.80
					Total	1,23,60.00 lakhs (or) Rs. 124 crores	64,02.11 lakhs (or) Rs. 64 crores

Consequential additional commitment to State Government

Rs. 124 crores — Rs. 64 crores = Rs. 60 crores, Say Rs. 60 crores over a period of 10 years.

TABLE II

Erosion in Resources due to Price Hikes in Diesel for the past Ten Years

(Rupees in Crores)

Sl. No.	Date of Price hike	Price in rupee per litre increased: From	Price in rupee per litre increased: To	Cost in paise per Km. increased: From	Cost in paise per Km. increased: To	Increased in cost per km. in paise	Cumulative increase	Km. run in lakhs till next hike	Additional expenditure
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	01-4-1974	0.86	1.02	25	29	4	4	4,421	1.77
2.	01-8-1975	1.02	1.21	29	35	5	10	2,857	2.86
3.	01-4-1976	1.21	1.36	35	39	4	14	14,309	20.03
4.	01-4-1979	1.36	1.48	39	42	3	17	2,037	3.46
5.	17-8-1979	1.48	1.65	42	45	3	20	5,150	10.30
6.	08-6-1980	1.65	2.27	45	63	18	38	4,177	15.87
7.	13-1-1981	2.27	2.69	63	74	11	49	3,753	18.39
8.	11-7-1981	2.69	3.05	74	84	10	59	13,510	79.71
9.	15-2-1983 (till 31-3-1984)	3.05	3.38	84	93	9	68	9,253	62.92
									215.31

Market borrowings by the State Government

5.15, 5.18 and 5.20—Market borrowings have been playing an extremely important role in public finance for the past several years. However, as may be seen from Table 1, the importance of this source of finance has increased considerably in the recent years. At the same time the character of borrowings also has undergone a change and the market borrowings are now more or less borrowings from a 'captive markets'.

Strangle hold of the Centre on the market borrowings

In India where capital market is not yet fully developed and the concept of investment banking is in its nascent stage the commanding position of centre is too obvious as it controls most of the commercial banks and other financial institutions which mobilize public savings. In fact the whole operation of market borrowings is co-ordinated by Reserve Bank of India and no market borrowings is possible without the permission of Central Government if borrowing organisation be it State Government or the financial institution is indebted to the Central Government. As all these organisations are indebted to the Central Government the Reserve Bank of India floats State Government loans only under the direction of Government of India or the market borrowings have been allocated between different States by the Reserve Bank of India on the advise of the Planning Commission and the Union Ministry of Finance. After 1969, if the nationalised banks subscribe under the direction of Reserve Bank of India, the market borrowings are just an allocation of the deposits of the banks by Reserve Bank of India. It is, therefore, a matter of little surprise that over the years the Government of India has been appropriating more and more of the total available market loans.

Distribution of shares to the State Governments

So far as the relative share of market borrowings between the Centre and States is concerned, it may be seen that during the first plan the State share which was 76 per cent of the total market borrowings has plummetted down to 23.08 per cent as per the Sixth Plan estimates. There has been a corresponding increase in the Central's borrowings as the percentage of total borrowings. Not only this, it may also be seen from Table 2 that the total market borrowings have increased from Rs. 204 crores in the first plan to Rs. 19,500 crores in the Sixth Plan which is an increase of 90 times. Even if we restrict overselves to a restricted period of 70's the rate of growth works out to nearly 29 per cent per annum. As against that the Central Government has of late allowed an increase of only 10 per cent over the previous years permissible limit in the market borrowings of the State Government. Obviously, the balance rate of growth has been utilised by the Central Government for financing its plan and to some extent plan assistance to the States. The result of all this is that the market borrowings which were accounting for 9.15 per cent of the Centre's plan outlay in the First Plan, now account to 30.67 per cent of the Plan outlay. As against that in respect of the States Plan outlay, the percentage has actually come down from 10.87 per cent during the First Plan to 9.26 per cent during the Sixth Plan. A comparative statement of Plan outlay and market borrowing of the Centre and the State's may be seen at Table 3.

Under the circumstances there is a pressing need to prescribe certain well established principles based on which the market borrowings should be shared equitably between the Centre and the States and horizontally among the States.

Sharing between the Centre and the States

From the foregoing it is quite obvious that the need for sharing the market borrowings in a more equitable manner can hardly be over emphasised. The plea to increase the share of State Governments may probably be countered with the argument that if it is complied with, it will necessarily result in the reduction of Central assistance and the net effect will be negligible. However, it may be pointed out that the Central assitance as a percentage to State plan outlay has decreased from 60.38 per cent during Third Plan to 31.58 per cent during the Sixth Plan. It has also to be emphasised that in the federal structure which we have opted for an equitable distribution of market borrowings is only just, since the market borrowings have been used by both the Centre and the States for the purpose of financing plan. It will but be resonable that they are shared in proportion to the Plan outlays of the Centre and the State's put together. Such a sharing will give a similar level of support for financing the Plan to both the Centre and the States. For example, if as in the Sixth Plan, the relative share of the Centre and the States are 50 per cent each, the market borrowings may also be allocated in the same ratio.

Similarly, the distribution amongs the States must also be done on the basis of a just and equitable principle.

Distribution among the States

In the past the distribution among the States of the market borrowings has been done in very ad-hoc and arbitrary manner giving increase of 10 per cent over the last years level of borrowings. Thus the States which were unfortunately at a low level continue to be so and there was no attempt for arriving at an equitable level. In fact if the trend of per capita market borrowings is seen for the period from 1969-79 (Table 5), it may be seen that whereas for Tamil Nadu the per capita market borrowing recorded an increase of mere 90 percent from 1969-79, West Bengal in the same period recorded an increase of nearly 600 per cent. It may also be seen that there are wide variation among the States as in 1978-79, the per capita borrowings varied from Rs. 5.78 for Uttar Pradesh to Rs. 52.80 for Nagaland with highly developed States like Haryana and Gujarat standing at Rs. 15.47 and Rs. 12.10 respectively. It clearly shows that the present sharing of market borrowings among the States is just following the policy of aimless drift without any thrust on correcting the existing imbalances. The present system does not consistently favour the backward with higher market borrowings nor does it show an inclination on the part of Central Government to spare these States from the burden of high debt service charges, by reducing the allocation of market borrowings and compensating for it by way of grants. As observed earlier the state of affairs as on date is one of aimless drift. Therefore the need of the hour is to formulate a just and equitable principles of distribution of market borrowings.

The President of India should liberally invoke his power under Article 280 (3) (c) to achieve this object.

It will be worthwhile to point out that the figures for market borrowings as given by the Union Planning Commission and as given by Reserve Bank of India do not agree. The figures given by the Reserve Bank of India have been reproduced in Table 6. It shows that whereas for Tamil Nadu market borrowings showed an increase of about 32 per cent between 1973-74 to 1982-83 for the same period the increase for Uttar Pradesh was over 228 per cent and for Andhra Pradesh 276 per cent. This however, once again underlines the eminent need to formulate a just and equitable principle for distribution by the Finance Commission.

We may, therefore, emphasise that while sharing the savings of the public as a whole and by allocating the market loans, various State Governments, the Government of India should go by the award of the Finance Commission. The Finance Commission in future can be used to suggest an appropriate formula for sharing of market borrowings. The actual execution can continue to be co-ordinated by the Reserve Bank of India. There seems to be no need to set up a separate loan council for multiplicity of agencies may create a situation of their working at cross purposes.

TABLE 1

(Rupees in Crores)

Plan period	Public Sector Plan outlay	Market borrowings	Market borrowings as percentage of public sector Plan Outlay
First Five-Year Plan (1951-56 Actuals)	1,960	204	10.48
Second Five-Year Plan (1956-61 Actuals)	4,672	756	16.18
Third Five Year Plan (1961-66 Actuals)	8,577	823	9.60
Annual Plans (1966-69 Actuals)	6,625	725	10.94
Fourth Five Year Plan (1969-74 Latest Estimate)	16,168	2,788	17.25
Fifth Five Year Plan (1974-79 Revised Estimates)	39,303	5,879	14.96
Annual Plan 1979-80 (Original Plan Estimates)	12,601	2,371	10.81
Sixth Five-Year Plan (1980-85 Original Estimates)	97,500	19,500	20.00

TABLE 2

Allocation of Market Borrowings between Centre and States

(Rupees in Crores)

Plan period	Total market borrowings	Market borrowings by Centre	Centre's borrowings as percentage of total market borrowings	Market borrowings by States	State Market borrowings as percentage of total market borrowings
(1)	(2)	(3)	(4)	(5)	(6)
First Plan (1951—56)	204	49	24.08	155	76.00
Second Plan (1956—61)	756	400	52.91	356	47.09
Third Plan (1961—66)	823	307	37.30	516	62.70
Annual Plan (1966—69)	725	384	52.97	341	47.03
Fourth Plan (1969—74) Latest Estimates	2,788	1,744	62.55	1,044	37.44
Fifth Plan (1974—79) (Revised Estimates)	5,879	3,746	63.72	2,133	36.28
Annual Plan (1979—80) Original Estimates	2,371	1,850	78.02	521	21.98
Sixth Plan (1980—85) Original Sixth Plan Estimates	19,500	15,000	76.92	4,500	23.08

TABLE 3

Plan Outlay and Market Borrowing-Centre and States

(Rupees in Crores)

Plan Period	Centre			States		
	Plan Outlay	Market borrowings	Market borrowings as percentage of Centre's Plan Outlay	Plan Outlay	Market-borrowings	Market borrowings as percentage of State's Plan Outlay
(1)	(2)	(3)	(4)	(5)	(6)	(7)
First Plan (1951—56 Actuals)	535	49	9.15	1,425	155	10.87
Second Plan (1956—61 Actuals)	2,590	400	15.44	2,082	356	17.10
Third Plan (1961—66 Actuals).	4,412	307	6.96	4,165	516	12.39
Annual Plan (1966—69 Actuals)	3,565	384	10.77	3,060	341	11.14
Fourth Plan (1969—74 Latest Estimates)	8,793	1,744	19.83	7,367	1,044	14.17
Fifth Plan (1974—79 Revised Estimates)	20,586	3,746	18.19	18,717	2,133	11.40
Annual Plans (1979—80 Original Estimates)	6,639	1,850	20.87	5,962	521	8.74
Sixth Plan (1980—85)	48,900	15.000	30.67	48,600	4,500	9.26

TABLE 4

Central Assistance

Plan period	*Central Assistance*	
	Total	*As percentage to State Plan Outlay.*
Third Plan (1961-66)	2,515	60.38
Annual Plan (1966-69)	1,767	57.90
Fourth Plan (1969-74)	3,535	47.98
Fifth Plan (1974-78)	5,271	41.48
Annual Plan (1978-79)	2,885	48.01
Annual Plan (1978-79)	2,694	45.19
	(Revised Estimate)	
Sixth Plan (1980-85)	15,350	31.58

TABLE 5

Per Capita Market Borrowings of the State Governments during 1969-79

States	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1. Andhra Pradesh	2.71	2.61	2.91	4.86	4.83	5.05	4.83	5.31	5.84	6.43
2. Assam	5.30	4.59	4.77	5.73	7.54	7.57	7.65	9.29	9.37	10.31
3. Bihar	1.50	1.22	1.36	2.95	4.36	4.36	4.38	4.80	5.27	5.80
4. Gujarat	10.28	6.75	7.84	7.52	8.15	9.22	9.08	10.00	11.00	12.10
5. Haryana	11.02	8.75	8.33	10.49	11.61	14.70	11.65	12.77	24.66	15.47
6. Himachal Pradesh	..	..	..	6.06	8.66	8.62	8.65	9.51	10.40	11.43
7. Jammu and Kashmir	..	..	..	4.78	14.35	14.36	14.47	15.89	17.48	19.22
8. Karnataka	6.94	5.64	5.99	5.88	7.52	7.58	7.49	8.26	9.08	9.99
9. Kerala	2.37	3.97	5.36	9.12	9.26	9.06	10.19	10.19	11.26	12.38

TABLE 5

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
10. Madhya Pradesh	2.02	3.05	2.98	3.03	4.63	4.57	4.64	5.10	5.61	6.17
11. Maharashtra	7.08	5.50	6.18	7.28	6.30	6.34	6.72	7.36	8.10	8.90
12. Manipur	..	..	..	10.09	12.55	32.14	12.45	13.82	15.18	16.73
13. Meghalaya	..	..	..	11.00	11.00	38.80	20.00	24.20	26.60	29.30
14. Nagaland	..	..	..	22.20	39.60	115.80	39.60	43.60	48.00	52.80
15. Orissa	2.30	3.64	4.68	3.01	5.80	5.99	5.79	6.38	7.02	7.72
16. Punjab	7.70	6.95	6.67	7.46	7.36	10.39	7.78	8.04	8.84	9.72
17. Rajasthan	2.52	3.74	3.75	7.98	8.80	8.84	9.30	9.68	10.65	11.71
18. Sikkim	..	..	..	..	..	..		..	..	..
19. Tamil Nadu	4.49	5.19	4.69	4.97	6.36	5.88	6.41	7.01	7.71	8.48
20. Tripura	..	..	..	..	..	10.37	8.62	9.50	10.44	11.50
21. Uttar Pradesh	1.54	1.52	1.98	2.97	4.34	4.15	4.40	4.78	5.25	5.78
22. West Bengal	1.78	4.06	4.45	7.93	9.26	9.28	9.30	10.19	11.20	12.32
All States (Average)	..	3.64	3.97	5.35	6.43	6.76	6.62	7.21	7.94	8.73

Notes.—Average for all States per capita market borrowings has been calculated on the basis of the 1971 population.

Qns. 5.15, 5.18, & 5.20

TABLE 6

Statement showing the net market Borrowings of the State Government during 1973-74 to 1982-83.

(Rupees in Lakhs)

Name of the State	1973-74	1974-75	1975-76	1976-77	1977-78
(1)	(2)	(3)	(4)	(5)	(6)
1. Andhra Pradesh	13,03	21,04	24,41	13,04	13,01
2. Assam	5,54	5,66	8,58	5,17	5,72
3. Bihar	11,09	14,86	15,22	11,03	11,05
4. Gujarat	9,70	13,71	18,29	12,17	12,41
5. Haryana	8,04	12,36	9,39	8,10	9,63
6. Himachal Pradesh	1,38	1,37	1,38	1,69	1,67
7. Jammu & Kashmir	2,48	2,44	2,49	2,54	2,48
8. Karnataka	9,12	19,12	18,01	11,71	11,76
9. Kerala	4,97	5,91	9,14	6,23	8,60
10. Madhya Pradesh	5,57	5,32	9,99	4,80	5,07
11. Maharashtra	13,03	15,42	27,11	13,35	13,25
12. Manipur	1,38	3,58	1,38	1,66	1,65
13. Meghalaya	1,11	3,88	1,10	1,41	..
14. Nagaland	1,99	5,80	1,93	2,22	2,48
15. Orissa	6,65	7,07	14,72	7,50	6,74
16. Punjab	5,54	9,76	7,51	5,28	2,92
17. Rajasthan	15,55	15,65	20,76	47,89	17,74
18. Sikkim	..		..	..	..
19. Tamil Nadu	13,05	14,62	26,30	13,24	13,15
20. Tripura		1,66	1,38	1,69	1,65
21. Uttar Pradesh	29,63	27,87	40,52	30,09	29,28
22. West Bengal	7,76	7,92	14,93	7,84	7,87
All States (Total)	166,61	215,02 (a)	274,54	178,65	178,12*

TABLE 6

Statement showing the Net Market Borrowings of the State Government during 1973-74 to 1982-83.

(Rupees in Lakhs)

Name of the State	1978-79	1979-80	1980-81	1981-82	1982-83	Percentage of increase between 1973-74 and 1981-82
	(7)	(8)	(9)	(10)	(11)	(12)
1. Andhra Pradesh	13,43	12,89	13,35	41,11	49,64	276.36
2. Assam	4,53	5,48	6,22	7,76	8,24	48.74
3. Bihar	11,13	11,21	10,53	22,15	22,83	105.86
4. Gujarat	12,14	11,99	13,51	15,04	16,49	70.00
5. Haryana	9,40	7,90	9,21	9,91	10,42	29.60
6. Himachal Pradesh	1,66	1,69	1,76	1,93	2,48	79.71
7. Jammu & Kashmir	2,48	2,48	2,80	3,06	3,58	44.35
8. Karnataka	13,31	12,15	13,78	14,06	17,02	86 62
9. Kerala	11,30	13,78	16,43	19,80	23,05	363.78
10. Madhya Pradesh	5,63	4,83	5,50	10,12	11,25	101.97
11. Maharashtra	13,14	13,20	13,16	14,71	16,15	23.94
12. Manipur	1,93	2,20	2,52	3,05	3,30	139.13
13. Meghalaya	..	1,38	1,51	..	4,68	321.62
14. Nagaland	2,76	3,03	3,33	4,16	4,40	121.11
15. Orissa	6,74	6,60	7,55	18,96	23,03	246.32
16. Punjab	3,49	5,63	6,13	7,02	7,40	33.57
17. Rajasthan	17,80	17,87	19,13	53,70	38,49	147.52
18. Sikkim	..	..	..	..	..	..
19. Tamil Nadu	13,22	12,91	13,89	16,46	17,19	31.72
20. Tripura	1,93	2,20	2,49	3,03	4,69	182.53
21. Uttar Pradesh	31,07	29,85	30,74	77,93	97,29	228.35
22. West Bengal	7,82	7,88	7,51	9,95	17,25	122.29
All States (Total)	184,95*	187,14*	201,07*	333,90*	398,26*	97.62

@Provisional. *Total will not add up.

SOURCE.—(1) Report on Currency and Finance Voll. II except for the year 1974-75.

(2) Article on Finance of State Governments, 1976-77 published in R.B.I. Bulletin December 1976 for the year 1974-75. Qns. 5.15 5.18 & 5.20.

5.16 and 5.17—It may be seen from table below that the State Government has been paying back approximately 60 per cent of the loans received from the Government of India as repayment of loans and the interest on the loans from Government of India. In fact in certain years like 1973-74 the repayment and interest itself was more than the loan received during the year. This clearly shows that over the years the States have reached such a level of indebtedness that they have to take more and more loan just to pay back the earlier ones. There are number of reasons which have contributed to high degree of indebtedness of the State Governments. They are reaccounted below :—

(1) The Government of India has always borrowed funds on more favourable terms than the terms on which they have been passed to the State Governments,

(2) Most of these loans are intended for developmental activities which are non-productive in nature and on which the State Government may not expect any return. They should have legitimately been treated as grants and treating them as loan has aggravated the indebtedness of the State Government.

We feel that in order to improve the situation in future, the loans from foreign agencies should be passed on to the State Governments on the terms and conditions on which they were obtained. Moreover the assistance given to the State Governments should be categorised into commercial and non-commercial purposes. Any assistance which is non-commercial and on which the State Governments cannot expect any reasonable return should be given as grant. In respect of productive purposes also it will be

worthwhile if a distinction could be made between the developing and backward States and if the terms of repayment and rate of interest were softer for the developing and the backward States.

Qns. 5.16 and 5.17

TABLE I

State Government's Borrowings from the Central Govt.

(Rupees in Lakhs)

Year	Repayment of loans to to G.O.I. (a)	Interest on loans from G.O.I. (b)	Loans received during the year (c)	a/c X 100	(a+b)/c X 100
1973-74 .	49,35	20,27	60,25	82	116
1974-75 .	22,21	18,51	53,42	42	77
1975-76 .	50,94	21,61	78,90	65	92
1976-77 .	31,64	23,26	99,32	32	56
1977-78 .	35,28	26,95	1,39,10	26	45
1978-79 .	43,31	32,40	1,65,34	27	46
1979-80 .	34,53	26,18	1,26,28	28	48
1980-81 .	40,17	55,57	1,54,50	26	62
1981-82 .	47,57	49,78	1,54,62	31	63
1982-83 .	54,85	57,04	1,75,57	32	64
1983-84 . (Provisional) Revised Estimates	86,46	65,80	2,08,59	42	73
1984-85 . (Provisional) Budget Estimates	74,85	63,16	1,92,06	39	72

NOTE—(i) Loan does not include ways and means advances.
(ii) Interest includes interest on ways and means advances.

TABLE II

State Government's Borrowings from the Central Govt.

(Rupees in Lakhs)

Year	Net Loan	Revenue receipt of the Tamil Nadu	Revenue surplus; of the Tamil Nadu	Per capita net loan	Per capita Revenue Receipts	Repayment × 100 Revenue Receipts	Repayment × 100 Revenue Surplus
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1973-74 . . .	10,90	4,86,30	13.67	2.65	118.04	11	361
1974-75 . . .	31,21	5,20,29	(—) 8,07	7.58	126.29	5	(—)276
1975-76 . . .	27,96	5,63,36	5,44	6.79	136.74	9	937
1976-77 . . .	67,68	6,28,98	61	16.43	152.67	5	5,187
1977-78 . . .	1,03,82	6,82,05	(—) 24,07	25.20	165.55	6	(—)147
1978-79 . . .	1,22,03	8,01,48	47,97	29.62	194.54	6	91
1979-80 . . .	91,75	9,44,85	95,30	22.27	229.34	4	37
1980-81 . . .	1,14,41	12,79,96	1,27,71	23.69	265.01	4	32
1981-82 . . .	1,07,05	14,41,55	81,66	22.17	298.46	4	59
1982-83 . . .	1,20,72	16,78,02	1,01,94	25.00	347.42	4	54
1983-84 (Revised Estimates)	1,22,13	18,92,86	24,53	25.29	391.90	5	368
1984-85 (Budget Estimates)	1,17,21	20,65,43	1,19,05	24.27	427.63	4	63

Population of Tamil Nadu : 1971 Census—412 lakhs.
1981 Census—483 lakhs.

5.19 In the recent years Government of India have progressively liberalised their policy of availing foreign credit. Loans have therefore been secured from international agencies as well as other foreign Governments to finance developmental expenditure of the State Government on specific projects. The external debt outstanding in 1984-85 is about Rs. 17,000 crores excluding I. M. F. loan and about Rs. 21,000 crores including I.M.F. loan. However, the system of raising foreign credit has been so designed as to work to the detriment of the State Governments *vis-a-vis* the Government of India. Although it is understandable that the loans raised through foreign agencies are all routed through Government of India who have to co-ordinate keeping in view the balance of payment position. Still there seems to be no justification for the Government of India to obtain the loan from foreign agencies on soft terms and then pass it on to the State Governments on extremely stringent conditions of repayment and on relatively higher rates of interests.

It has been shown elsewhere that the debt burden of the State Government has already been strangling the meagre resources of the State Government and there is an imperative need to provide some relief from the excessive debt burden. It has also been shown that for Tamil Nadu the repayment of loans and interest works out to around 70 per cent of the loans received in a particular year. In a situation like this, there seems to be a genuine need for Government of India to provide even its own loans to the State Governments at much softer terms for repayment and definitely there would be no justification for the Government of India to modify the terms of the loans received from foreign agencies so as to further worsen the financial position of the State Governments already hard pressed for resources.

In this connection, we would like to draw the attention to the Table 'A' below which sets forth the position excluding the I. M. F. loan.

TABLE A

(Rupees in Crores)

Countries/Institutions	Interest on External debt	Out-standing loan	Average rate of interest
(1)	(2)	(3)	(4)
France	16.00	3.31	4.8
West Germany	25.55	15.06	1.7
Japan	45.82	11.19	4.2
Holland	11.57	5.81	1.9
Britain	3.45	5.96	0.6
America	69.82	30.72	2.2
I.D.A.	69.97	67.26	1.0
World Bank (IBRD)	1,35.38	9.64	14.0
Kuwait	5.63	.93	6.0
Saudi Arabia	14.02	.84	.8
United Arab	1.51	.17	..
Russia	10.46	3.15	3.3
I.M.F. Trust Fund	3.06	5.75	0.5
Others	5.81		
	4,08.05	1,70.00 (Approximately)	2.4

It may be seen that the rate of interest for loans taken from various external sources varies from 0.5 per cent to 14 per cent. The average rate of interest will work out to only 2.4 percent which the Government of India is paying to their external creditor. On the other hand, they have been passing on this credit to the State Governments on much more exacting terms and conditions. Most of this assistance is passed on as a part of the State Plan assistance on the same terms and conditions, for which the State Government have to pay 7 per cent as the rate of interest.

In this connection, we would like to bring out the extent to which the Government of India have modified the terms and conditions to the detriment of the State Governments with reference to a few examples. It may be seen from the table 'B' below that for Training and Visits Scheme which was assisted by the world Bank for improving the agricultural production, the Government of India had obtained loan at the rate of 3/4 per cent but the loan was subsequently passed on to the State Government at the rate of 5-1/2 per cent.

TABLE B

Project	Assistance of External Agency		Rate of Interest	Assistance to the State Schemes		Rate of Interest	Internal Burden
	Loan	Grant		Laon	Grant		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1. M.H.D.P. (I.D.A.)	100 Per cent	..	3/4 Per cent	70 per cent	30 per cent	5½ per cent	4¾ per cent
2. T.N.N.P. Ltd. (World Bank I.B.R.D.)	100 per cent	..	10.08 per cent (It varies)	100 per. cent	..	14 per cent	3.92 per cent
3. Training and visit System (World Bank)	100 per cent	..	3/4 per cent (Interest charges)	100 per cent	..	5½ per cent	4¾ per cent
Average percentage			3.86%			8.33%	3.86%

Similarly on the commercial side, for a State Public Sector Enterprises, viz., Tamil Nadu Newsprint Papers Limited, the Government of India obtained loan from World Bank at the rate of 10.08 per cent on an average, but passed it on to the State Government though at the rate of interest of 14 per cent. Not only this, the Swedish International Agency has given full grants to the Government of India for implementing Social Forestry Schemes. But the Government of India have converted this grant into 70 per cent loan and 30 per cent grant while passing it on to the State Government and they have charged rate of interest of 7 per cent of or this.

In the light of the above we would like to recommend that even though the Government of India can continue to co-ordinate the borrowings from the external agencies as it is closely linked with the foreign exchange availability and the balance of payment position, the Government of India will pass on the entire loan on the same terms and conditions on which they are obtained from the external agency to the State Governments after deducting a notional amount of 1.0 per cent as Service charges. This, in our view, will not only be just but will also go a long way towards improving the position of the heavily indebted State Governments.

5.21—It should be emphasised that availing of large overdrafts by the State Governments can be directly attributed to the weakness in the system of devolution that obtains at present. The award of Finance Commission did not take into account the additional instalments of Dearness Allowance which had to be sanctioned to the Government employees. Similarly, while working out the resources of the State Government, the additional commitment due to the enhanced subsidy to Electricity Board and Transport Corporations which becomes payable due to increase in administered prices imposed by Government of India during the award period is also not taken into account. Similarly while finalising the plan outlay and State Plan assistance, sufficient margin for cost escalation is not provided. These are the factors which are primarily responsible for the continued overdrafts of the State Governments. A remedy for this has already been suggested in the answer to the Question No. 5.14.

5.22—We may reiterate that the taxes assigned to the State Government are not as buoyand elastic as the taxes assigned to the Centre. In fact there

is only one tax(Sales tax) which gives the State Government some scope for manoeuvring additional resources. Being the only income-alastic source of taxation, it has already been exploited to the fullest possible extent. It may be relevant to point out that in the period from 1973-74 to 1981-82 the increase in sales tax (Tamil Nadu) is 311.34 per cent as against only 185.18 for excise duty. This may amply prove that a generalisation as made in Question No. 5.22 is neither fair nor appropriate (Table).

TABLE

(Rupees in Crores)

Items (1)	1973-74 (2)	1974-75 (3)	1975-76 (4)	1976-77 (5)	1977-78 (6)	1978-79 (7)	1979-80 (8)	1980-81 (9)	1981-82 (10)
Union Excise Duty .	2,602.13	3,230.52	3,844.78	4,221.45	4,447.51	5,341.95	6,011.09	6,500.02	7,420.74
Percentage of growth .		24.14	19.01	9 79	5.35	20.11	12.52	8.13	14.16
State Sales Tax :—									
Sales Tax	132.25	188.00	209.00	229.00	242.00	294.00	325.00	457.00	544.00
Percentage of growth; . .		42.16	11.17	9.57	5.68	21 49	10.55	40.55	19.04

5.23—The view of the State Government on this subject is given in para 25 and 26.1 of Chapter I of Volume I in the Memorandum to the eighth Finance Commission. We agree that there is a substantial leakage of Central taxes and also that the return on the capital investment which has been made is meagre. The Central Government may probably be in the best position to decide the measures to be taken to rectify this situation.

However, it may be emphasised that the Finance Commission while working out the resources of the Centre should take into account a minimum acceptables return on capital investment and collection of arrears as is done in the resource forecast of the State Governments.

5.26—This is covered in para 1, 2.1, 2.2, 3 and 4 of Chapter V of Volume I of the Memorandum to the eighth Finance Commission. The table below shows that the Collection from Railway fares has become more than three fold in a period of eleven years. It is, therefore, only reasonable that the State Governments should be proportionately compensated by the Finance Commission by taking into account the increase in passenger fares collections.

TABLE

Earnings from Passengers Carried for Indian Railways.

(All India figures)

(Rupees in Lakhs)

Year (1)	Suburban (2)	Non-Suburban (3)	Total (4)
1969-70 . . .	28,65	2,50,21	2,78,86
1970-71 . . .	29,94	2,65,55	2,95,49
1971-72 . . .	32,14	2,87,99	3,20,13
1972-73 . . .	35,67	3,08,14	3,20,13
1973-74 . . .	38,73	3,28,42	3,67,15
1974-75 . . .	41,50	3,71,05	4,12,55
1975-76 . . .	50,53	4,63,59	5,14,12
1976-77 (R.E.) .	N.A.	N.A.	5,72,19
1977-78 . . .	61,92	5,59,73	6,21,65

TABLE—*Contd*

1	2	3	4
1978-79 . . .	66,80	6,05,97	6,72,77
1979-80 . . .	78,32	6,60,50	7,38,82
1980-81 . . .	90,52	7,36,95	8,27,47
1981-82 (B.E.)	N.A.	N.A.	9,31,75
1982-83 (B.E.)	N.A.	N.A.	11,94,19

N.A.—Denotes "Not Available".

5.27—We have no to offer remarks on this question

5.28—The views of this Government have been explained in detail in paragraphs 5, 9, 10, 11 and 13 of Chapter X of Vol. I of the Memorandum to the eight Finance Commission. These recommendations are exhaustive and may be retained as such. Only one additional point which may probably be highlighted is that normally the Government of India not only fixes on over all ceiling for expenditure on relief but even allocates it to various sectors within this total ceiling. This allocation is not only unnecessary but also harmful. In the first place the State Governments which are in close touch with the people are best judge of making these allocations depending upon the actual requirements. Secondly the visit of the Central team normally takes place months after the outbreak of the calamity and if the State Government waits for the allocation made by the Central team the very purposes of relief will often be defeated because of the delay. Therefore, we may recommend that once the Government of India has assessed the ceiling of assistance of eligible items it may leave the *inter-se* distribution of this money to various sectors with the State Governments. Of course, the Government of India can still make sure that the expenditure is incurred only on eligible items but limits of expenditure on each eligible items should be removed.

5.29—The State Government may probably take a stand that all the transfers of resources should be routed through only one body that is Finance Commission, so that the problems can be viewed in the over all perspective and an integrated approach is evolved.

5.30 We cannot agree to the suggestion made in this question. The State Government has a well defined role to play under the Constitution and has also been assigned well defined resources to carry out these responsibilities. The Centre cannot encroach on the sphere of State activity by using the argument that all funds flow from the public and have to be spent with an intention to benefit them and therefore, it is immaterial as to who does it.

5.31 The views of this Government have been explained in paragraphs 22, 23, 24 of Chapter I of Vol. I of the Memorandum to the eighth Finance Commission.

5.32 to 5.38 These buestions deal with the scope of the scrutiny that can be exercised by Comptroller and Auditor-General, the Public Accounts Committee, Estimates Committee, etc. In this regard it may be held that the existing procedure adequately empowers the Accountant-General to scrutinise the accounts of the State Governments and give a comprehensive report to be placed before the Legislature. Even points which have not been adequately covered by him are subsequently probed into much greater detail by Public Accounts Committee and Public Undertaking Committee. As such the existing procedure is enough to ensure that the public money is spent properly and according to the overall scope allowed to the executive by the representatives of the people. So far as the question of appointing an Expenditure Commission is concerned it should be generally opposed as the propriety of an expenditure is already gone into in detail by the Committees of Legislature, after taking into consideration. the recommendations of Comptroller and Auditor-General. Moreover if an Expenditure Commission is appointed for the purpose of assessing the propriety of the expenditure incurred by the Union and the States it is very likely that over the years such a Commission may become unduly influenced by the Centre as has happened in the case of Planning Commission and the practical implementation of this scheme may militate against the federal structure of our Constitution.

5.39 It is our stand that to the extent possible the Central Government should try to phase out Centrally-Sponsored Schemes and withdraw completely from the areas which had been specifically assigned to the States under the Constitution. It is an acknowledged fact that the State Governments come in much closer contact with the people and can be the best judge of their requirements. Therefore, even for the existing schemes there seems to be no justification for the Government of India, to insist upon the advance clearances of the plans of action formulated by the States, by the Administrative Ministry concerned at the Centre. Such stipulation not only causes delay but is an avoidable irritant and source of friction. The State Government who are closer to the people and answerable to them should be considered to be capable of formulating their own scheme within the broad outlines and implementing them.

PART VI

ECONOMIC AND SOCIAL PLANNING

The title "Economic and Social Planning" and the inclusion of this subject as Entry 20 in List III Concurrent List by itself affords a ready indicia that such economic and social planning is intended to highlight the necessity and the needs of both the Centre and the States. As on date, the Planning Commission as well as the National Development Council are functioning under due resolutions passed by the centre. Both the Planning Commission as well as the National Development Council are functioning as recommendatory bodies without a statutory foundation and recognition unlike the Finance Commission postulated in Article 280. Though the National Development Council by its very nomenclature is bound to be national in its character yet, it is seen that the National Development Council has become a forum for States to press their claims for special projects rather than discussion on national issues. Its status has been considerably reduced and it is acting merely as a council to viceforth its views but not to secure its objectives. Statesmen and Economists have expressed in uncanny terms that both the bodies are functioning as quasi-political bodies and Justice Subba Rao has rightly characterised them as working as a "super cabinet" integrated in all respects with the Central Cabinet. In fact the working of the Planning Commission which is at the apex has rightly been styled as a single monolithic chunk controlled by the Centre although operated in respect of concurrent and state subjects in the State. In the nature of things, therefore, the will of the Centre in the matter of the formulation and execution of Plans is demonstrably visible when the non-statutory discretionary grants under Article 282 are taken into computation. On the basis of the recommendation of the National Development Council and the Planning Commission, the States are expected to receive discretionary bounty by way of block grants and loans but they are not even measured by the depth and weight of the requirements of specific schemes postulated and formulated by the States.

If the Planning Commission is placed on an independent footing and as also the contemporaneous right to consult both the Union and the States simultaneously, for social and economic planning, then the irritant comment that the States' autonomy in the matter of securing financial resources for its advancement is being stemmed, by the Union, could be avoided. Such collective and co-operative endeavours not only in the matter of planning for State's projects but also for national projects should be thought of and the Planning Commission in conjunction with the National Development Council should centrifuge their attention in such a way as to ensure equitable distribution of the finances of the country, both for the Union and the States in accordance with the requirements and wishes of the people at large. The Centre's interferences is felt in working out major projects. In juxta-position to this, the Centre while dealing with similar recommendations of the National Development Council as regards Central schemes, the State's views and involvement in such schemes are at the lowest ebb notwithstanding the fact that the State concerned is the primary architect to implement such schemes in their respective States.

Apart from the imminent necessity to place the Planning Commission on a statutory basis, the Planning Commission should bear in mind the vast

dimensions of India with different attitudes, ideologies, intellectual physical and spiritual standards and should, reconcile its activities in such a way that it avoids unitary and centralised plans but wooes democratic plans which are at once useful to both the Centre and the States. As pointed out by Justice Subba Rao, the planning should be "democratic planning and should not cause the springs of personal initiative to dry up as a result of over centralisation and bureaucratization. Planning should not be understood as an exercise for a five year period but it requires a continual watch on current or incipient trends" and re-orientation of such plans whenever necessary even within the five year period should be undertaken and adjusted in the light of new requirements and new demands.

Again the Industries (Development and Regulation) Act 1951 read with Entry 52 of the Union List has caused visible misgivings and it is in this perspective we have suggested while dealing with Part II (Legislative Relations) certain modifications in Entry 52. In the background of the above tintroductory remarks, this Government are answering the questions under this part.

6.1—Entry 20 in the Concurrent List of the Seventh Schedule is really an eye-opener to the planners as to the modalities to be adopted chartering economic and social planning both for Union and State purposes. The entry being in the Concurrent List accentuates upon the concept that neither Parliament may sweep the State Legislative field aside in the process of making law with respect to economic and social planning nor the State Legislature may try to overtake the Union legislative field while making law with respect to economic and social planning. It is in this sense that this provision is to be accepted as the basis for co-ordinated action between the Centre and the State whether they relate to planning, pursuing and implementing economic and social programmes in their respective fields of activity. As was pointed out in our introductory remarks above, the Planning Commission is having a garb of a super Cabinet or is viewed as a single monolithic chunk controlled by the Centre. Rightly, therefore, the Administrative Reforms Commission Study Team conducted by experts have noted the three shortcomings in planning relationship which are set out in the question itself and needs no repetition. The poser however is as to what remedial measures and procedural changes are necessary to remove or at any rate to minimise the shortcomings listed by A.R.C. Study Team for the purpose of remedying the existing defects we make the following suggestions :—

(1) The Union Parliament must make law with respect to Entry 20 of the Concurrent List to create a Central Board of Planning. It must define its Constitution, Functions, and Powers clearly. It also must clearly specify that the Central Board of Planning must concern itself in assessing the availability of the Central resources listing out Central schemes relating to Union subject matters, territorial and sectoral allocation of the schemes, priorities implementing such schemes, etc.

(2) The State Legislature must pass separate Legislation for the purpose of creating a State Board of Planning. Such State legislation must lay down the constitution of the Board, its powers and functions. It also must state clearly that the State Planning Boards shall concern itself with the availability of the State resources, State schemes pertaining to the State subject matters, the territorial and sectoral allocation of such schemes, priorities to be fixed among them, etc.

(3) The plans so prepared by the Central Board of Planning and the State Boards of Planning must be submitted to the National Development Council for consideration. The National Development Council must appoint an Expert Advisory Committee, consisting of eminent Economists, Scientists, Management Experts, Sociologists and Engineers. This Committee must give its Expert advice within a stipulated period regarding the schemes of plans suggested by the Central Board of Planning and State Boards of Planning stating clearly the priorities in each group sectorwise and territorial-wise allocations, resource needs, time factor, etc. The Committee also must recommend wherever possible the dove-tailing of schemes suggested by the Central Board and State Boards of Planning. By such induction of a Standing Committee as a buffer between the National Development Council and the Planning Commission, a meaningful economic and social planning for the country both at the Central level and at the State level could be undertaken so that the approach and perspective may not only meet the national needs but would also ensure the processing of State's development programmes and priorities and in the ultimate analysis, there should be proper adequate allocations of resources between the Union and the States.

(4) The Report of the Advisory Committee must be placed before the N.D.C. for its approval. Once it is approved, the Central schemes are implemented by the Central Government either directly or through the State Governments by giving block grant or schemelinked grants. It also must specify very clearly, which of them will be centrally administered schemes and which will be block grant schemes or grant-linked schemes. The State schemes must be administered by the States. But, if there is any deficit in resources, it must be met by the Central grants prescribed by the Finance Commission.

If the above mentioned steps are taken, they may go a long way to remedy the existing malady in the planning relationship between the Centre and the States and minimise the shortcomings listed by the A.R.C. Study Team.

6.2.—In our answer to Question 6.1, we have implicitly accepted the continuance of the National Development Council but it should be governed by law made by Parliament. So, there is no difficulty on our part to accept the suggestion that a National Development Council consisting of all the Chief

Ministers of the States presided over by the Prime Minister and experts of various fields as members should be set up on a statutory basis.

As far as the second aspect of the question is concerned, the non-statutory body, namely the Planning Commission must be dispensed with as by setting up the National Development Council as recommended by us, any exercise whatever nature undertaken by the Planning Commission, which is the child of executive discretion, would not only be unnecessary but it will certainly be a futile exercise. Thus, the Planning Commission should be substituted by two concurrent bodies firmly placed on a statutory basis, namely the Central Board of Planning and the State Boards of Planning. Before the National Development Council approves all the plans either at the Central level or at the State level, it should in turn get the advice of an Expert Advisory Committee for an indepth study into the various details connected with such schemes. Such recommendations by the Expert Advisory Committee must be discussed and finally their approval should be secured as provided for in the law constituting such a Council. We are of the view that if the plans for the benefit of both Centre and States are channelised, considered and ultimately approved by the National Development Council, then such approved plans should be implemented independently by the Centre and States accordingly. Subject to the constitution of the National Development Council as proposed by us and the methodology to be adopted by them to give their seal and approval to a Central or State plan, we agree with the proposal made in the question.

6.3 Since we are of the opinion that the non-statutory Planning Commission, should be given up the question of continuing it with some changes does not arise. In its place, statutory bodies, as suggested in our answer to Question 6.1., must be created. Such a change will be a great step forward in creating a harmonious planning relationship between the Centre and the States.

6.4 The three suggestions have to be considered if we agree to the continuance of the present Planning Commission. Since we are not for the continuance of the present Planning Commission, there is hardly any necessity to express our views on these three suggestions. However, if the present Planning Commission is continued, we would say that the second suggestion regarding the composition of the Planning Commission is more reasonable. That is to say, it would be better if the Planning Commission is so constituted as to make it a high-grade advisory body of economists, technologists and management experts. Without being tied to the chariot wheel of the sponsoring Central Government the Planning Commission should make an indepth better results and better planning relationship between the Centre and the States if such an expert body functions in an independent manner without being influenced by the political upheavals.

6.5 If the Planning Commission were to continue then we would agree with the suggestion that it should be made an autonomous body under the National Development Council. In the law, which this Government envisage should govern the Constitution functioning and powers of the National Development Council, a separate chapter can be provided for the creation, functioning and powers of the Planning Commission as an autonomous body with advisory jurisdiction over the subject matters with which it is charged to consider. But it is difficult to agree with the view that the Planning Commission must be given such functions as over-seeing planning, investment and decision-making at the National level. It can at best be an advisory body and not a supervisory body. Final decision on schemes of planning must lie with the National Development Council and power to implement the plan schemes must vest with the Central and State Governments.

6.6 Subject to our earlier view on the continuance of the Planning Commission and in the alternative for a re-orientation of its status, we find it difficult to agree with the view that there is a need to consider and incorporate national priorities in the State Plans. Such measures will give greater scope for Planning Commission to interfere with the State autonomy. In fact the acceptance of this guideline might even result in the Planning Commission as it exists today, violently differing from the views of the National Development Council. This would again lead to all seeing eyes supervision of the Planning Commission over the plans envisaged and accepted by the National Development Council. It is better separate priorities are established in national and State plans. If the suggestions made by us in our answers to Q. 6.1. are taken into consideration, they will help a great deal to remove the present difficulties and stop errosions of State autonomy.

6.7 Since the Planning Commission is a non-statutory body and leans very much on the Central Government and their ideologies, the present system of channelising Central assistance by way of loans and grants through the Planning Commission to the States has not worked well. The powers, functions, tenure, etc., of the Planning Commission have not been specifically prescribed by a statute. With the Prime Minister as its Chairman and a few important Ministers of the Central Cabinet as members, the Planning Commission has virtually become a mouthpiece of the Central Government. With such status and powers it is difficult to expect from the planning Commission a fair deal to the States. The grants stipulated by Article 282 is a discretionary grant and its distribution or dispersal through the Planning Commission has not benefited the States. Loans have been given to the States for implementing various schemes in such a manner that today almost all the States have had to utilise the major part of the loans for servicing the debts owed to the Central Government. It is said, and rightly so, that in the context of inadequate State Finances and the need for large outlays of development schemes, Central aid assumes a crucial role in the implementation of the plans. It is also necessary to note that it is the States that have to execute a large number of schemes necessary for the planning development. Planning ultimately becomes transmitation of the desired targets of growth into desired outlays in various sectors, namely Central Sector, the State Sector and the Private Sector. Constitutionally the plan in the Central and State Sectors should list out schemes on the related subjects in the State List, the Concurrent List and Union List. It is also well known that the Centre's investments have been largely towards industrial development

and development of transport and communications, whereas the State outlays are directed towards irrigation, power, agriculture and various social services, The Central aids are given to two types of schemes, namely centrally assisted schemes and centrally sponsored schemes. The grant/loan element is usually much higher in the centrally sponsored schemes. The Centrally sponsored schemes and independent study and make recommendation at their own initiative. It is quite possible to expect are, for example, family planning programme, eradication and control of communicable diseases, welfare of the Backward classes, various agricultural production programmes, etc. Besides, the planning has created a huge non-development expenditure for the States because of the growth of administrative and other services necessitated by urbanisation in the agglomerated areas. Consequently, the method of granting loans and its recovery have created a tremendous hardship to the States under the present planning pattern. It is said that the impact of planning and channelisation of loans through the Planning Commission on the State finance has been unsatisfactory. It is pointed out that for the third plan, the expenditure on debt services for all the States (including appropriation for reduction or avoidance of debt) has been Rs. 934 crores which is more than Rs. 610 crores of additional taxation for the third plan. This is according to the Reserve Bank of India Bulletin of May 1966. So, it was remarked pertinently by an author that the Centre giving grant from one hand for plan purposes and taking away part of them by way of interest charges on debts, illustrates the control which the Centre has in the matter of the grants-in-aid. Therefore, it is better to channelise the Central assistance whether by way of loans or grants through the Finance Commission as approved by the National Development Council.

6.8 There is no doubt some substance in the argument that the present system of arriving at the State's plan size by adding to the assessed resources independently pre-determined quantum of Central Plan Assistance is somewhat *ad hoc*, However, the State Government feels that so far as the requirement of the economically weaker States are concerned, they are taken care of even by the Finance Commission while arriving at the devolution as well as by various grants, such as the grants for the fiscal deficit, upgradation of standard of administration, etc. Therefore while examining the adequacy or the needs for changes in the Gadgil formula, judicious balance has to be struck between the need for the poor and the economically backward States and the need to maintain a certain degree of equity among the various States in the matter of plan assistance. The State Government has been emphasising another important point at various forums, that is, even while applying the Gadgil formula in all the factors including the factors like per capita income, the 1971 population alone should be taken into account so that the States which have implemented the family planning programme in all seriousness are not penalised. It may also be emphasised that whereas the high income States can take care of all the plan needs and low income States are being adequately provided for by both Finance Commission and the Planning Commission it is the middle income States which are given a raw deal in the process. Any modifications to the Gadgil formula should rectify this imbalance so that the middle income States which are more or less in a take off stage can be given one big threat crushed for developments in a pre-determined period.

6.9 We have already set out earlier, how the present system of allocation of funds for execution of centrally sponsored schemes and centrally assisted schemes is bound to result in economic hardships to the States. One of the main irritants which is responsible for the above result is the abnormal increase in non-developmental expenditure which the States are not in a position to meet them completely. No doubt, the economic activities generated by various schemes, whether centrally sponsored or centrally assisted, have created some openings and scope for increased tax resources. But such increased tax resources have not kept pace with the enormous growth of non-developmental expenditure, which a State has to incur. As an illustration, in the case of implementation of major centrally assisted projects the execution and implementation of the same, is, always at the door-step of the States. It should not be overlooked that every centrally-sponsored scheme or centrally assisted scheme has to be geographically put through within the boundaries of a particular State. As such, when the scheme progresses in its implementation, the State has to take upon itself various duties and responsibilities including acquisition of sites, variable price structure of raw materials, measures of public health, maintenance of law and order etc. It is because of this unavoidable concept in either a centrally-sponsored scheme or a centrally assisted scheme, the co-ordination of the States is essential, not only for its successful working but also for its speedy working. Such close association is necessary even when such schemes are thought of and should not be postponed until it comes up for execution and indeed should be borne in mind till the completion of the concerned scheme. Such inter-co-ordinated activity between the Centre and the State in working out essential details connected with the projects and its completion is an important matter which has to be reckoned with in achieving the real objective, namely national progress all-wise. When such exchange of thoughts and actions precede the formulation and working of plans in general and when the related assistance is ensured, then the possibility of imbalances apprehended in the present system of allocation of Central assistance in whatever sector it may be, can be avoided.

In the State of Tamil Nadu, schemes for development of urban land were taken up under the Tamil Nadu Town Planning Act, 1920 prior to the passing of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972). Under the repealed Act, various matters such as construction of roads and communications, acquisition of land, transport facilities, water-supply, lighting, drainage, reservation of land for religious and charitable purposes, hospitals and dispensaries and other public purposes and such other matters not inconsistent with the object therein are some of the matters

that may be dealt with in a Town Planning Scheme. Section 23 of the repealed Act reads as follows :

"23. Power to levy betterment contribution—Whereby the making of any town-planning scheme the value of any property has increased or is likely to increase, the municipal council, if it makes a claim of the purpose within the time (if any) limited by the scheme not being less than three months after the date of publication of a notification of the State Government sanctioning a scheme under section 14, shall be entitled to recover from the owner of such property an annual betterment contribution for such term of years and at such uniform percentage of the increase in value not exceeding ten per centum as may be fixed in the scheme :

Provided that the aggregate amount of the contributions so recovered shall not exceed one-half of the maximum increase in value during the aforesaid term of years as ascertained under the next following section."

Thus the said Act itself provides for reimbursement of State expenditure by calling upon the beneficiary of such schemes to pay a betterment contribution to the State so that the expenditure incurred by the State for the benefit of the State and its people could, to a certain extent , be reimbursed. Some such provision can be thought of in the law which the Parliament can make when creating the National Development Council so that the benefits can be conferred without a deep inroad in the Central or State exchequer. Such a modus of reimbursement, if adopted, will root out the imbalances as also the criticism against inequitable allocation of Central plan assistance to the States.

6.10 We agree with this view. Most of the centrally sponsored schemes are non-productive schemes. Since the States do not have sufficient financial resources to take up such non-productive schemes, they are eager to accept such centrally sponsored schemes and in the process, the State Plan priorities get distorted. We therefore suggest that centrally sponsored schemes which are non-prodcuctive in nature must be fully financed by the Central Government. The State must have a supervisory role. Besides, the Centre must be compelled to make provisions for developmental expenditure due to implementation of such centrally sponsored schemes.

6.11 It is quite possible to think that the monitoring and evaluation machinery established in the Planning Commission in each State have been functioning well. But what is important from the point of Centre-State relations is creation of a machinery of similar nature which will not put irritants into such relationship. So, we suggest that the Centre and the States must be given sufficient power to constitute separate monitoring and valuation machinery to watch the implementation of the Central schemes and State schemes separately. There is no need for Central machinery to watch the investment of State funds to see whether they yield the desired results.

6.12 We fully agree with the view that the decentralised planning would help a great deal in introducing a spirit of "co-operative federalism" in our planning system. In fact, with this view in our mind, we suggeted in our answer to Q. 6.1. a wholesome decentralised planning system. Our answer to Q. 6.1., has given a full picture for a scheme of the decentralised planning. If those suggestions are accepted and given effect to, we are sure that they will help to ensure proper co-operation between the States and the Centre at the stages of plan preparation and plan implementation.

6.13 What has been said here may be true. But to give a opinion whether national plan should become progressively more indicative and less imperative as and when State Planning Boards gain experience, we must first concede the continuance of the existing system. Since we do not suggest the continuance of the existing system, we cannot subscribe to the suggestion made herein. As suggested earlier by us, the planning Boards separately functioning at two levels, one of the Central level and the other at the State level but working in unison under the aegis of National Development Council will contribute a great deal to the Economic and Social Planning in the country. Such functioning will also bring the much needed co-operation and harmonious relations between the Centre and the States.

PART VII

MISCELLANEOUS

Industries

7.1 This Government have already suggested under the heading 'Legislative Relations' that Entry 52 should be substituted by a new entry by which the entry itself will specify the industries and accordingly entry 52 may be recast as suggested under the heading 'Legislative Relations'. However, even in respect of industries, in respect of which Parliament will have power to legislate, the industrial policy is framed by the Government of India from time to time. It is the view of the Government of India that industrial development is an inter-disciplinary concept. It pertains not only to the manufacturing activity but to all related infrastructual development; licensing and corporate policies, financial fiscal, trade and pricing policies; industrial relations and management; scientific and technological development and broad socio-economic policies. As such the implementation of the industrial policy requires close and effective co-ordination and monitoring at various levels at the Centre as well as between the Centre and the States.

Hence, prior consultation with the State Governments would be desirable while framing industrial policy by the Government of India.—At present there is no such prior consultation. The States are given the major task of administering the industrial development programmes. Hence, they should be involved in major industrial policy formulation.

The entrepreneur wanting to set up an industry submits his application to the Government of India, which is referred to the State Government for their comments to be submitted within three or four weeks. There are cases here even before the comments of the State Government are made available, the Government of India take their own decision and communicate the same. Having given an opportunity to the State

Government to offer their views it is necessary for the Government of India to await the remarks of the State Government within the time limit allowed for the State Government before deciding on the application of the entrepreneur.

The other suggestion will be that the applications of the entrepreneurs are placed before the Licensing Sub-Committee. There is no representation for the State Government in the Licensing Sub-Committee. *The State Government should be represented in the licensing Sub-Committee so as to enable State Government to give their views on the application.*

Certain concessions are given in backward areas to ensure wide dispersal of industries. The backward areas have not been uniformly defined throughout the country. In some States, they refer to blocks or taluks or districts. Prior consultation of the State Government in regard to definition of backward areas will set matters right in this regard.

In 1979, the Government of India issued guidelines to the effect that if an undertaking wishes to shift the whole or part of its manufacturing activities from a forward area to a backward area or from a notified backward area to another notified backward area within the same State, there in no need to obtain prior permission of the Government of India provided the prior permission of the State Government is obtained by the industrial undertaking. This power of the State Government, has now been taken away by the Government of India and all cases of change of location will now have to be referred to the Government of India for approval. There appears to be no reason why this delegation should not be continued. The industrialists will be put to hardships, since they have to get permission from the Government of India in such cases. *The Government of India should, therefore, issue revised instructions, restoring the delegation to the State Government to give permission for the change of location within the state.*

The State Government have no representation in the Central Financial Institution like Industrial Development Bank of India (IDBI), Industrial Finance Corporation of India (IFCI), etc., through the State financial Institutions are major borrowers from these institutions. *A representation for various State Governments on rotational basis should be considered.* Regional Boards should be established and in the Regional Boards, regional representation should be given.

At present the clearance of Pollution Control Boards is stipulated as a pre-requisite only at the time of conversion of letter of intent into industrial licence and in many cases the industrial licences are also granted without reference to the Board. The Industries approach the Board for the clearance when they are almost ready for commissioning. To avoid such a contingency it is suggested that the Pollution Control Boards may be consulted even at the time of issue of letter of intent to industries.

We agree with the view that as a result of this indiscriminate extension of the First Schedule to cover a very high proportion of industries in terms of value of their output, the basic constitutional scheme has been patently subverted and "Industries" has been virtually transformed into a "Union subject". This has been dealt with in Part II also under the heading of 'Legislative Relations'. As long as the expression 'public interest' in Entry 52 has not been defined: it is necessary that Entry 52, having regard to the inclusion of several items as controlled items thus impinging on the State's autonomy, needs a radical change. This is because flood-gates are open under Entry 52 to include in the schedule any industry which in the opinion of the Central Government is in public interest or of national importance. Even the illustration given in the question such as soaps, paints, match, sticks, gum, etc. amongst others, gives a reasonable impression that industries which are not really of national importance have been included under the Industries (Development and Regulation) Act, 1951. It is, therefore, necessary that Entry 52 which is undefined and practically all pervasive should be amended specifying the industries themselves in Entry 52 as suggested under the heading 'Legislative Relations'.

7.2 In the light of the opinion expressed by this Government in answering the questions in Part II this Government feel that Entry 52 should be amended specifying the industries themselves in Entry 52 as suggested under the heading 'Legislative Relations' and Article 249 should be deleted. Therefore, no suggestions are made in this context.

Qns. 7.3, 7.4, 7.7 and 7.8 are covered by the general note.

7.5 Proper norms should be laid down for assistance by the financial institutions so as to ensure that each State should have its reasonable share as there have been criticisms about these institutions as showing partisan attitude in giving assistance to the States.

7.6 For locational decision on Central investment in Public Sector, the objective criteria to be followed shall be on the basis of availability of resources, taking into account the infr astructural facilities, etc., and also the backwardness of the region. The prior consultation of the State should also be prime criteria in this regard.

Trade and Commerce

8.1 In the light of the fundamental right of an individual citizen to carry on any occupation, trade or business, the subject of trade and commerce has to be highlighted. A distinction should always be made between inter-State trade and intra-State trade. In so far as the inter-State trade is concerned, in the light of our recommendations made while dealing with the 'Legislative Relations' (in particular transfer of Entry 33 from the Concurrent List to the State List), it is but proper to maintain Centre-State relations to amend Article 382 so as to omit any reference to Intra-State trade and commerce and confine it to inter-State trade and commerce. In order to achieve the subject for which Justice Sarkaria's Commission has been set up to recommend changes and measures as may be appropriate to review the working of the existing arrangements between the Union and the States, this Government are of the view that the Centre and the State should be kept on part so for as trade and commerce is concerned, particularly in the light of the fundamental right guaranteed under Article 19(1) (g) of the Constitution. Apart from the

recommendation earlier made in the matter of the amendment to Article 302, the word "Reasonable" may be inserted before the word "restrictions".

This Government have no comments on Article 303 and the avoidance of discrimination in taxes contemplated in article 304. *But this Government are of the view that the proviso to Article* 304 *should be omitted.* Article 304 is an enabling provision. The taxes to be imposed under the article should not be discriminatory and the restrictions which the State Legislature may imposed should be reasonable and should be in the public interest. So far, Article 304 calls for no comments by us. The proviso to the Article requires that before any Bill or amendment relating to imposition of restrictions on the freedom of trade and commerce is introduced or moved in the State Legislature, the previous sanction of the President should be obtained. It will be observed that such previous sanction is necessary in respect of restrictions to be imposed not only on inter-State trade and commerce, but it is required even for regulating or restricting commercial activities within the borders of a State. In dealing with the distribution of Legislative powers, we have suggested that all provisions in the Constitution relating to reservation of Bills passed by State Legislatures for the consideration and assent of the President (except Article 288(2)) should be omitted altogether. Whether the restrictions imposed by an Act of a State Legislature on the freedom of trade and commerce are reasonable and whether they are in the public interest for purposes of Article 304 (b) are questions to be decided ultimately by the High Court or the Supreme Court. If the Court finds that the restriction are unreasonable or opposed to the public interests previous sanction of the President or his subsequent assent cannot cure the infirmity. If the legislation is otherwise valid and the restrictions are reasonable and in the public interest, this previous sanction will be a superfluity. In any case, the requirement relating to the previous sanction of the President directly encroaches on the field assigned to State Legislatures. We, therefore, recommend that the proviso to Article 304 be omitted. We have no more suggestions regarding the other Articles such as 301 and 307.

In answering the specific question 8.1. *we are of the view that in the interest of securing better Centre-State relationship in trade and commerce it is necessary to appoint an authority to—*

(a) *Survey and bring out periodically a report on restrictions imposed on inter-state trade and commerce ;*

(b) *recommend measures to rationalise or modify the restrictions imposed with a view to facilitate trade and commerce; and*

(c) *examining the complaints from Chambers of Commerce. including the apex body like FICCI.*

Agriculture

9.1 We agree with the observation of the Administrative Reforms Commission on Centre-State Relations (1967). Agriculture including Horticulture, Animal Husbandary, Forestry and Fisheries should primarily be treated as a State subjects. It has been the experience that the Government at the Centre have been taking a large number of sectors in the Agriculture field and giving a lot of funds to individual State depending upon the pressure individual States have been able to exercise. In certain cases, despite the need and importance of assistance in certain fields of activity, the Central assistance has not been forthcoming, due to lack of appreciation and proper understanding of the local problems, on the part of the Centre. It is, therefore, felt that the flow of assistance from the Centre has not been on the merits of the individual cases but instead lopsided assistance has been going on. This situation calls for corrective steps and unless Central attachment in the activity, is restricted, the scope for partiality or undue favours would be available to a sizeable extent. Therefore, in the interest of equal treatment of the States and with a view to avoid unbridled substantive activity and sanction of various schemes involving sizeable financial commitment and assistance from the Centre there is need for restricting the scope of Entry 33 in the Concurrent List.

Though Agriculture is a State subject, Centre should also evince interest for substantive development whenever a State suffers from flood havoc or continuous drought otherwise there will be heavy burden on the State exchequer.

Thus entries 33 and 34 may be transferred to the State List as it is not likely to cause any prjudice to national or public interest. The Government also suggest that in any event when particular State suffers from flood havoc or continuous drought, the Centre should evince interest and render assistance not only such emergent situations but also to encourage various preventive measures for the same.

9.2 Agriculture should only be treated as a State subject and Central assumption of responsibility/control for substantive activity need not be permitted too much. There is huge variation between the different agroclimate zones as well as the eating habits of population of different States wherein broad generalisation is not possible in this field. Further, while fixing all-India targets for different crops, equal yardsticks are not adopted. For example, there is no parity between the price of wheat and rice as a result of which the production of rice is always pushed through to the disadvantage of the farmers, in the Southern region compared to a farmer in the Northern region.

In the case of Centrally sponsored schemes also, the same is always being launched by Government of India with considerable outlay, i.e. Agro-forestry with Rs. 188 lakhs for 1983-84. However, when this has to be continued by State, such a considerable allotment is not easily found under State funds, after meeting the existing commitments. Therefore it would be enough if the States are asked to project is long-term perspective plans and necessary financial backing alone given by the Government of India, Block grants may be sanctioned by Government of India and placed at the disposal of State Government for any of the agricultural project which it deems fit. In addition, there is an unwritten law that the Central funds are granted always towards revenue expenditure only and to for capital expenditure. This should be relaxed

to a major extent and Central funds should be allotted over a long period of time for the construction of permanent buildings purchase of equipment, etc.

The recommendation of the National Commission on Agriculture (1976) that a long term perspective be developed in which the Central and centrally-sponsored schemes being implemented through the State Agency, ultimately form part of the State Sector and that their number should be kept to a minimum is to be agreed to. This is because in the annual implementation of centrally-sponsored schemes, a number of bottlenecks occur every year, impeding the progress of the different programmes. Therefore, it will be in the fitness of things and with a view to run the Agriculture programmes on right lines, well within the seasonal limits, crop development programmes/schemes should be implemented as part of the State Sector. Further, the pattern and set up of new schemes have to be formulated only on the basis of local conditions in individual States and these cannot be generalised for a large number of States. A longer period of assistance should be planned before the State agency takes up the continuation of scheme under State Sector.

9.3 Even though State and Centre are expected to be equal partners in the formulation of centrally sponsored schemes, Centre only cannot dictate terms and conditions for the implementation of scheme (e.g.) Central funds are not made available for the Intensive Cotton Development Programme staff since they are merged with training and Visit Programme.

The working groups from both the Centre and the State should meet very often to exchange their views and the difficulties experienced by the State should be accepted by the Centre. Proper guidelines should be evolved by the working groups to appreciate the priorities of programmes to be implemented for the benefit of the people at large.

The suggestion of the National Commission on Agriculture need reiteration, so that the emphasis of mutual consultation and implementation of agreed programmes may not be lost sight of.

9.4 With regard to fixation of minimum fair prices for agricultural items especially for paddy, the State is definitely put at a disadvantageous position. Often, this does not take into account the variability in local conditions and the price fixed is sometimes totally unrelated to the actual cost of production. This is because of the conditions in different parts of the country are highly variable, even though the same crop may be grown. Therefore, in the matter of enforcing the minimum fair price for Agriculture produce, the State Government should be intimately associated with the decision making. The parity between the prices of wheat and paddy even though pressed for many a times did not come through.

This poses not only a problem for economic cultivation of this major staple food of this State but triggered political reflections also.

In irrigation, the natural resources of water that are available should be made use of to its maximum. Our suggestion made in this regard in Part IV may also be taken into consideration.

The provision of strategic inputs including credits is highly insufficient and should be increased as per the suggestions made by the State from time to time.

The State should be given the maximum power in designing the forestry policy and administration for the welfare of the States.

"Forest" was a State subject ever since the Constitution came into force. But after the commencement of the Constitution (Forty-Second Amendment) Act, 1976 with effect from 3rd January 1977, the above subject has been taken over in the Concurrent List of the Constitution, according to which both Centre and State can legislate with regard to the above subject. The Government feel that the subject "Forests" should be restored to the State List, which was the position obtaining before the commencement of the Constitution (Forty-Second Amendment) Act, referred to.

The Central Government have recently passed the Forest (Conservation) Act, 1980 (Central Act 69 of 1980) which came into effect from 25th October 1980. The Central Act has caused many difficulties to the State Government. According to the Forest (Conservation) Act referred to above, no forest lands or any portion thereof can be used for non-forestry purpose without the prior concurrence of the Government of India. Under this Act, non-forest purposes means breaking up or clearing of any forest land or portion thereof for any purpose other than re-afforestation.

The State Government also do not have the power to dereserve any forest land without the prior approval of the Government of India.

If a road has to be laid in a bit of forest land, or if a bit of forest land is to be given in connection with the Public Water Supply Scheme, the prior approval of the Government of India, under the Forest (Conservation) Act will have to be obtained.

Even if a farmer has to take a pipeline from a water course to his land passing through a spur of forest land, the matter has to be referred to the Government of India and their prior concurrence has to be obtained.

Again, if a forest land has already been given permanently long before the coming into force of the Forest (Conservation) Act and the nature and character of the land have totally and invisibly changed, but formerly if the land has to be dereserved by a notification now, proposals will have to be sent to the Government of India for their approval.

Further, if any transmission line has to be laid to give power connection to villages, particularly in tribal areas, proposals will have to go to the Government of India. Thus quick and speedy implementation of the developmental activities, pertaining to the tribals are greatly affected by this Act.

The State Government are in direct touch with the needs of the public and it is also their statutory duty to see how they can be redressed. Further, proposals are sent by this Government to the Government of India after getting appropriate approval. The Government of India in same cases have turned down the requests. When such proposals, which have been given great consideration at the highest level are turned down, this naturally causes embarrassment to the

State Government and puts them in a false position *vis-a-vis* the people whose urgent needs have to be met. The State Government are one with the Government of India in preserving the forests. But the State Government however feel that in the alternative under the Forest (Conservation) Act, a certain amount of delegation is quite necessary for the State Government at least in the following and similar cases :—

(1) When transmission lines are to be laid inside the forest, proposals need not go to the Government of India, as great care is always taken to see that there is minimum felling of trees.

(2) Roads are being laid by the Forest Department for the Welfare of the Tribals and others. When ordinary fair whether roads are laid, proposals need not go to the Government of India. When pucca motorable roads are laid by the Highways and Rural Works Department with a width of 20 ft. and above, in Reserved Forests, such proposals will be sent to the Government of India.

The Government of India have enacted the Inter-State Water Disputes Act, 1956 (Central Act 33 of 1956) which provides for adjudication of disputes relating to waters of inter-State rivers and river Valleys. The Inter-State Water Disputes Act, 1956 should continue to govern inter-State disputes regarding entitlement of water from river, and Tribunals should be set up under the provisions of this Act by the Government of India immediately when such disputes arise so that the problem could be solved without delay. Once the entitlement is settled River Basin authorities should be set up for equitable distribution of water in the existing system and for equitable allocation of waters consistent with entitlement of concerned States and the agreement between the basin States and the rights acquired through usage. The Inter-State Water Disputes Act must be suitably amended to provide for the River Basin authorities.

Another point which arises in this context is as to how the decision of the Tribunal given under the Act is to be implemented. Section 6 of the said Act states that the decision of the Tribunal is final and binding on the parties to the dispute and that it shall be given effect to by them. The question still is how is the decision to be enforced? It may be pointed out here that section 17 of the Arbitration Act 1948 (Central Act X of 1948) empowers the Court concerned to pronounce judgement according to the award of the arbitrator and upon the judgment so pronounced, a decree follows. In the absence of a similar provision in the Central Act of 1956, it is extremely doubtful whether the decision of the tribunel could be effectively implemented against a recalcitrant State.

This Government therefore suggest a modification of the Act or the introduction of a new provision therein enabling the parties to the dispute to secure through a known legal process the relief to enforce the awards given by the tribunal.

National Water Resources Council and River Basin Commissions may be appointed to discharge the functions to be specified. The modalities for the functioning must be settled through further discusion between Centre and States.

The Government of India may declare all inter-State Rivers in the country as National Rivers as most of the major rivers are inter-State in character. It is suggested that it must be compulsory for any Tribunal to set up administrative arrangements to carry out its judgement and such arrangements must be binding on all States.

However, the amendment suggested to the Inter-State Water Dispute Act, 1956 as stated above, is without prejudice to the view expressed in the answer to Question 4.7 that all disputes relating to Inter-State rivers should be referred to a permanent Tribunal constituted by the Supreme Court. If this view is accepted then the Inter-State Water Disputes Act, 1956 will require repeal or modification.

9.5 In the Indian Council for Agricultural Research there is need for more representation on the Governing Body for the Southern States like Tamil Nadu where the climatic conditions are quite distinct and needs are different from those of the North Indian States. This alone could ensure proper flow of funds for catering to the needs of the Southern States.

In the policy making body like Indian Council of Agriculture Research, the State Directors of Animal Husbandry and Agriculture should also be co-opted as members.

It is the experience of this State that with respect to the role of Research Institutions, the varieties released by Tamil Nadu Agriculture University is more beneficial to the ryots than the varieties released by Indian Council for Agricultural Research—probably ICAR is concentrating on more wheat and other varieties which are suited to the locations where these research stations are situated. This is the case of agronomical practices also. It would only be useful of more of these Indian Council on Agricultural Research stations are located in the agro-climatic zones of the State.

The Indian Council of Agricultural Research may be requested to take up post-harvest technology, packing, storage and cold storage transit containers for developing the vegetable, fruit marketing system in the country.

The preamble of Central Act 61 of 1981 (The National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981) indicates that the National Bank for Agricultural and Rural Development (NABARD) is established for providing credit for the promotion of agriculture, small-scale industries, cottage and village industries, handicrafts and other rural crafts and other allied economic activities in rural areas, with a view to promote integrated rural development and securing prosperity of rural areas and for matters connected therewith or incidental thereto. The first Board of Directors was appointed by Government of India on 19th March 1983. The Board of Directors for NABARD comprises two representatives of co-operative banks, one of commercial banks, three each of the Reserve Bank of India and Government of India, two of the State Governments and two experts in rural crafts, village and cottage industries and small scale industries. It is considered that the strength of the Board of Directors has to be enlarged to give more representation to the State Governments as the subjects dealt with by NABARD are mostly matters falling within the State List.

The NABARD and beneficiaries should come very near to each other in the matter of financing. The present methods now employed by the NABARD make the beneficiary to suffer more by paying increased differential interest as the applications are forwarded and scrutinised through other agencies, which adds interest for every stage. This increased burden of differential rate of interest can be avoided if the NABARD invites the applications directly for the financial help.

Food and Civil Supplies

10.1 The department of Food in each State is responsible for the maintenance and supply of food grains and essential commodities. This is particularly so when the interest of the under privileged and the weaker sections of the community are borne in mind. The public and the people of Tamil Nadu are not fully instructed about the dual responsibility of the Centre and the State in this regard. The present arragements for Centre-State consultation are not consistent with the actual responsibility of the State Government. As would be seen hereafter, there is ample scope for improving Centre-State liaison in the areas of procurement, pricing and distribution. The position can be classified and analysed under the following heads:

Procurement

For maintaining the Public Distribution System the State Government will have to necessarily procure the essential commodities. It would not be possible for the State to procure the entire quantity of food grains or other commodities required for being supplied through the Public Distribution System of this State due to reasons like adverse seasonal conditions, paucity of production of particular commodity, etc. As far as Tamil Nadu is concerned, it will be just self-sufficient in rice production provided the seasonal conditions are normal. Whenever the monsoons fail, the Tamil Nadu State becomes the deficit State and such situation have occurred in the last few years. Therefore, it has become necessary to look upon the allotment by the Centre from the Central pool in addition to the procurement by the State. Further, the Tamil Nadu Government will have to look upto the Centre for permission, whenever it proposes to purchase rice or wheat from other States in the open market. Even for purchases from other State Government agencies by the Tamil Nadu State, the clearance from the Government of India is necessary. Apart from this, the Reserve Bank of India is charging higher rate of interest for such outside the State purchases. While private traders are free to purchase from other State, subject to the payment of levy there, the State Governments are not so free to purchase rice or wheat from other States even if it is levy paid stock. Getting clearance from the Government of India creates embarrassing situation. In as much as the private traders freely purchase from outside, it is not clear why the State Governments alone have to get the concurrence of the Government of India. No Government will purchase more than what is necessary for the State. The excess control in matters relating to Food which is a State subject may not be desirable.

Even where the Government of India gives concurrence for the purchases from other States, the Reserve Bank of India charges higher rate of interest for cash credit assistance given by it. Thus the higher rate of interest increases the cost of the rice. Any rise in prices is adversely commented upon by the public and the State Government has to answer the public though it has no control over the cost.

As regards the allotment from the Central pool, the Central Government has its own policy for alloting the quantity and the State Government is not able to get due share. The State Government no doubt contributes to the Central pool, whenever there is surplus. At the same time, when there is no surplus in Tamil Nadu State, there is no point in contributing to the Central pool and getting it back, as this procedure serve no purpose except increasing the prices. Therefore, the insistance on contribution to the Central pool should be only when there is a really comfortable surplus. In order to remove such difficulties the following are necessary :

1. The State Government or its agencies should be permitted to purchase levy paddy and rice from the surplus States without interference by the Centre.
2. The Reserve Bank of India should charge normal rate of interest in this regard.

Prices

Now the procurement price is fixed by the Government of India on the recommendation of the Agricultural Price Commission, which is known as support prices. Such fixation is also done for wheat etc. While fixing the prices the Government of India takes into account the recommendations of the Agricultural Price Commission which in turn consults the State Government. But the difficulty is that while the cost of production is taken into account in respect of wheat, the same cannot be applied to rice.

While purchasing through levy, the prices fixed by the Government of India will have to be given and no enhanced rate can be offered. Thus, while private traders purchase at a higher price, the State Government is forced to pay only a lower price. Which farmer will sell paddy to Government if the trader offers a better price? Though section 3 (38) of the Essential Commodities Act, 1955 empowers the State Government to fix the procurement prices with the concurrence of the Central Government, subject to certain conditions, in practice the State Government is not able to exercise this power. In this view, the Government suggest that the expression "previous approval of the Central Government" in the matter of fixation of procurement price, appearing in section 3(38) of the Essential Commodities Act, 1955 be deleted and positive co-ordination will only be ensured.

Distribution of Food Grains and other essential commodities through Public Distribution System.

The Central Government have been advocating need for organising and strengthening the Public Distribution System to ensure the availability and distribution of essential commodities at fair and reasonable prices to the public, with particular reference to the weaker sections of the society. Though, the State Government has taken great care and intensive efforts in organising a well-knit distribution system through

the fair-price shops, including at the Village level, the State Governments are not able to get the adequate quantity of the essential commodities like edible oil etc. for supply through ration shops. In other words, the supply of quantity allotted by the Government of India is inadequate to meet the demand. Therefore, the prices of edible oils could not be controlled at a lower price. In the State of Tamil Nadu, several schemes in the cause of education obligeration of illiteracy, Nutritious Non-Meal Scheme (feeding about 84 lakhs of children and old aged pensioners) conceived for the first time in the country by the Hon'ble Chief Minister Dr. M.G. Ramachandran, schemes for the welfare of the aged and the under privileged have been undertaken. All such schemes need food grains and other commodities. *It is therefore suggested that in so far as the State of Tamil Nadu is concerned, a subsidised control of prices has to be introduced for the continuance of such welfare schemes.*

10.2 Production, supply and distribution of food stuffs, including edible oil seeds and oils is in the concurrent list as per Entry 33 in List III of Schedule VII to the Constitution of India.

The following are the Central enactments in relation to Food and Civil Supplies :

(i) The Essential Commodities Act, 1955 as amended by Essential Commodities (Special Provisions) Act, 1981.

(ii) The Rice Milling Industry (Regulation) Act, 1958.

(iii) The Warehousing Corporation Act, 1962.

(iv) The Industries (Development and Regulation) Act, 1951.

(v) The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

The above Acts are intended to ensure equitable distribution and availability of essential commodities at reasonable prices and also to keep the prices under control. These Acts are also helpful to see that there is no undue profiteering and exploitation by the traders.

The Essential Commodities Act is the mainstay of the Food Department of the State. Section 3 of the said Act empowers issue of Control Orders by the States on various matters for regulating or prohibiting production, supply and distribution therefor. Any Control Order to be issued under this section requires the concurrence of the Government of India with reference to Section 5 which provides for delegation of the powers. The delegation under Section 5 is not a real delegation in as much as the prior concurrence of the Government of India has to be obtained every time when an order is issued or when an amendment is to be issued to the existing Control Order. *In order to achieve an effective control and fair distribution of essential commodities, it is necessary that such orders are issued by the State Government without reference to the Centre.*

Government of India is maintaining a central pool for food grains to help deficit States. They can also import items which are in short supply. In view of this, the role of Government of India is very important.

The State of Tamil Nadu has been handicapped in the day-to-day administration of Food and Civil Supplies Departments because the Essential Commodities Act is a Central legislation. State amendments or notifications need the concurrence of Government of India. Going to Government of India every now and then is cumbersome. Some notifications have been challenged on the ground that the concurrence of Government of India was not obtained or the communication from Government of India was not specific. In a sensitive matter like food, the immediate responsibility is that of the State. *So, more powers have to be delegated to the State Governments.* For example, the price to be paid for procurement has to be decided by the State Government with reference to local conditions.

A few other instances of delegation needed are given below :

Wheat Roller Flour Mills

Till 28th February 1969 the control functions over the Wheat Roller Flour Mills under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 were looked after by the Government of India. However, as from 1st March 1969, these functions were transferred to the State Governments. These control function included issue of new milling licences, renewal of milling licences already issued, issuing of directions to the Roller Flour Mills, imposing of penalties on Roller Flour Mills for Violation of provisions of the said Order, inspection to ensure manufacture of quality products by the Roller Flour Mills and entertaining of appeals against the orders passed by the licensing authority. The Government of India have *with effect from 6th February* 1982, resumed the powers to issue new milling licences, to impose penalties on erring mills and to entertain and decide on appeals preferred by mills aggrieved by the orders of the licensing authority. They have accordingly issued notifications amending the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 suitably and appointing the Deputy Secretary (Development and Regulation) Department of Food, Government of India as the new licensing authority. The changes contemplated by the amendments now issued by the Government of India to the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 are :

(i) The powers to issue milling licences vest with the Government of India with effect from 6th February 1982. The Deputy Secretary (Development and Regulation) Department of Food has been appointed as the new licensing authority. Accordingly, all orders issued by the State Government, prior to this date appointing licensing authority, would cease to be operative from that date.

(ii) The State Government are now required to issue an order appointing specified authority under clause 2(dd) of the said order for renewal, etc., of the milling licence.

(iii) While the State Government would continue to have the powers to renew licences, renewal of milling licences in respect of flour mills closed for a period exceeding 12 months or where the milling licence has not been renewed

within 30 days of the expiry of the licence, should be referred to the Government of India before renewal.

(iv) The power in respect of suspension or cancellation of the milling licence now vests with the Central Government which it will exercise on the basis of reports received from the concerned State Government.

(v) All appeals against orders issued by the licensing authority or the specified authority should be submitted to the Union Food Secretary.

(vi) The powers to issue directions to licence will be continued to be exercised by the State Government (Specified authority) subject to the condition that no direction with regard to the source from which and the manner in which wheat shall be obtained for the purpose of manufacturing wheat products will be issued by the State Government without prior approval of the Central Government as hitherto. The sub-allocation of wheat to mills and fixation of extraction percentage will be done by State Government.

The powers and duties of the "specified authority" under the said order, are :

(i) to renew or refuse to renew the milling licence.

(ii) to issue directions regarding the source from which the manner in which wheat shall be obtained for the purpose of manufacture of wheat products, the production or manufacture of different kinds of wheat products and also the size of the packing, the method of packing of like and the disposal of wheat products.

(iii) to report to the licensing authority regarding the violations and contraventions of the provision of the said order and of the conditions of the milling licence for action under clause 11 of the said order which provides for suspension or cancellation of milling licence.

When the appellate powers were vested with the Secretary to the Department of Government dealing with Food, the Joint Commissioner of Civil Supplies was appointed as the licensing authority. Now, the appellate powers as well as licensing powers have been taken over by the Government of India. The licensing authority now is the Deputy Secretary (D&R) Department of Food, Government of India and the appellate authority is the Union Food Secretary. As per the amended provision of clause 11 of the said order, taking of action by the licensing authority to suspend or cancel the milling licence is contemplated on receipt of a report from the "specified authority".

Wheat and wheat products are consumed by almost all the people of Tamil Nadu next to rice. Wheat products like maida and sooji are well known for their instant and urgent use by housewives besides they being nutritious. Effective control over their production control and distribution can be had only if the State Government have control powers over the Roller Flour Mills. Decentralisation of power and giving of more powers to State Government are desirable for efficient administration. But even the powers which the State Government have been enjoying all along have been taken away. In the interest of effective control over the Roller Flour Mills and ensuring proper production and distribution of maida and sooji to consumers, it is but necessary that the licensing powers of Roller Flour Mills are again vested with the State Governments, subject to general guidelines from Government of India.

Pulses

Tamil Nadu is deficit in pulses. The requirement of pulses of our State are met mostly from imports from abroad and from Northern States. These importers include not only traders on own account but also commission agents, who had persuaded the dealers outside this State to send goods to our State. Due to large scale import of pulses, the prices are kept stabilised.

Of late, the Government are receiving a number of representations from the dealers in pulses requesting the Government, to exempt them from the operation of ceiling of stocks of pulses as fixed in the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 and also to address the Government of India to enhance the ceiling on stocks of pulses. The Government of India who were requested to enhance the ceiling limits have not agreed to proposals. At present, exemptions for individual consignments of pulses imported from abroad, from the operation of clause 4 of the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977, are given by the Government of India on specific recommendations of the State Governments. The number of applications from the wholesalers, commission agents in pulses requesting exemption from stocking limits for the consignments or pulses imported by them from abroad are too many. Considerable time lag is involved in moving the Government of India for grant to exemption and issue of notification exempting the imported stocks from stocking limits. In the meanwhile, it is open to the enforcing authorities to take action against the dealers/commission agents keeping stocks in excess of the prescribed limits, considering it a violation of the provisions of the control order. Due to this, the dealers importing pulses are experiencing a lot of hardship. While this Government support the action taken by the enforcing authorities, it is felt that there is a genuine and urgent need for finding a remedy to this situation. The Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 is essentially a dehoarding measure and it aims at pushing into the market whatever quantity of pulses that are being imported by the private trade. Clause 7A of Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 provides for granting exemption from stocking limits by the State Government with the previous approval of the Central Government. If the power to grant exemption from ceiling on stocks of pulses, in cases where the genuineness is satisfied, is vested with the State Government without reference to the Government of India it will do a lot of good to dealers besides making pulses available in plenty to the consumers at reasonable price.

Kerosene

At present, the wholesale dealership in Kerosene is awarded by the Government of India through its Oil Companies. Due to the reduction in the Government of India allotment of Kerosene in the year 1979

and the consequent Kerosene scarcity, kerosene is being distributed on family cards to ensure equitable distribution of the available quantity. The retail distribution of kerosene in this State has been entrusted to the State owned Tamil Nadu Civil Supplies Corporation and the Co-operatives. These institutions lift kerosene from private wholesalers for distribution to the family card holders. Kerosene is an essential commodity needed by the weaker sections of the society as fuel for cooking and lighting purposes. The State Government is looking after the retail distribution of kerosene is this State but the State Government has no powers to order the location and the establishment of wholesales depot. It is in the fitness of things that the powers of appointing new wholesale dealers should be with the State administration. The State owned Tamil Nadu Civil Supplies Corporation and Co-operatives have a net work of retail points (17,926 Fair Price Shops) all over the State distributing essential commodities to the general public. The Tamil Nadu Civil Supplies Corporation and Co-operatives are prepared to undertake wholesale dealership in kerosene whenever and wherever offered. Even, if a particular wholesales point by itself may not be economically viable, the Tami Nadu Civil Supplies Corporation is prepared to undertake such dealership also in the interest of serving the general public and to ensure uninterrupted supplies to the retail points.

In view of our suggestions, the Government of India may confine itself to major policies, inter-State transactions, imports, etc. Public Distribution System and Civil Supplies matters can be made to work better if they are entrusted to the State.

11.1 to 11.5 We would prefer to give a consolidated note on the subject of 'Education' instead of answering questions 11.1 to 11.5 chronologically. In the note which follows, we have discussed the constitutional position before and after the Forty-second amendment to the Constitution; the historical perspective concerning the subject on "Education" before and after 1950, the need for restoring Education to the State List, on the language policy adopted by the State of Tamil Nadu, the disparity in the devolution of University Grants Commission assistance to the State Universities and Colleges and the need for redefining the real objective in Articles 23 and 30 of the Constitution.

A. The Constitutional Position before and after the Constitution (42nd Amendment) Act, 1976

It will be useful, at the outset to set down the relevant items in the list of devolution of powers given in the VII Schedule to the Constitution of India, before and after the 42nd amendment.

Before 42nd Amendment	*After 42nd Amendment*
Union List (List I)	*Union List (List I)*
63. The institutions known at the commencement of this Constitution as the Benaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 3715; any other institution declared by Parliament by law to be an institution of national importance.	63 to 66 : Same as before 42nd Amendment.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.	
65. Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.	
66. Co-ordination and determination or standards in institutions for higher education or research and scientific and technical institutions.	
State List (List II)	*State List (List II)*
11. Education including Universities subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.	Item II deleted.
Concurrent List (List III)	*Concurrent List (List III)*
25. Vocational and technical training of labour.	25. Education, including technical education, medical educations and Universities subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

B. A. Historical Perspective

(I) Till 1950

Centre-State relations in education over the last 130 years have presented an extermely variegated picture in our country. Prior to 1833, we had a period of total decentralisation when all the three Presidencies of the British Empire followed their own educational policy, subject only to the distant and sporadic supervision of the Court of Directors in *London.* The Charter Act of 1833 went to the other extreme and created a highly centralised form of administration in the country under which Education, like any other subject, became a responsibility of the Government of India. During this period, for instance, the Directors of Public Instruction in the Provinces used to complain that they could not incur an expenditure of even one rupee without sanction of the Imperial Government of Calcutta. This was thus a period of *extreme centralisation.* In 1870, a period of decentralisation of authority was initiated by Lord Mayo. This decentralisation was gradually increased till 1918, by which time the Provincial Governments came to possess large authority over education, although the Government of India did continue to exercise considerable supervisory powers in essential matters. In addition, there was

the Indian Education Service which was created in 1897 and whose officers filled the important posts in all the Provincial Education Departments. This period may, therefore, be regarded as a period of *large decentralisation combined with limited but essential, Central control.*

The Government of India Act of 1919 made a still more radical change. It introduced diarchy in the provinces under the control of Indian Ministers responsible to a legislature with a large elected majority. As a corollary to this, therefore, the Central control over education had to be reduced to the minimum, if not eliminated altogether. Consequently, there came about what the Hartog Committee calls a 'Divorce' between education and the Government of India. This situation continued right till 1950 although, some devious attempts were made, from 1935 onwards, to bring the Government of India back into the picture through such measures, as the revival of the Central Advisory Board of Education.

(II) From 1950

The adoption of the Constitution in 1950 changed the situation to some extent. The Government of India now obtained a large authority over education than under the Government of India Act of 1919 or 1935 and the co-ordination and maintenance of standards in higher education was made a Central responsibility. This trend towards centralisation was indicentally supported by three extraneous factors namely : (1) the adoption of Planning as to the technique of development with the consequential creation of a Planning Commission and the formulation of five year plans covering both Central and State developmental activities, (2) the institution of large Central grants earmarked for specific education schemes and, (3) the political accidents of the same party being in power at the Centre and in the States. Till 1967, therefore, it may be said that education, though constitutionally a 'State' subject, could in essence be administered as a concurrent subject.

Even before the 42 amendment, the Central Government had a considerable hold in Education. The Supreme Court had interpreted the power to coordinate under item 66 of Union List as "not merely power to evaluate but also to harmonies or secure relationship for concerted action". The view of the Central Government expressed in the Union Education Ministry's Administration Report for 1968-69 was as follows :—

"The Constitution makes Education essentially a State subject but also vests considerable responsibilities in the Government of India. The Union Government for instance, is directly responsible for Central Universities, for all institutions of national importance, for the enrichment, promotion and propagation of Hindi, for co-ordination and maintenance of standards in higher education, for scientific and technical education and research and for welfare of Indian Students abroad and cultural and educational agreements with other countries. Social and Economic Planning which includes educational planning is a concurrent responsibility. The Centre also has special responsibilities for the education of the scheduled castes and scheduled tribes".

C. Moves to take away education from State List (Unsuccessful till 42nd Amendment was made).

Even at the time the relevant entries in the draft Constitution were discussed in the Constituent Assembly of India on 2nd September, 1949 there were misconceived and infructuous suggestions to take away education from the State List. Their arguments were met in the following terms by Thiru T.T. Krishnamachari :—"I would like to repudiate at once so far as the Drafting Committee is concerned, that there is any idea of either overleading the Centre or erring on the side of the provinces. All that we have done, to the extent that we are able to do, is only to see that the Centre takes only such powers as are needed for the purposes of co-ordinating the activities of the provinces. My Honourable friends who have moved these amendments either to take over the entry "Education" to the concurrent list or to limit the scope of entry 18 to Education up to the Secondary standard, if they would please peruse the items relating to Education in List I, they will see that we have provided and the House has accepted those provisions which confer enough power on the Centre to co-ordinate the educational activities of the States in the field of Higher Education, in the field of technical education, in the field of vocational education and also in the field of scientific research. That is about so far as it is safe for the Central Government to go; it would not be wise for any Central Government to go beyond that limit:

I think that is about the best that we can possibly do, consistent with the idea of having States with a large measure of autonomy for themselves and the Centre taking up the question of security, defence and general well being of the country, leaving other things to the States".

Later there were from time to time ill-advised suggestions to take away Education from State List *e.g.* Recommendation of the Sapru Committee 1965 to transfer Higher Education from State List to Concurrent List; Constitution (Amendment) Bill, 1971 of S.C. Samanta to transfer Education entirely to Concurrent List. None of these attempts succeeded because both the Central Government and the State Government were against such an unwise step. But with the passing of 42nd Amendment, a patently undesirable situation has been created under which Education has been placed under the Concurrent List.

D. Need for restoring education to State List

Even in such small countries like the U.K. with a unitary Constitution informed opinion is against centralised control in fields like education. The following views of C. Northeote Parkinson ("The law of Delay"—John Murray, London 1970 See the Chapter "Principalities and Powers") will be of interest :—

"Problems of health and housing would never be discussed in Paris or Rome where there would be time, therefore to deal with matters which are genuinely national and international. Our present Policy is to kill all initiative on the periphery and leave no time for business at the Centre... — —"

"Wha t no one out of bedlam could propose is a syste m by which an Educational Policy agreed at Ed inburgh has to be debated again in London. That way lines madness, as must be obvious to anyone of even average intelligence. Out administration is cumbersome enough as it is. To add to it, costly complexity could be tantamount to suicide".

It is all the more unwise to talk of retaining Education in the Concurrent List in such a vast country like India, with a federal Constitution, when the founding fathers of the Constitution of India has orginally rightly placed Education under the State List.

A former Union Education Minister, Dr. V.K.R.V. Rao himself had referred in 1970 to complaints in past (even when Education was in the State List) of non-essential schemes being included in the centrally sponsored sector, of Central funds being utilised to ride hobby horses of doubtful significance, or over domination by Central Officials, of wasteful expenditure of needless red-tape and of insistance on conformity with standardised regulations. The above objections to be centrally sponsored sector apply equally to the retention of Education under the Concurrent List.

It will be conducive to the healthy development of Education if among other things, the Central Government curtails the size of the outlay on centrally sponsored and central sector schemes (but instead distributes the funds among the State on equitable basis), does not duplicate facilities provided by States (*e.g.* by running Central Schools, etc.); and provides for the equitable distribution among the various States and Languages groups of the funds for Higher Education is spends through the U.G.C. etc., and the funds for development of all the National languages of India, etc.

Language Question

Following the mandate of the Tamil Nadu Legislative-Assembly at its special meeting held on 23rd January, 1968, Tamil Nadu has all along been following (since January, 1968) the two language formula under which the language studied in schools in Tamil Nadu are :—

Part A—Regional language (or Mother-tongue when it is different from the regional language).

Part B.—English or any other non-Indian language.

The Part A language is taught from Standard I and the Part B language from Standard III. Examinations in the two languages are compulsory.

Resolution on the language problem passed by the Tamil Nadu Legislative Assembly on the 23rd January 1968 gives expression to the apprehension of the people of Tamil Nadu that Hindi which is one of the regional languages adopted as the official language of India will disturb the unity and integrity of India and result in the domination by a region of one language over the regions of other languages and that Tamil and other national languages should be adopted as the official language of the Union and that Constitution should be amended accordingly and that till such time as this is achieved, English alone should continue as the official language. It was also urged that ways and means should be devised to see that the people in non-Hindi region are not subjected to any disadvantage; the resolution also stated that the House refuses to accept the scheme of the Government for the imposition of Hindi. The resolution also said, among others, that the three-language formula should be scrapped and that Hindi words of command should not be used in the N.C.C. and similar Corps.

2. In the Governor's address to the Tamil Nadu Legislature on 7th July 1977 it was declared :

"It will be the firm policy of my Government to implement the two language formula which was enunciated by our late Chief Minister Anna and unanimously approved by this august Assembly. This formula fully represents and reflects the wishes of the people of Tamil Nadu".

The suggestion of this Government therefore is that English should be included in the Eighth Schedule to the Constitution and all the languages in the Eighth Schedule should be declared as the official languages of the Union. Till such a decision is made, English should continue to be used as the Official language of the Union both for the Centre and State communications as well as communications among the States *inter-se*.

3. The Union Government should accord equal financial assistance for the development of all languages specified in the Eighth Schedule to the Constitution of India.

4. Tamil is a classical language of equal or even greater antiquity than Sanskrit. Tamil is moreover spoken even now not only by 5 crores of people in India but also by some more millions of persons in diverse parts of the globe like Srilanka, Malaysia, Mauritius, Fiji Islands, etc. The place of Sanskrit *vis-a-vis* the Indo-Aryan Languages of North India is analogous to that of Tamil *vis-a-vis* the Dravidian Languages of South India. Hence the Union Government should provide assistance for the development of Tamil studies in the same manner as for Sanskrit studies.

There is inter-State disparity in the devolution of U.G.C. assistance to Universities and Colleges. The bulk of the U.G.C. grants are availed of by the Central Universities and the share of other Universities is meagre. There is no much of an all India character about the Central Universities (since generally only students of the concerned localities join these Universities). In the circumstances, a more equitable formula for the distribution of Central funds for Higher Education will have to be devised, a formula which does justice to the claims of Universities and colleges in the States.

The provisions under Article 29 and 30 of the Constitution pertaining to the rights of minorities in regard to the establishment and management of denominational educational institutions, require to be defined more rigorously, restricting them to protect the genuine interests of the minorities. The provisions as they now stand (and as they are interpreted by the Supreme Court and High Courts) are often misued.

This situation has to be remedied by redefining those provisions.

Role of Governor—Extent of and Limitation of his Powers.

The role of the Governor so far as it relates to Education, is in respect of the functions and duties he performs and the powers he exercises in his capacity as Chancellor of the Universities in the State.

2. By convention all the Universities in Tamil Nadu have the Governor as Chancellor. The appointment of the Governor under the statutes relating to the Universities is not made in his personal capacity, but *ex officio*. He functions as such only as long as he holds the office of Governor. It is, therefore, clear that only because of his position as Governor he functions as Chancellor. There were divergent opinions about functions of the Governor as Chancellor, whether it should be exercised under the discretion of the Governor or with Ministerial advice under Article 163 of the Constitution. The Governor is appointed to such statutory office as per provisions in the University Acts because he is the Head of the State Government, the intention presumbly being that as Head of the State he will reflect the views of the elected Government and as such appointment cannot possible be made in favour of the State Government straight away. If this view is correct, the Statutory functions of the Governor must be regarded as one that is included within the "business of the Government of the State under Article 163 (3) and within the meaning of functions under Article 163(1)".

3. As far as University affairs are concerned the Governor's role as Chancellor comes in while appointing the Vice-Chancellor and nominating persons to various statutory bodies.

It would be a healthy augury for democracy that the Governor acts in this regard on the advice of Council of Ministers who enjoys the confidence of public (so far as they remain Ministers) than on his own discretion. This would incidentally help the Vice-Chancellor and other members to project the views of the Government in the conduct of University affairs. The view of the Government in answer to Question 3.1 (Part IV-Role of the Governor) may also be perused for further elucidation.

Inter-Governmental Co-ordination

12.1 This Government are of the view that it would be useful to set up an institution in our country similar on to the Advisory Commission on Inter-Governmental Relations (ACIR) which should promptly deal with many of the irritants and problems which arise with regard to the Centre-State relations in India. We have earlier expressed the view that notwithstanding the express provision in the Constitution in Article 263 for the constitution of an Inter-State Council, such an inter-State Council has neither been thought of or contemplated eversince the birth of the Constitution. In such circumstances, and as there is no prospect of Inter State Council as contemplated in Article 263 being set up and even if set up, activised in accordance with the wishes of the people. This Government are of the view that the setting up of an Advisory Commission on Inter-State Governmental Relations may be one of the expeditious ways to improve the co-ordination and co-operation among the various States and also with the Centre.

Regarding its composition, this Government suggest that the Chief Ministers of all States under the Presidentship of Prime Minister may be set up.

The recommendations of such Advisory Commission shall be treated on par with the recommendations made by the Finance Commission as provided for in Article 281 of the Constitution, with the result such recommendations of the Advisory Commission together with an explanatory memorandum as to the action therein has to be laid before each House of Parliament. *In view of this, an institution similar to the one in the United States, which has obviously stood the test of times, would not only satisfy the aspirations of the people of India and in particular the States of Tamil Nadu,but also would be instrumental for a prompt and expeditious consideration and disposal of many of the irritants and problems which may arise either seasonally or otherwise between the Centre and the State.*

Summary of Recommendations

Preliminary

Dr. C. N. Annadurai, former Chief Minister of Tamil Nadu had emphasised the need for a review and reappraisal of the Constitution of India so as to remove the serious imbalance in the distribution of resources and to ensure larger powers to the States in the legislative financial and other spheres and with a view to achieve true federalism. The present Chief Minister Dr. M.G. Ramachandran has also pointed out the essential need for review of the Constitution in regard to the Centre-State relations and in particular for giving more powers to the States in the legislative, administrative and financial spheres.

The Government of Tamil Nadu are of the firm view that India should be made a true federation wherein the Central Government and the State Government will be equal and independent partners and where the residuary legislative powers including the residuary taxing power will vest in the State Government and the Central should have only limited powers. The existing Constitutional set up should be modified so as to ensure decentralisation of the powers which are now in the hands of the Centre and the State should be made more autonomous both in the legislative as well as in the financial and administrative spheres.

With the above objective in view the Government of Tamil Nadu have answered the questionnaire issued by the Sarkaria Commission. The salient features of the recommendations are set out below—

PART I

INTRODUCTORY

Though the basic structure in our Constitution is said to be federal in nature certain provisions which are not found in other Constitutions, do make our Constitution to a certain extent unitary and not federal. Provisions such as Articles 256, 257, 356, 365, 200 and 201, 31-C, 31-A(I), 254(2) and 304(b) proviso

lend support to the perpetual comment by the people and by jurists that our Constitution is not truly federal.

The autonomy of the States has been eroded by the invocation of certain unpalatable Articles in the Constitution introduced by the Founding Fathers nearly 35 years ago. The difficulties, issues tensions and problems that have arisen in Union-States relationship are due to substantial defects in the schematic plan and the fundamental fabric as envisaged at present in our Constitution. State's autonomy cannot be made to rest on the good-will of the Centre.

It would therefore be salutary to evolve healthy conventions and procedures and time has now come for removing the tensions and frictions between the Centre and the States by suitably amending the provisions of the Constitution wherever necessary and restore the amity and harmony between the Centre and the State. The object is that true federalism should come into existence. However, till that goal is achieved the amendment suggested in the following parts will go a long way in giving more powers to the States commensurate with their responsibilities and strengthen the unity of the country.

PART II

LEGISLATIVE RELATIONS

Concurrence of State Legislature before Legislation by Parliament.—No law should be enacted by Parliament in respect of a matter falling within the Concurrent List except with the concurrence of the State Legislature. If no such concurrence is obtained then the law made by Parliament in respect of a concurrent subject will not be applicable to that State.

Reservation of State Bills for the consideration of the President.—No. Bills falling within the scope of Article 31-A or Article 34-C need be reserved for the consideration of the President. Accordingly, the first proviso to Article 31-A, the proviso to Article 31-C the two provisos to Article 200 and the proviso to Article 201 should be omitted. The provision relating to the withholding of assent by the President under Article 201 also should be omitted.

Other Legislative provisions.—Article 246 should be so amended to preserve the prerogative of both the Parliament and the States in their respective legislative fields.

The proviso to Article 254(2) should be substituted to the effect that Parliament shall have no power to enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative of the State.

Articles 247, 249, 250, 251 and 252 should be omitted.

As regards Article 252, the alternative suggestion is that Article 252(2) should be so amended so as to make the power as between the Centre and the State mutual and not exclusive.

Residuary powers.—The residuary power of legislation and taxation should be vested in the State Legislature. Therefore Article 248 and entry 97 in the Union List have to be omitted. Consequently, a new entry as entry 67 may be included in the State List, as under :—

"67. Any other matter not enumerated in List I or List III including any tax not mentioned in either of these Lists ".

Articles 154 (2) (b) and 258(2).—The amendment to these articles may be made providing that if the Union were to exercise the power as contemplated in both the articles, the consent of the State should be obtained.

Article 304(b).—The proviso to Article 304(b) should be omitted.

Article 246-A—A new Article 246A has been suggested to the effect that Parliament should have no power to order an enquiry in respect of the conduct of Ministers of the State Government. But it shall be open to the State Government to appoint a Commission of Inquiry, to inquire into the conduct of the State Minister either while in office or after demitting office.

Legislative Entries.—The Government have suggested additions, modifications, deletions of entries under the Union List (List I) State List (List II) and Concurrent List (List III). The revised Union List, the revised State List and the revised Concurrent List, with the modification suggested by this Government will be as follows :

In the revised Union List out of 99 entries, 9 entries have been either omitted or transferred either to the revised State List or revised Concurrent List.

In the revised State List 42 entries have been added to the existing 61 entries.

In the revised Concurrent List, 33 entries have been transferred to the revised State List. Consequently, the revised Concurrent List contains only 23 entries.

List I Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.

2. Naval, military and air forces; any other armed forces of the Union.

2-A. Omitted.

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its [production.

7. Industries necessary for the purpose of armaments.

8. Central Bureau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the Security of India; persons subjected to such detention.

10. Foreign affairs : all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

23. Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways in inter-State rivers, the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters.

26. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and air craft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircrafts and air-navigation; provision of aerodromes; regulation and organisation of air-traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by inter-State river waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State.

33. Acquisition and requisitioning of property for the purpose of the Union.

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including Universities.

45. Omitted.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchange.

49. Patents, inventions and designs; copyright; trademarks and merchandise marks.

50. Establishment of standards of weight and measure.

51. Establishment of standards of quality for goods to be exported out of India.

52. Industries specified below :—

1. **Metallurgical Industries** :—

A. Ferrous ;

(1) Iron and Steel (Metal)

(2) Ferro-alloys

(3) Iron and steel castings and forgings.

(4) Iron and steel structurals.

(5) Iron and steel pipes.

(6) Special steels.

(7) Other products of iron and steel.

B. Non-ferrous :

(1) Precious metals, including gold and silver and their alloys.

(2) Other non-ferrous metals and theiralloys.

(3) Semi-manufactures and manufactures.

2. **Fuels** :

(1) Coal, lignite, coke and their derivative.

(2) Mineral Oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydro carbon oils and their blends including synthetic fuels, lubricating oils and the like.

(3) Fuel gases—(coal gas, natural gas and the like).

3. Steam Generating Plants :

Steam generating plants.

4. Prime Movers (Other than Electrical Generators)

(1) Steam engines and turbines.

(2) Internal combustion engines.

5. **Telecommunications** :

(1) Telephones.

(2) Telegraph equipment.

(3) Wireless communication apparatus.

(4) Radio receivers, including amplifying and public address equipment.

(5) Television sets.

(6) Teleprinters.

6. **Transportation**

(1) Aircraft.

(2) Ships and other vessels drawn by power.

(3) Railway locomotives.

(4) Railway rolling stock.

7. **Fertilisers** :

(1) Inorganic fertilisers.

(2) Organic fertilisers.

(3) Mixed fertilisers.

8. **Chemicals (Other than Fertilisers) :**

(1) Coal tar distillation products like naphthalene, anthracene and the like.

(2) Explosive including gun powder and safety fuses.

9. **Paper and Pulp including Paper products :**

(1) Paper-writing, printing and wrapping.

(2) Newsprint.

(3) Pulp-wood pulp, mechanical, chemical, including dissoliving pulp.

10. **Sugar** :

Sugar.

11. **Defence Industries** :

Arms and ammunition.

53. Omitted.

54. Omitted.

55. Omitted.

56. Regulation and development of inter-State rivers and river valleys, diversion of the waters of inter-State rivers to any part of the territory of India and apportionment among the States (but not including the use within the States) of the waters of inter-State rivers, to the extent to which such regulations, development, diversion and apportionment under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries beyond territorial waters.

58. Manufacture, supply and distribution of salt by Union agencies.

59. Cultivation, manufacture and sale for export of opium.

60. Omitted.

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial and any other like institution financed by the Government of India wholly.

63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University the University established in pursuance of article 371-E.

64. Institutions for scientific of technical education financed by the Government of India wholly.

65. Union agencies and institutions for—

(a) professional, vocational or technical training including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Omitted.

67. Omitted.

68. The survey of India, the Geological, Botanical, Zoological and Anthropoliogical Survey of India Meteorological organisations.

69. Census.

70. Union public services; All India Services; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; The Election Commission;

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendence of persons for giving evidence or producing documents before committees of Parliament of commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers

for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of services of the Comptroller and Auditor- General.

76. Audit of the accounts of the Union.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court.

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

79. Extension of the Jurisdiction of High Court to, and exclusion of the jurisdiction of a High Court from Union territory.

80. Extension of the powers and jurisdiction of members of a police force belonging to any state to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes or income other than agricultural income.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) Alcoholic liquors for human consumption.

(b) Opium, Indian hemp and other narcotic drugs and narcotics.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land or individuals and companies: taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges.

91. Rates of stamp duty in respect of bills of exchange cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares debentures, proxies and receipts.

92. Taxes on the sale or purchase of news papers and on advertisements published therein.

92-A. Taxes on the sale or purchase of goods other than newspaper, where such sale or purchase takes place in the course of inter-State trade of commerce.

92-B. Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person); where such consignment takes place in the course of inter-State trade of commerce.

93. Offices against laws with respect to any of the matters in this List.

94. Inquires, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

97. Omitted.

List-II State List

1. Public order (but not including the use of any naval military or air force or of any contingent or unit thereof in aid of the civil power).

1-A. Preventive detention for reasons connected with the security of a State or the maintenance of public order; persons subjected to such detention.

1-B. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in Entry 1-A of this List and Entry 3 of List III with the consent of the other State.

2. Police (including railway and village police).

3. Officers and servants of the High Courts; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

3-A. Administration of justice; constitution; and organisation of all courts, except the Supreme Court and the High Courts.

3-B. Contempt of court, but not including contempt of the Supreme Court.

4. Prisons, reformatories, borstal institutions and other institutions of like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts; distirct boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

5-A. Trust and Trustees.

5-B. Administrators-General and Official Trustees.

6. Public health and sanitation, hospitals and dispensaries.

6-A. Vital statistics including registration of births and deaths.

7. Pilgrimages, other than pilgrimages to places outside India.

7-A. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which

parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

8. Intoxicating liquors, that is to say, the production manufacture, possession, transport, purchase and sale of intoxicating liquors.

8-A. Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium.

9. Relief of the disabled and unemployable.

9-A. Vagrancy : nomadic and migratory tribes.

9-B. Lunacy and mental deficiency, including places for the reception or treatment of Lunatics and mental deficients.

10. Burials and burial grounds; cremations and cremation grounds.

10-A. Trade unions; industrial and labour disputes.

10-B. Social security and social insurance; employment and unemployment.

10-C. Welfare of labour including conditions of work provident funds, employees' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

11. Education, including technical education, medical education universities, subject to the provisions of Entries 63, 64 and 65 of List I; Vocational and technical training of labour.

11.A. Provision of education and training for the mercantile marine and regulation of such education and training provided by State and other agencies.

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records and archae logical sites and remains.

12-A. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

13. Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I; municipal tramways; ropeways, inland waterways, intra-State rivers and traffic thereon; vehicles including mechanically propelled vehicles.

13-A. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rules of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

13-B. Ports other than these declared by or under law made by Parliament or existing law to be major ports.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

15-A. Prevention of cruelty to animals,

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; and improvement and agricultural loans; colonisation.

19. Forests.

20. Protection of wild animals and birds.

21. Fisheries.

22. Courts of wards subjects to the provisions of Entry 34 of List I; numbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries other than those specified in Entries 7 and 52 of List I.

24-A. Commercial and industrial monopolies, combines and trusts.

25. Gas and Gas-Works.

25-A. Factories.

25-B. Boilers.

25-C. Newspapers, books and printing presses.

26. Trade and commerce within the State including trade and commerce in,—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foddstuffs, including edible oil seeds and oil;

(c) cattle fodder; including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seeds; and

(e) raw jute.

27. Production supply and distribution of goods including the production supply and distribution of,—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foodstuff, including edible oilseeds and oil;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned and cotton seeds; and

(e) raw jute.

28. Markets and fairs.

28-A. Futures markets.

28-B. Actionable wrongs.

29. Weights and measures except establishments of standards.

30. Money lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

31-A. Adulteration of foodstuffs and other goods.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary scientific, religious and other societies and associations : co-operative societies.

33. Theaters and dramatic performances : cinemas, sports, entertainments and amusements..

33-A. Sanctioning of cinematograph films for exhibition.

33-B. Broadcasting and Television.

34. Betting and gambling.

34-A. Charities and charitables institutions, charitable and religious endowments and religious institutions.

34-B. Lotteries organised by the Government of a State.

35. Works, lands and buildings vested in or in the possession of the State.

36. Acquisition and requisitioning of property except for the purpose of the Union.

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the States.

40. Salaries and allowances of Ministers for the State.

41. State public services : State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

43-A. Audit of the Accounts of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

45-A. Price control.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption.

(b) opium, Indian hemp and other narcotic drugs and narcotics.

52. Taxes on entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption of sale of electricity.

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 72-A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propolled or not, suitable for use on roads, including tram-cars.

57-A. Taxes on mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

58. Taxes on animals and boats.

59. Tools.

60. Taxes on professions, trades, callings and employemnts.

60-A. Legal, medical and other professions.

61. Capitation taxes.

61-A. Taxes on futures markets.

62. Taxes on luxuries. including taxes on entertainments. amusements, betting, and gambling.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

63-A. Inquiries and statistics for the purpose of any of the matters specified in this List including inquiries in respect of the conduct of any Minister of a State Government, while in office or after demitting office.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List but not including fees taken in any Court.

67. Any other matter not enumerated in List I or List III including any tax not mentioned in either of those Lists.

List-III Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the maintenance of supplies and services essential to the community; persons subjected to such detension·

4. Omitted.

5. Omitted.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contract of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Omitted.

9. Bankruptcy and insolvency.

9-A. Banking.

10. Omitted.

11. Omitted.

11-A. Omitted.

12. Evidence and oaths, recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the Commencement of this Constitution, limitation and arbitration.

14. Omitted.

15. Omitted.

16. Omitted.

17. Omitted.

17-A. Omitted.

18. Omitted.

19. Omitted.

20. Economic and social planning.

20-A. Population control and family planning.

21. Omitted.

22. Omitted.

23. Omitted.

24. Omitted.

24-A. Regulation and development of oilfield and mineral oil resources; petrol and petroleum product; other liquids and substances declared by Parliament by law to be dangerously inflammable.

24-B. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

24-C. Regulation of labour and safety in mines and oilfields.

25. Omitted.

26. Omitted.

27. Relief and rehabilitation of persons displaced from their original place of residence.

28. Omitted.

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting man, animals or plants.

30. Omitted.

31. Omitted.

32. Omitted.

33. Omitted.

33-A. Omitted.

34. Omitted.

35. Omitted.

36. Omitted

37. Omitted.

38. Electricity.

39. Omitted.

40. Omitted.

41. Custody, managemen and disposal of property (including agricultutal land) declared by law to be evacuee property.

42. Omitted.

43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears, arising outside that State.

44. Stamp duties other than duties or fees collected by means of judicial stamps. but not including rates of stamp duty.

45. Inquiries and statistics for the purpose of any of the matters specified in List III but not including inquiries in respect of the conduct of any Minister of a State Government while in office or after demitting office.

46. Jurisdiction and power of all courts, except the Supreme Court, with respect to any of the matters in this List.

47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

PART III

ROLE OF THE GOVERNOR

Our Primary view is that the post of Governor should be abolished as a Governor appointed by the President is a legacy of the past. Under the Constitution, the Governor has to act always on the advice of the Council of Ministers. As it is proposed to be made clear statutorily that there is no discretionary field at all for the Governor, the post of the Governor is redundant. In some cases, the Governors do not hesitate to misuse their powers and dismiss the Council of Ministers notwithstanding the fact the Council of Ministers enjoy the absolute confidence of the Legislature. In order to avoid repetition of such misuse of power, the Post of Governor may be abolished. As a result, the Chief Minister may be vested with all the executive powers.

If the office of the Governor is to be retained, the suggestion is that he may be selected from the panel of four names submitted to the President by the Chief Minister enjoying the confidence of the Legislative Assembly. In such a case, if Legislative Assembly decides that the continuance of the Governor in any State will not be in the interest of the State then on a resolution passed to that effect by the Legislative Assembly, the President should remove the Governor on receipt of a copy of the said resolution by the President.

If the post of Governor is decided to be continued, then the following recommendations are made.

There should be no area in respect of which the Governor should have discretion. In respect of all matters; the Governor should be bound by the advice of the Chief Minister or of the Council of Ministers.

In his role as an inalienable part of the State Legislature, the Governor's task is only to secure a Government and not to form a Ministry.

While discharging important functions for summoning or proroguing the house or houses of the State Legislature, the Governor should do so only on the advice of the State Cabinet.

So also while exercising the power of dissolution of the Legislative Assembly, the Governor should do so only on the advice of the State Cabinet.

If the suggestion to appoint a Governor from the panel of names submitted by the Chief Minister is not accepted, them in the interest of securing a harmonious relationship between the Governor and the State Cabinet, it is necessary that the State Cabinet should be always be consulted and the concurrence of the Chief Minister obtained prior to the appointment of a Governor. It is also not proper to issue guidelines as to how the Governor should function as this would be derogatory to the high office of the Governor.

The Governor is neither the Agent of the Centre nor mere ornamental head of the State but a close link between Centre and the State.

Consistent with the notions of Parliamentary Democracy, a specific provision should be inserted in the Constitution after clause (1) in Article 164 of the Constitution specifying in detail the manner in which a Chief Minister should be appointed. The new clause (IA) shall run as follows :—

"(IA) (a) The Governor should appoint as Chief Minister the leader of the party commanding an absolute majority in the Legislative Assembly.

(b) Where the Governor is not satisfied that any one party has an absolute majority in the Legislative Assembly, he should of his own motion summon the Legislative Assembly for electing a person to be the Chief Minister and the person so elected should be appointed by the Governor as the Chief Minister.

(c) The advice of the Chief Minister to the Governor to dismiss any Minister should be accepted by the Governor.

(d) Where it appears to the Governor at any time that the Chief Minister has lost the confidence of the majority of the Members of the Legislative Assembly, the Governor should immediately and of his own motion summon the Legislative Assembly to eanable the Chief Minister to secure a vote of confidence in the House.

(e) (i) If the Chief Minister fails to seek the vote of confidence, or having sought it, fails to secure such vote of confidence, the Chief Minister shall resign forthwith. If there is any party commanding an absolute majority in the Legislative Assembly at the time of such resignation, the Governor shall, of his own motion, appoint as Chief Minister the Leader of such party.

(ii) Where the Chief Minister fails to resign under paragraph (i), or where there is no party commanding an absolute majority in the Legislative Assembly, then the Governor shall immediately of his own motion, summon the Legislative Assembly. The Legislative Assembly shall elect the person to be the new Chief Minister who should be appointed by the Governor as the Chief Minister or in the alternative, the Legislative Assembly may pass a resolution recommending the dissolution of the Legislative Assembly which shall be binding on the Governor.

(iii) If the Legislative Assembly fails to elect a new Chief Minister or pass a resolution as mentioned in paragraph (ii) within a period of one month commencing on and from the date of seeking the vote of confidence under sub-clause (d), the Legislative Assembly shall stand dissolved on the expiry of the said period of one month.

(f) When the Legislative Assembly stands dissolved under sub-clause (e) and during the period on and from the date of Commencement of the Legislative Assembly and sending with the date of election of the new Chief Minister by the

new Legislative Assembly, the Chief Minister and the other Ministers who are in office on the date on which the Legislative Assembly stands dissolved under sub-clause (8) shall continue in office only as a caretaker Ministry."

No person should be a Governor for more than one State/Union Territory at a time.

The proviso to Article 153 should be omitted. Consequent on the omission of the said proviso clause (3-A) of Article 158, must be deleted.

The Governor shall be appointed by the President with the concurrence of the Chief Minister. Consequently Article 155 should be suitably modified.

The Governor discharges certain functions specified in the Constitution as an agent of the President but the language of Article 160 is such that it may be stretched to cover even other functions of the Governor. The Article requires modification.

Article 163 (1) of the constitution which provides that the Council of Ministers have to aid and advise the Governor in the exercise of his function, except in so far as he is by or under this Constitutions, required to exercise his functions or any of them in his discretion, should be modified on the line of Article 74(1) of the Constitution. Article 163(1) may be recast as follows :—

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor who shall in the exercise of his functions act in accordance with such advice:

Provided that in respect of the functions expressly conferred on the Governor under Articles 239(2), 371 and 371-A the Governor shall exercise his functions in his discretion".

Article 163(2) may not be conducive for effective functioning of the Cabinet System of Government in the State. This Article may therefore be omitted.

PART-IV

ADMINISTRATIVE RELATIONS

Issue of Directions to the States by the Union and President's rule in States.—Articles 256, 257, 365 and 356 have both catalytic and fatalistic effect on the States in view of the possible unitary exercise of executive power by the Union under these Articles. These articles may therefore be omitted, because the effect of these Articles is that powers reserved by the Union have a over-riding influence over the States bringing down the theory of autonomy of State to a catastrophic minimum. This is so because, the use of such power during the three decades in the past have *ex-necessitats* demonstrably, proves that there has been excessive or misuse of such powers resulting in extra-ordinary steps, being taken and the edifice of State autonomy made to crumble. Article 357 and 360 may also be omitted.

Central Agencies handling subjects relating to States and Concurrent List.—The Central Agencies like the Agricultural Prices Commission, Central Water Commission, Central Electrciity Authority etc., cannot be created with respect to subjects handled by State in the State list without the explicit consent of the States.

Inter-State Water Dispute.—All disputes relating to inter-State Water disputes should be referred to a permanent tribunal constituted by the Supreme Court.

All India Services.—It is not necessary to have All India Services including I.P.S. and I.P.S. There should be two services namely (i) State Civil Services for the purpose of the State Govt. and (ii) Central Service for the purpose of the Federal Govt. In the Central Service, due representations should be given to the States in the offices of the Central Govt. location in the States.

Central Reserve Police Force.—The deployment of the Central Reserve Police Force should be done only with the consent or request of the States.

Zonal Councils.—In the interest of the States concerned the Zonal Councils set up under the States Re-organisation Act, 1956 should be activised so as to serve the expectations under the said Act.

Inter-State Council.—The Inter-State Council created under Article 263 will have no practical value as the advice tendered, recommendations made and conclusion arrived at are not binding on any party. Therefore the entire Article 263 providing for the establishment of Inter-State Council may be deleted altogether.

Issue of directions under Article 339(2) Article 344 (6). and Arlticle 350-A.—The said Articles should be omitted.

PART V

FINANCIAL RELATIONS

The Finance Commission.—The Finance Commission is constituted under Article 280. It should be reconstituted giving representation to the States. The recommendations of the Finance Commission shall be binding on all parties both Centre and States. Amendments to this effect should be made in the Constitution.

The Finance Commission should not confine itself to non-plan revenue gap but should take an integrated view of the whole problem of financial imbalance. States should be categorised into the more affluent, middle income and poor States. Tamil Nadu which falls within the middle income criteria should be given additional allocation of grants.

The Finance Commission should also ensure that the per capita surpluses of middle income States are comparable and more or less equal to the more affluent States. All funds to the States should be channelled through the Finance Commission.

Excise Duties.—All excise duties and cesses, special regulatory or otherwise, which are shareable at the option of the Union should all be made compulsorily divisible between the Union and States.

Additional duties of excise should be continued only with the concurrence of the States.

Levy and collection of duties and taxes.—Article 268 can be straightaway delegated to the States for levy and collection. Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land under Article 269 could also be delegated to the States. Similarly terminal tax on goods or passengers carried by railway, sea or air tax on sale or purchase of news papers and on advertisement can be brought under the purview of Article 268.

Many of the taxes specified in Article 269 are not levied. The Union Government must therefore give a substantial amount to the States in lieu of the non-levy of certain taxes.

Corporation Taxes, as well as surcharge on Income Taxes should be divisible and ear-marked for the concerned State as in the case of Income-Tax.

Grants.—Grants by the Centre to the States, both for plan and non-plan expenditure should be made on the recommendation of an independent and impartial body like the Finance Commission or similar statutory body.

Loans and indebtedness of States.—A Committee of experts may be set up to consider the entire issue relating to the indebtedness of States.

Relief Fund.—There should be a fund for each State for the relief of distress arising out of natural calamities. The fund may also be utilised to ameliorative measures.

Market Borrowings.—At present, the distribution among the States of the market borrowings has been done in a very adhoc and arbitrary manner giving increase of 10 per cent over the last years level of borrowings. Therefore, a just and equitable principle of distribution of market borrowings should be formulated. To achieve the object in view, the President should invoke his powers under Article 280 (3) (c).

It is desirable that the Finance Commission should suggest an appropriate formula for sharing of market borrowings. The State Government and the Government of India should go by the award of the Finance Commission. The actual execution can continue to be co-ordinated by the Reserve Bank of India. There is no need to set up a separate loan council for multiplicity of agencies may create a situation of their working at cross purposes.

PART VI

ECONOMIC AND SOCIAL PLANNING

Planning Commission and National Development Council

The Planning Commission as well as the National Development Council, the two major bodies incharge of planning, are now functioning as only recommendary bodies without a statutory foundation and recognition unlike the Finance Commission postulated in Article 280. Therefore, the following changes in the Constitution of planning bodies may be made :—

(1) The Union Parliament must make law to create a Central Board of Planning. It must define its constitution, functions and powers clearly. The Central Board should assess the availability of resources relating to Central Schemes only.

(2) The State Legislature must pass separate Legislation for the purpose of creating a State Board of Planning. This Board will address itself to resources and priorities regarding States subject matters.

(3) The Plan so prepared by the Central Board and State Board must be submitted to the National Development Council for consideration.

The National Development Council must appoint an expert Advisory Committee consisting of eminent Economists, Scientists, Management Experts Sociologists and Engineers. This Committee must give its expert advice within a stipulated period of time. The Advisory Committee must also recommend wherever possible the dove-tailing of schemes suggested by the Central and State Boards. This would ensure a meaningful planning exercise without over-looking the State Government's priorities.

However, if the planning Commission were to continue, then it should be an autonomous body, under the National Development Council. The Planning Commission should not be given such functions as over-seeing planning at State Level and decision making at the National Level. It can at best be only an Advisory Body. Final decision should rest with the National Development Council and with the Central and State Governments.

PART VII

MISCELLANEOUS

Industries

Under Entry 52 of List I "Industries, the control of which by the Union is declared by parliament by Law to be expedient in the public interest" come within the exclusive legislative competence of the Parliament. In view of this entry, the State Legislature is made incompetent in respect of the Industries coming under the Act enacted by Parliament under the said entry 52. Therefore, entry 52 should be substituted by a new entry by which the industries will be specified in the entry itself. In this connection, please see entry 52 of the revised Union List. However, even in respect of industries in respect of which Parliament will have power to legislate, prior consultation with the State Government would be desirable while framing industrial policy by the Government of India.

State Government could be represented in the licensing sub-committee so as to enable the State Governments to give their views on the applications. Final decision should be taken on the basis of the recommendations of the States.

As regards the change of location of manufacturing activities within the State, the obtaining of prior permission of the Government of India should

be dispensed with and the Government of India should issue revised instructions restoring the delegation to the State Government to give permission for the same.

A representation for various State Governments in the Central Financial Institutions like I.D.B.I., I.F.C.I., etc. on rotational basis should be considered. Regional Boards should be established and in the said Boards, regional representation should be given.

Trade and Commerce

In the interest of securing better Centre-State relationship in trade and commerce, it is necessary to appoint an authority to :—

(a) survey and bring out periodically a report on the restrictions imposed on inter-State trade and commerce;

(b) recommend measures to rationalise or modify the restrictions imposed with a view to facilitate trade and commerce; and

(c) examine the complaints from Chambers of Commerce including the appex body like the F.I.C.C.I.—

The requirement relating to the previous sanction of the President under the proviso to Article 304(b) of the Constitution directly encroaches on the field assigned to the State Legislature. Hence, the proviso to Article 304(b) should be omitted.

Agriculture

Agriculture including Horticulture, Animal Husbandary, Forestry and Fisheries should primarily be treated as a State subject.

In the matter of enforcing the minimum fair price for agriculture produce, the State Government should be intimately associated with decision making.

Inter-State rivers

The Inter-State rivers should be declared as National rivers.

Food and Civil Supplies

Procurement.—(1) The State Government or its agencies should be permitted to purchase levy paddy and rice from the surplus States without interference by the Centre.

(2) The Reserve Bank of India should charge concessional rate of interest in this regard.

Prices.—In the matter of fixation of procurement price, the previous approval of Central Government is not necessary.

Distribution of food grains and other essential commodities through public distribution system.—Several schemes in the cause of education, obliteration of illiteracy, Nutritious Noon Meal Scheme (Feeding about 84 lakhs of Childeren and old aged pensioners) have been conceived for the first time in the country by the Hon'ble Chief Minister Dr. M.G. Ramachandran. A subsidised control of prices for essential commodities has therefore to be introduced for the continuance of welfare schemes like Chief Minister's Nutritious Noon Meal Schemes.

Wheat roller flour mills.—In the interest of effective control over the roller flour mills and ensuring proper production and distribution of maida and sooji to consumers, it is but necessary that the licensing powers of roller flour mills are again vested with the State Government, subject to general guidelines from the Government of India.

Pulses.—If the power to grant exemption from ceiling on stocks of pulses, in cases where the genuineness is satisfied, is vested with the State Government without reference to the Government of India, it will do a lot good to dealers besides making pulses available in plenty to the consumers at reasonable price.

Kerosene.—The powers of appointing new wholesale dealers should be with State administrations.

Education

With the passing of the Constitution (Forty Second Amendment) Act, 1976, 'Education' report has been placed under the Concurrent List. When the founding fathers of the Constitution of India have originally rightly placed 'Education' under the State List, it is necessary that 'Education' should be restored to the State List.

Language.—English should be included in the Eighth Schedule to the Constitution and all the languages in the Eighth Schedule should be declared as the official language of the Union. Till such a decision is made, English should continue to be used as the official language of the Union. English should be used both for the Centre and the State communications as well as communications among the State *inter se*.

Inter-Governmental co-ordination

An institution similar to the Advisory Commission on Inter-Governmental Relations in the United States which has obviously stood the test of time, would not only satisfy the aspirations of the people of India and in particular the State of Tamil Nadu but also would be instrumental for a prompt and expeditious consideration and disposal of many of the irritants and problems which may arise either seasonally or otherwise between the Centre and the State.

Supplementary Questionnaire No. 4

(i) to (iv)

1. The Government of Tamil Nadu are of the View that as already stated in Part III—Role of the Governor, the office of Governor itself is unnecessary and as such should be abolished, as the Governor appointed by the President is a legacy of the past. The institution of Governor has outlived its utility. Judged by the recent instances, in most of the States in India the Governor has acted more as an agent of the Central Government. However, if the office of the Governor is to be retained, the following remarks are called for in regard to the supplementary questionnairs :

In regad to Question No. 1 the Government of Tamil Nadu are of the view that there should be no area in respect of which the Governor should have discretion in the discharge of his functions and that in respect of all matters, the Governor should be bound by the advice of the Chief Minister or the Council of Ministers. This Government are also of the view that Article 163 (1) should be amended on the lines of Article 74(1) of the Constitution as recommended by this Government under the heading "Part III—Role of the Governor".

Dr. Ambedkar has expressed the view in the Constituent Assembly that the Governor is only an ornamental head. So also, the Supreme Court, in Ram Jawayas case (AIR 1955 SC 549), has held that the Govennor is a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. In Shamsher Singh's case, it was explained by Justice A. N. Ray who delivered the judgement on behalf of himself and Justice Palekar, Mathew, Chandrachud and Alagiriswami that Articles where the expression 'acts in this discretion' is used in relation to the powers and functions of the Governor are those which speak of special responsibilities of the Governor. These Articles are 371-A(1), (B), 371-A(1) (d), 371-A(2) (b) and 371-A(2) (F). Justice A. N. Ray has also referred to the two paragraphs in the Sixth Schedule, namely 9 (2) and 18 (3) though paragraph 18 has now been omitted. No doubt, in Shamsher Singh's case, the discretionary powers of the Governor were recognised by the majority under Article 200 and also under Article 356. But this Government are of the view that the Governor should be bound always by the advice of the Council of Ministers in the discharge of this functions in respect of all matters as already referred to and that Article 356 should be omitted.

2. As already stated since the suggestion of this Government is that the Governor should have no discretionary power at all, the question of laying down principles of regulating the discretionary power of the Governor will not arise.

3. In Shamsher Singh's case, majority has expressed the view that under Article 200, the Governor may act irrespecttive of any advice from the Council of Ministers and that in such matters where the Governor has to exercise his discretion he must discharge his duties to the best of his judgment. The Government of Tamil Nadu are of the view that in respect of Article 200, which relates to assent of Bills by the Governor the Governor should always act on the advice of the Council of Ministers and he should be bound by the advice of the Council of Ministers and he should have no discretion in any respect the real executive power vests only in the Council of Ministers and the Chief Minister and the Governor being a Constitutional figure head, this Government are not agreeable to vest in him a discretionary power under Article 200. Justice Krishna Iyer who delivered the judgement on behalf of himself and Justice P.N. Bhagwati approved de Smith's statement regarding royal assent. The following portion will be relevant :—

"We have no doubt that de Smith's statement regarding royal assent holds good for the President and Government of India.

'Refusal of the royal assent on the ground that the monarch strongly disapproved of a bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course—a highly improbable contingency—or possible if it was notorious that a bill has been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent".

Consistent with this view, the Government suggest that the two provisos to Article 200 should be omitted. Similarly, when a Bill is reserved for the assent of the President, the Government of India should advice the President to give assent to the Bill. The President should not have any discretion to withold his assent. Accordingly, it is suggested that the proviso to Article 281 should be omitted.

As regard Article 254, this Government have suggested under the heading "Legislative Relations" that the proviso to Article 254 (2) should be substituted as follows :—

"Provided that Parliament shall have no power to enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by Legislature of the State".

4. This Government are of the view that no Bill falling within the scope of Article 31-A or 31-C need be reserved for the consideration of the President. The Council of Ministers are responsible to the State Legislative Assembly to the State Legislative Assembly and consequently, the executive power vest in them fully and completely. It should not be open to the Governor to reserve a Bill for the consideration of the President on the ground that in the Governor's opinion, it should be reserved for the consideration of the President even though the Council of Ministers had advised that such reservation is not necessary.

Accordingly, the Government of Tamil Nadu would suggest that it is absolutely necessary to omit the first proviso to Article 31-A and the proviso to Article 31-C.

If these provisos are omitted and in the light of the views expressed under Article 200, it will not be open to the Governor to reserve any Bill for the consideration of the President except in cases falling under the Concurrent List, attracting the provisions of Article 254, wherein the Governor will be bound by the advice of the Council of Ministers. But even in such cases where the Bill is reserved for the consideration of the President, it will not be open to the President to refuse his assent under any circumstances. The Government of Tamil Nadu desires to reiterate that the Union Government cannot sit in judgmet over the decision of the State Legislature and the State Government as regards the Constitutionality of a Bill passed by the State Legilature.

As regards the proviso to Article 304(b) which requires previous sanction of the President before a Bill or amendment is introduced or moved in the

Legislature this Government are of the view that the proviso will have to be omitted for the reasons stated under the heading 'Trade and Commerce' in Part-VIII-Miscellaneous. It should not be open to the Governor to reserve any Bill in the exercise of his discretion for the consideration of the President on the ground that in his opinion it appears to infringe the policy of law laid down by Parliament.

5. It is the State executive which is to decide about the Constitutionality of the Bill or whether the Bill seeks to endanger the position of the High Court. It should not be open to the Governor or to the Union Government to sit in judgment on this question. The Governor has to be bound by the advice of the Council of Ministers.

The Union Government by themselves should not advise the President to refer any State Bill to the Supreme Court under Article 143. Reference to Supreme Court under Article 143 should be made only in cases where the concerned State Government desires it and not otherwise.

Since it is for the State Government to suggest whether the entire Bill or only a specific provision of the Bill should be referred to the Supreme Court under Article 13, it should be open to the Supreme Court to examine the entire Bill or only such of those provisions as are referred to by the President as desired by the State Government.

Supplementary Questionnaire No. 5

1. As earlier stated, in Part III—Role of the Governor, the Government are of the view that the office of Governor itself is unnecessary and as such should be abolished, as the Governor appointed by the President is a legacy of the past. The institution of Governor has outlived its utility. Judged by the recent instances in most of the States in India, the Governor has acted more as an agent of the Central Government. However, if the Office of the Governor is to be retained, the following remarks are called for in regard to the supplementary questionnaire :

> The Government of Tamil Nadu suggest that if the office of the Governor is to be continued, he may be selected from the panel of four names submitted to the President by the Chief Minister enjoyed the confidence of the Legislative Assembly.

The choice of the Governor need not be restricted either to politicians or to retired Civil/Defence personnel. The views expressed by Pandit Jawaharlal Nehru are as follows :—

> "He may be sometimes, possibly, a man from the province itself. We do not rule it out. But on the whole it probably would be desirable to have people from outside—eminent people sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally while co-operating fully with the Government and carrying out the policy of the Government at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the public someone slightly above the party and thereby in fact, help that Government more than if he was considered as part of the party machine. I do submit that is really a more democratic procedure than the other procedure in the sense that the latter would not make the democratic machine work smoothly". (C.A.D. Vol. VIII/p.455)

But the crucial test is whether a person selected is of high calibre, of absolute integrity and free from partisan politics.

2. The Government of Tamil Nadu are of the view that if the Council of Ministers decide that the continuance of any Governor in any State will not be in the interest of the State, then on a resolution passed by the Legislative Assembly to that effect, the President should remove the Governor on receipt of a copy of the said Resolution by the President.

3. There should be a fixed tenure for the Governor. But, however, the tenure may be terminated by the President if a Resolution to that effect is passed by the Legislative Assembly in the manner suggested above.

There shall not be a re-appointment of a Governor for a fresh term.

4. Pension may be liberal after the retirement of a Governor.

The Governor should be made ineligile to hold any office of profit under the Government of India or the Government of a State after his retirement. So also, he should be made inteligible to hold any elective office such as Minister at the Centre or in a State, President of India, Vice President of India or Member of Parliament or of a State Legislature, since these are all allurements which will make him subordinate to the Central Government.

5. This Government do not approve of the current practice of the Governor sending a fortnightly report to the Centre. This report can as well be sent by the Chief Minister. However, an express provision may be made that the fortnightly report may be sent to the Centre by the Chief Minister.

If the Chief Minister is to report to the Centre he will be the judge to decide as to what should be the content of the report. Since it is suggested that the Governor should not send the report, the answers to other questions do not arise.

6.1 & 6.2 As already stated, there should be no field in which the Governor can have discretionary function.

Even in respect of exercising powers of Chancellor of University, the Constitution should be specifically amended to the effect that he should exercise the power in accordance with the advice of the Council of Ministers.

6.3 & 6.4 This question has been answered under the heading "Role of the Governor" under Part III. Article 164(1-A) proposed by this Government provides an answer to this question. It should not be open to the Governor to decide whether a Chief

Minister is found indulging in or encouraging anti-national activities or engaging in corrupt practices. The Chief Minister is the real executive and he represents the people. There is no question of imposing President's Rule as this Government are of the view that Article 356 itself is to be omitted.

6.5 It is unnecessary to have a guidelines issued to the Governor by the President. Consequently, no amendment to the Constitution is necessary for this purpose. The Governor should act always on the advice of the Council of Ministers.

Law and Order

7.1 & 7.2 The deployment of the Armed Forces in a State whenever there is an internal disturbance in the State should be only at the request of the State Government concerned. This Government have suggested the omission of Entry 2-A of List I.

7.3 No doubt, it may be open to the Central Government to ask for information in regard to the situation of the public order and security within the State. But failure to submit the Report should not be construed as amounting to impeding the exercise of the executive power of the Union. This Government has already suggested that Article 257 itself should be omitted.

7.4 & 7.5 If there is internal disturbance within the State, it is open to the Centre to obtain the necessary information from the Chief Minister concerned and the Chief Minister's suggestion in this regard may be implemented by the Central Government. But under no circumstances, can the President's Rule be imposed on the ground that there is internal disturbance in the State or on the ground that there is external aggression.

This Government are of the firm view that Article 356 itself should be omitted. Dr. Ambedkar in reference to this Article in the Constituent Assembly has stated as following :—

"In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinecs. In fact, I share the sentiments expressed by my honourable friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way, in which they were intended to happen in the Constitution. If that warning fails. the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this articles. It is only in those circumstances he would resort to this Article". (C.A.D. Vol. IX. pp. 176-177)

But all the instances in which President's Rule has been imposed are in direct violation of what Dr. Ambedkar has said or contemplated in his speech. This Government suggest that Article 356 should be omitted as it militates against the federal structure of the Constitution. The views of this Government are explained in detail under the heading "Administrative Relations" under Part IV.

President's Rule

8.1 & 8.2 The answer to this question does arise in view of the suggestion of this Government omit Article 356 itself.

Co-ordination between States

9.1 to 9.4 On the question of Inter-State Council please refer to this Government's views under the heading "Administrative Relations" under Part IV.

The Zonal Councils may be activised, and be made more effective.

Failure to comply with Centre's Directions

10. Article 356 has been a much misued and abused Article by the Central Government. This Government suggest that Article 356 may be omitted. Answer to this question does not arise. Article 365 itself has to be omitted.

Supplementary Questionnaire No. 6

6. As regards the question relating to Article 249 of the Constitution of India, this Government have already suggested that this Article should be totally omitted, for the reasons stated in Part II—Legislative Relations. This question therefore does not arise.

Supplementary Questionnaire No. 7

7. As regards Article 252, this Government are of the view that this Article should be omitted. Alternatively, Article 252 (2) should be so amended so as to make the power vest in the Centre and the State mutually and not exclusively. Please see remarks under the heading Part II "Legislative Relations".

Supplementary Questionnaire No. 8

1. The Supreme Court in Satpal v. State of Punjab (1982 ISCC 12) has held "Ours is a Constitution where there is a combination of federal structure with unitary features". The Government of Tamil Nadu are of the view that these unitary features found in the Constitution have been made use of by the party in power at the Centre to destabilise the State Governments in which a party different from the ruling party at the Centre is in power.

2. The Government of Tamil Nadu are of the firm view that the unity and integrity of the country should not be impaired in any manner. At the same time, the amendment suggested in the earlier part of this Report under the various headings will enable the States to get more powers so as to serve the people of the States with whom the State Government are in direct contact.

3. These Articles have been dealt with under the heading Part IV "Administrative Relations".

4. The expression "national interest or public interest" is vague and has been made use of by the Central Government and the Union Parliament to

encroach on the field-legislative and executive fields—exclusively allotted to the State Legislature and the State Governments. The criticism that the Union Parliament has drained out the content of the linked Entries in List II of the Seventh Schedule and thus improperly encroached upon the State Legislative field is well founded and the Government of Tamil Nadu agrees with this view.

The question as to how the Constitution can be amended so as to ensure greater powers to the States at the same time without affecting the strength of the Centre have been dealt with under various heads in the various parts of the Report.

5. The question relating to Inter-State Councils has been dealt with under the head-Part IV-"Administrative Relations".

6. As regards the basic features of the Constitution, the following may be recognised as the basic features :—

(1) Unity and Integrity of the Nation.

(2) Sovereign democratic republican structure.

(3) Federal structure of the Constitution with the modifications suggested in the earlier part of this note.

(4) Supremacy of the Constitution.

(5) Parliamentary system of Government.

(6) Judicial review.

7. As regards the distribution of Legislative powers under the Seventh Schedule, the subject has been already dealt with under the heading Part II—"Legislative Relations" and this Government has suggested a revised Union List, State List and Concurrent List.

8. For minimising or alleviating frictions between the Union and the States, this Government has suggested various amendments under various heads. They may be referred to.

9. As regards Article 370, the Government are of the view that it may be omitted.

10. On the question whether sales tax can be abolished and instead, additional excise duty can be levied by the Union in consultation with the States and collected by the States themselves, this Government are of the firm view that sales tax should not be abolished. The suggestion to levy additional excise duty in the place of sales-tax by the Union in consultation with the States and collected by the States themselves is not acceptable to the Government of Tamil Nadu. Sales tax should exclusively be the subject matter of legislation by the State Legislature. Sales tax should be levied by the State and collected by the State.

Tamil Nadu

REPLY TO CERTAIN POINTS RAISED BY JUSTICE SARKARIA.

Role of the Governor

The Chairman has called for replies of the State Government to the points in regard to the abolition of the institution of Governor and on the question of deletion of Articles 153, 159, etc.

The reasons for suggesting the abolition of the institution of the Governor have been mentioned at page 26 of the Report submitted by the State Government under Part III—Role of the Governor. The main reasons are that the institution of Governor is an anachronism, owing its existence to the British Colonial System. Further, some of the Governors have misused their offices against the spirit and letter of the Constitution in order to further certain party interests. The real executive will be the Chief Minister of the State who has been elected by the people of the State. Whatever powers are exercised by the Governor can be exercised by the Chief Minister.

The State Government have suggested that there should be no area in which the Governor should act in his discretion. As the real executive is the Chief Minister, the post of the Governor may become redundant. In this view, it was suggested that the institution of Governor should be abolished.

On this basis, it was suggested that Articles 153 to 162 may be omitted. Article 153 is the Article which provides that there shall be a Governor for each State and Article 159 relates to the oath of office by the Governor. These articles are all connected with the institution of Governor and therefore, if the institution of the Governor is to go, then these articles will have to be deleted.

Article 163 :

As regards Article 163, the question was raised in a Writ Petition (W.P.No. 1795/85) before the Madras High Court that the appointment of the Chief Minister and swearing in of the Chief Minister alone in one day and the appointment and swearing in of the other Ministers on subsequent days is not Constitutional. This contention was negatived by the Madras High Court in *R.R. Dalawai* v. *Government of Tamil Nadu.* The following portion will be relevant :—

"**69.** A convention seems to have grown that a Chief Minister is normally sworn in alone, and then he applies his mind to the question as to whom he will nominate as his Council of Ministers. Now it appears that in 1977, even the Prime Minister of India was alone sworn-in on 24th March 1977 and the other Ministers were sworn-in only on 26th March 1977. There is no express provision in the Constitution that the other Ministers must also be sworn-in on the same day on which the Chief Minister is sworn-in. Taking into consideration the manner in which a Parliamentary Democracy and Cabinet system of Government normally works, and the privilege which the Chief Minister enjoys as Chief Minister to decide who shall constitute his Council of Ministers, we do not see any reasons, especially having regard to the existing Rules of Business, to take the view that the Chief Minister cannot perform any executive functions of the Government until the other Ministers are sworn-in. This is, of course, on the assumption that within such time as may be considered reasonable by the Governor the Chief Minister inform the Governor the names of the other Ministers who are to be appointed by the Governor under Article 164(1) of the Constitution. We are therefore of the considered view that the second respondent did not suffer from

any constitutional disability in taking any decisions in exercise of the executive power of the Governor prior to 14th February 1985".

The suggestion to make a specific provision in this behalf has been made for the reason that the other High Courts and perhaps the Supreme Court may take a contrary view and that in order to give no room for that, the suggestion to amend Article 163 was made. However, this Government agrees that the Constitution should not be over-loaded with details.

The Chairman has also stated that the general principle adopted is that the Governor will exercise his power after consulting his Council of Ministers and that the Governor is bound to consult the Council of Ministers. In *Samsher Singh's case* (AIR 1974 SC 2192) which the Chiarman was pleased to refer, it was observed by the Supreme Court as follows :—

"**55.** In making a report under Article 356, the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the Constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President, who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163 (2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly, Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgement. The Governor is required to pursue such courses which are not detrimental to the State.

57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally. The present appeals concern the appointment of persons other than District Judges to the Judicial Service of the State which is to be made, by the Governor as contemplated in Article 234 of the Constitution after consultation with the State Public Service Commission and the High Court. Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution."

It will be seen from the above judgement that a majority of five Judges has held that the Governor has discretion while sending a report under Article 356. The Bench has gone further and stated that Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. This is not a desirable position. A Bill which has been passed by both Houses of the State Legislature should automatically be assented to by the Governor. But two Judges of the Supreme Court observed as follows :—

"**153.** We declare the law of this branch of our Constitution to be that the President and Governnor, custodians of all executive and other powers under various Articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House but refuses to quit office; (c) the dissolution of the House were an appeal to the country is necessitous, although in this area the Head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the Constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement regarding royal assent holds good for the President and Governor in India."

'Refusal of the royal assent on the ground that the monarch strongly disapproved of a bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course—a highly improbable contingency—or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements: but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent'.

Thus, the majority view is that while exercising the power of assent to a Bill passed by the State Legislature, the Governor can act irrespective of the advice of the Council of Ministers. This position ought to be avoided and it should be made clear that in according assent to a Bill the Governor is bound to act always on the advice of the Council of Ministers and should have no discretionary power in this regard.

Article 356 :

The State Government has already suggested that Article 356 should be omitted in view of the fact that the ruling party at the centre, whatever be the party's

composition, has exercised the power against the State Governments ruled by a different party. The State Government reiterates the suggestion that Article 163(1) should be amended as follows :—

> "There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor who shall in the exercise of his functions act in accordance with such advice :
>
> Provided that in respect of the functions expressly conferred on the Governor under Articles 239(2), 371 and 371-A, the Governor shall exercise his functions in his discretion."

The position that the Governor should act always according to the advice of the Council of Ministers is the same as set out in Article 74(1) as amended by the Constitution (Forty-second Amendment) Act. What the President is to the Centre, the Governor is to the State Government. This principle has been accepted by the Supreme Court in a number of cases such a *Ram Jawava kapur* v *State of Punjab* (AIR 1955 SC 549 at p. 556) *Sanjeevi Naidu* v *State of Madras* (AIR 1970 SC 1102 at p. 1106) *U. N. R. Rao* v *Indira Gandhi* (AIR 1971 SC 1002 at p. 1005) and *Shamsher Singh's* case (AIR 1984 SC p. 2192).

Proposed Article 164 (1-A) :

As regards the suggestion made by the State Government for insertion of Article 164 (1-A) as a guiding principle for the appointment of the Chief Minister, the Chairman has stated that there may be difficulties in regard to the implementation of Article 164(1-A). But the point the State Government would like to press is that the Governor should appoint the person who commands absolute majority in the Legislative Assembly and in case there is no absolute majority, the Governor should appoint a person who enjoys the confidence of the Legislature. It should not be left to the Governor to have his own discretion in the matter of appointment of Chief Minister. No doubt, there are conventions. But this Commission is well aware of how this convention has been violated in several instances and the Governor has sought to appoint a person as Chief Minister notwithstanding the fact that he does not enjoy the confidence of the Legislature. It is this situation which has led this Government to make the suggestion as proposed in Article 164 (1-A), the basic principle being that the Chief Minister should always be a person who enjoys the confidence of the Legislative Assembly and if that is not possible, election should follow as a democratic method.

The Chairman has pointed out that what will happen if there is a problem of law and order. It is submitted that this problem will not be peculiar to the State. There may be cases also arising at the Centre. What is the position? The State Government's submission is that whatever position is obtaining in the Centre may obtain in the States also. The provision relating to the appointment of the Prime Minister of India should also be made applicable to the appointment of Chief Ministers in the States.

The Chairman has made a suggestion to keep the Assembly in suspended animation. This will not be happy situation for them, it will lead to horse trading and there will be Ayarams and Gayarams crossing from one party to the other. This will be notwithstanding the Anti-Defection Law embodied in the Constitution by the Constitution (Fifty-Second) Amendment Act.

Article 356 :

As regards Article 356, this Government is of the firm opinion that it should be omitted in its entirety. The eighty-seven instances which have been mentioned at pp.34-35 of the Report submitted by the State Government will go to show that this Article has been misused and it will be a hope in vain to expect that this Article will be used only sparingly in future. In fact, Dr. Ambedkar in his Constituent Assembly speech has said that this Article will be a dead letter; but unfortunately it is not so. It has become a very live Article for the Centre to interfere in the affairs of the State Government. Article 356 is against the basic principle of federalism and therefore it has to be deleted.

The safeguards that have been suggested by the Chairman, namely, the incorporation of clauses similar to Article 352(7) and 352(8) will be no safeguards at all for the reason that it is very unlikely that Parliament will disapprove the imposition of President's rule since the ruling party at the Centre will always command a majority in the Parliament.

Article 263 :

The suggestion of the State Government is to omit Article 263 which provides for the constitution of Inter-State Councils. As already submitted at P. 40 of the State Government's Report, any inter-State Council under Article 263 will have no practical value. The tenor and the language of Article 263 are such that any advice tendered, recommendations made and conclusions arrived by a Council established under it are not binding on any party and that such advices, recommendations, etc., may have persuasive value only. Further, under Article 263, an Inter-State Council has so far not been established after the lapse of 35 years since the commencement of the Constitution. It is for this reason that the Government suggested that the Inter-State Council may be abolished.

Inter-State Water Disputes

As regards the Inter-State Water Disputes Act, 1956, the Act as it now stands is not of practical importance. Under Section 4(1) of the Act, when any request is made by the State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of water dispute. Section 6 of the Act states that the Central Government shall publish the decisions of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them. This Section 6 has not been amended subsequently. The question here is as to how to enforce the award of the Tribunal if any State Government does not give effect to the award. The 1968 Amendment to the Act does not deal with the enforceability of the award. It is for this reason this

Government have suggested at p.89 of the Report the modification of the Act for introduction of a new provision therein enabling the parties to the dispute to secure through a known legal process the relief to enforce the awards given by the Tribunal. It has also been suggested at p. 89 of the Report that the Government of India may declare all Inter-State rivers in the country as national rivers as most of the major rivers are Inter-State in character. In the same page, it has been suggested that all disputes relating to Inter-State rivers should be referred to a permanent Tribunal constituted by the Supreme Court and that if this view is accepted, then the Inter-State Water Disputes Act, 1956 would require repeal or modification. The State Government is in agreement with the view suggested by the Chairman that Article 262(2) may be deleted and jurisdiction may be given to the Supreme Court to decide Inter-State Water Disputes and that automatically any decision or decree of the Supreme Court will be binding. The suggestion made by the Chairman that the matter should come to the Inter-State Council first and that the differences could be sorted out and settled and that if it could not be settled, it is mandatory on the part of the Central Government to set up a Tribunal will, it is submitted, be a time consuming process and that the defects now found in the Inter-State River Water Disputes Act, 1956 will again be repeated. For the Inter-State Council to meet it will take time; for the Inter-State Council to arrive at a decision it will take time; and if the Central Government is to appoint a Tribunal after being informed that the dispute could not be settled by the Inter-State Council, further time will be taken.

Article 254 :

As regards the suggestion made by the Chairman for facts and figures in relation to the reservation of Bills under Article 254, the following are submitted.

The basic point sought to be made by the State Government is that when a Bill is sent to the Central Government for obtaining the assent of the President on the ground of repugnancy to an existing law or to an earlier law made by Parliament with reference to Article 254(2), virtually the Central Government sits in appeal over the Bill. There are cases where a Bill has been passed unanimously by both Houses of the Legislature and when the Governor reserves the Bill for the consideration of the President on the advice of the Chief Minister, the Bill is referred to 4 or 5 Ministries by the Home Ministry, which is the Co-ordinatory Ministry. Each Ministry takes its own time to offer its remarks and the Bill is subjected to scrutiny from a policy and Constitutional angle. So far as policy is concerned, the State Government will be the best Judge as to what is the best policy so far as the State is concerned and it is not for the Central Government to sit in judgment over a policy decision of the State Government and adopted by the State Legislature in the form of a Bill. If this trend continues, then virtually the State Legislature will be subordinate to the Central Government which the Constitution does not envisage, at all. It is therefore submitted that the Central Government should never look into the policy angle embodied in the Bill unless it be that the Bill is dangerous to the sovereignity, integrity and unity of India.

Again, it is submitted that the Central Government sits in judgment over the Constitutionality of the issue. The question whether a particular enactment is Constitutional or not can never be answered conclusively except by the Supreme Court. Even the High Court judgement is not final and the Supreme Court may reserve or affirm the decision of the High Court and Article 141 of the Constitution States that the law declared by the Supreme Court shall be binding on all courts. If the State Government consider that the Bill is Constitutional, it should not be open to the Central Government to sit in judgment over that decision for the decision of the Central Government cannot itself be said to be final and the Constitution also does not say so. It is therefore submitted that when a Bill is reserved for the assent of the President by the Governor on the advice of the Chief Minister, the President should automatically assent to the Bill.

Instances

I. **Delay in giving assent to Bills :**

1. The Industrial Disputes (Tamil Nadu Amendment) Bill, 1981 (Legislative Assembly Bill No. 43 of 1981). This Bill was passed by both Houses of the State Legislature and the same was reserved for the consideration of the President in Letter No. 16853/81-1, dated 10th June, 1981.

Under the Industrial Disputes Act, 1947 (Central Act XIV of 1947), a reference by the Government is necessary if a dispute is to be adjudicated by a Labour Court. It is decided that when one settlement is arrived at in the course of any conciliation proceeding taken under section 2-A of the said Act, the aggrieved individual workmen shall be allowed to take the industrial dispute arising under Section 2-A of the said Act in the prescribed manner to the Labour Court direct without any reference by the Government for adjudication by such Labour Court and the Labour Court shall proceed to adjudicate such dispute as if such dispute has been referred to it for adjudication and all the provisions of the Act relating to adjudication of industrial disputes by Labour Court shall apply to such adjudication. Sub-section(4) of section 11 of the said Act as it stands now does not empower the conciliation officer to summon and examine any person for the purposes referred to therein. It is considered necessary that apart from calling for any records the conciliation officer should also be vested with the power to enforce attendance of persons and examine them on oath or to issue commissions for examination in addition to their power to compel the production of documents. The Bill sought to achieve the above objects.

The Bill was reserved on the ground that it was repugnant to the provisions of the Industrial Disputes Act, 1947 which was an existing law on a concurrent subject.

On 21st July 1981, a letter was received from the Ministry of Home Affairs stating that the Ministry of Labour who were consulted in the matter had advised that the Central Government were already considering amendments to the Industrial Disputes Act, 1947 on the same lines as proposed in the Bill by the State Government and that the State Government may consider deferring the proposal pending decision of the Central Government in the matter.

On 7th September 1981, the State Government again expressed its anxiety that the Bill should be placed on the Statute Book and the benefits accruing therefrom made available to the working class as early as possible and that it may take some more time for the Government of India to bring the legislation contemplated by them.

On 1st February 1983, the Government of India informed the State Government that the Secretaries' Committee before which this Bill was placed felt that the right sought to be conferred on workman should not have general applicability and certain categories of industries and services should be insulated from the operation of the provisions, *viz.*, the essential services and vital sectors. The State Government was advised to consider modifying the proposal in this regard.

On 4th October 1983, the Government of India were informed that having regard to the provisions of section 2-A of the Industrial Disputes Act, which confined itself to individual disputes relating to the discharge, dismissal, retrenchment or termination of the services of an individual workmen, the Bill did not cover cases of strikes and lock-outs, etc., which have wider impact upon industrial sectors. The Government of India were informed that as the Government of India had already given their concurrence to the above Bill and as the Bill had been passed by both Houses of the Legislature, the assent of the President may be expedited.

On 6th March 1984, the then Labour Minister Thiru Veerendra Patil informed the then State Labour Minister that the Sanat Mehta Committee constituted by the National Labour Conference has also made recommendation, more or less on similar lines and that they have not so far taken a decision in this regard and that till such time a decision was taken, it was not possible for them to communicate the Government of India's acceptance to the proposed amendment.

In view of the stand taken by the Government of India, this Government informed the Government of India that this Government have decided to wait till such time a decision is taken by the Government of India on the report of the Sanat Mehta Committee. Thus the Bill has been subjected to protracted correspondence. The Bill is still pending with the Government of India.

2. **The Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Bill, 1981 (L.A. Bill No. 64 of 1981).**—On 23rd September 1981, this Bill was sent to the Government of India for obtaining the assent of the President in Lr. No. 28802/81-2. The Government of India were reminded several times, *viz.*, on 24th October 1981, 3rd December 1981, 11th January 1982, 10th February 1982 and 18th March 1982. On 17th March 1982, the Government of India forwarded the representations of Sri-la-Sri Ambalavana Pandara Sannathi Avl. raising certain objections to the provisions of the Bill and asking for the comments of the State Government. On 7th September 1982, the comments of the State Government were sent. The legal contentions raised by the Adinathar were also sent. It was also pointed out that the decision of the Madras High Court in the writ appeal had no application to the Bill in question and that an appeal has been preferred to the Supreme Court.

Again, on 17th June 1982, the Government of India have sent further representation from Sri-La-Sri Ambalavana Pandara Sannathi and asked for the comments of the State Government.

Again on 4th January 1983, the Government of India asked for the comments of the State Government and suggested that it is perhaps advisable either to await the judgement of the Supreme Court or to take such other steps to have the Madras High Court judgment reviewed.

On 2nd April 1983, this Government replied to the points raised by the Government of India and stated that the Bill was Constitutional and that the assent may be expedited. Further reminders were sent.

Again on 8th June 1983, the Government of India asked for the comments of this Government with reference to Article 26 of the Constitution. On 1st December, 1983, this Government replied that the Bill does not infringe Article 26 and asked for the expedition of President's assent. The Government of India were again further reminded.

On 7th January 1984, the Government of India referred to some judgements of the Gujarat High Court and asked for comments. On 5th June 1984, it was pointed out that the Gujarat judgement had no application and asked for the expedition of President's assent. On 9th July 1984, the Government of India remarked that the Bill in so far as it relates to removal of the trustee for appointing a successor who has not the capacity to discharge his functions will infringe Article 26 of the Constitution. This Government again replied by a D.O. Letter from the Law Minister to the then Union Law Minister stating that the Bill is Constitutional and requesting for President's assent, enclosing a note on the subject.

The Government of India were again reminded on 4th July 1985. On 19th August 1985, the Law Secretary of the State Government discussed the matter with the Union Law Secretary, Legal Affairs and explained the Constitutional position, pointing out that according to the judgement of the Supreme Court in *Mahalinga Thambiran's case* (AIR 1984 SC 199) relied on by the Madras High Court, custom could be modified by a Statute and accordingly the Bill passed by the State Legislature is constitutionally valid. The then Union Law Secretary wanted the Advocate General's opinion obtained. On 2nd September, 1985, the Advocate-General has been asked to give his opinion on this subject and his reply is awaited.

The Government of India's point of view is that the Bill, in so far as it relates to the removal of the trustee, for nominating a successor not having the capacity to perform the duties and functions under the Act, is not Constitutional. The Bill contains enough safeguards before removing a trustee. A suit lies to a civil court with an appeal to the High Court. This is a case where assent is being delayed as, in the Government of India's view, the Bill is not constitutional. It is submitted that this is for the Supreme Court to decide whether the Bill passed by the State Legislature is constitutional or not and the Government of India cannot assume the functions of the Supreme Court in deciding the Constitutionality of the Bill.

3. The Tamil Nadu Recognition of State Register of Practioners of Indian Medicine Bill, 1983 (L.A. Bill No. 14 of 1983).—The Bill was sent to the Government of India for obtaining President's assent on 14th February 1983.

The Registrar of Indian Medicine as maintained by the Tamil Nadu Board of Indian Medicine has no statutory basis and is based on only executive order issued by the State Government from time to time. The election of members representing the Ayurveda, Sidda and Unani systems of Indian Medicine to the Central Council constituted under the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) is made with reference to the "State Register of Indian Medicine" as defined in section 2(1)(j) of the said Central Act. It has been represented to the Government that unless the State Register of Indian Medicine is given statutory basis, the Medical Practioners who are Registered as on the 1st February 1983 in the said State Register will be ineligible to stand for, or vote at, the aforesaid election. It was therefore proposed to provide necessary statutory basis to the said Register of Indian Medicine by undertaking necessary legislation. The Bill sought to achieve the above object.

On 27th June 1984, the Government of India requested the State Government to give an assurance that they could make the Necessary amendment in the Bill after the assent of the President is accorded to the Bill.

4. The Tamil Nadu Building and Construction Workers (Conditions of Employment and Miscellaneous Provisions) Bill, 1984 (L.A. Bill No. 44 of 1983).— On 8th November 1984, the Bill was sent to the Government of India for obtaining President's assent.

At present there is no separate legislation to safeguard the interests of the workers engaged in building and construction works in regard to their wages, health and safety and other working conditions. The need to enact a separate legislation in this regard has been keenly felt. The Government have, therefore, decided to enact a separate legislation to regulate the working canditions of the workmen engaged in building and construction work in this State. The Bill sought to achieve the above objects.

On 23rd March, 1985, the Government of India have asked for some clarifications.

5. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amemdment Bill 1985 (L.A. Bill No. 44 of 1985).—On 3rd July 1985, the Bill was sent to the Government of India for obtaining the President's assent.

In terms of the existing provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (T.N. Act 58/61), no public trust and educational institution can acquired any land.

Representations have been received by the Government that the above prohibition to acquire land imposed under the said Act has hampered the growth of educational institutions and hospitals. The public trusts, educational institutions and hospitals have not been able to acquire land even for bonafide purposes, that is, for the establishment or for the expansion of educational institutions and hospitals. It has, therefore been considered necessary to amend the said Act suitably taking power for the Government to grant permission in favour of public trusts, educational institutions and hospitals to hold or acquire land for such educational and hospital purposes subject to the conditions that may be imposed by the Government in the order granting such permission. To give effect to the above proposal, it has been decided to amend the said Act suitably. The Bill sought to give effect to the above proposal. The provisions of the Bill as introduced in the Legislative Assembly and as passed by both Houses of the Legislature were the same.

On 26th November 1985, an interim reply was received from the Government of India. The Government of India were reminded on 16th December 1985.

6. The Tamil Nadu Urban Land (Ceiling and Regulation) Amendment Bill, 1985 (L.A. Bill No. 45 of 1985).—On 31st July 1985, the Bill was sent to the Government of India for obtaining the President's assent.

In terms of the existing provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978), public charitable or religious trusts, educational institutions, hospitals and industrial undertakings cannot sell any vacant land even for the purpose of promoting the objectives of the trust or for the purpose of expanding the educational activities of such educational institutions or preserving or maintaining the industrial growth of such industrial undertaking. Representations have been received that the prohibition to sell the whole or a portion of a vacant land held by such public charitable or religious trusts, educational institutions, hospitals and industrial undertakings, hampers the growth of the said public trusts, educational institutions, hospitals and industrial undertakings. It has, therefore, been considered necessary that in the case of public charitable or religious trust which is desirous of starting an educational institution or a hospital or to carry out the objectives of the trust, when they do not have adequate financial resources, such trust may be permitted to transfer by way of sale, mortgage, lease or otherwise the whole or a portion of a vacant land by it to carry out the abovesaid objectives. Such permission is to be granted by Government on application made to the Government. The permission will be subject to such conditions. as the Government may impose in the order granting the permission, Similarly, in the case of educational institutions, hospitals and industrial undertakings, it has been considered necessary that they may be permitted by Government to transfer by way of sale, mortgage, lease or otherwise the whole or a portion of the vacant land held by them so that the proceeds of such transfer may be utilised for the purpose of expanding the activities of educational institutions or hospitals or preserving and maintaining the industrial undertakings or promoting the activities of the industrial undertakings subject to the conditions imposed by Government in the order granting the permission in favour of such institutions, industrial undertakings and trusts. It has, accordingly, been decided to amend the Act

suitably for the above purpose. The Bill sought to achieve the above object. The provisions of the Bill as introduced in the Legislative Assembly and as passed by both Houses of the Legislature were the same.

On 26th August 1985, the Government of India offered some remarks. The Bill is pending with the Government of India.

II. Withholding of assent :

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Bill, 1980 (L.A. Bill No. 26 of 1980).—On 30th August 1980, this Bill sent to the Government of India for President's assent.

Clause 5 of the Bill seeks to insert a new chapter as Chapter III-A in the principal Act. The said new Chapter III-A contains new section 23-A to 23-G. Sub-section (1) of the new sec. 23-A invalidates all transfers effected on or after 1st January 1959 and before 6th April 1960 by any person including a trust who held land in excess of the ceiling area on 6th April 1960 or any person including a trust who would have held land in excess of the ceiling area on that date but for the transfers referred to above. Sub-sect. (2) of the said sec. 23-A seeks to exempt any transfers made to any person (other than a trust) not exceeding one unit of land which is defined as five ordinary acres of dry land or two and a half ordinary acres of wet land, subject to the conditions provided therein. Sub-section (4) of the said section 23-A provides for the publication of a notification by land Commissioner to the effect that the surplus land is required for a public purpose and on the publication of such notification, the land specified therein shall be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances. The new sec. 23-C *inter-alia* provides for the application of the provisions contained in the principal Act including the provisions relating to the amount payable in respect of lands acquired under that Act. The new section 23-E provides for the constitution of a Committee consisting of the persons referred to therein, for the purpose of gathering information and particulars relating to transfers referred to in sec. 23-A (1), etc.

On 13th March 1981, the Government of India sent a letter containing the representation from the Thanjavur District Agriculturists Association and also stated as follows :—

"The examination of the Bill in various Departments of the Union Government has brought out the following points :—

(i) The Tamil Nadu Bill seeks to invalidate certain transfers made on or after 1st January 1958 and before 6th April 1960 when the the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, came into force. The proposed invalidation will be both inexpedient as a public policy and highly discriminatory in its operation. Unless there are exceptional reasons, settled rights in land should not be disturbed and it is as much an obligation of the State to prevent uncertainty in the property rights of citizens as to ensure that these rights do not operate in a manner detrimental to public good. These rights, it is obvious, should be subject to modification if such modification serves an important public purpose. In the present case, there is no information as to the public good that will be served with the proposed invalidation of the transfer under reference. The State Government have no doubt said that some big land holders are delieved to have transferred parts of their holdings soon after the then Revenue Minister of the State referred to the prospect of a ceiling legislation in the Legislative Assembly some time in March 1958 but there is no information as to the scale of such transfers. The principal Act was published in the Fort St. George Gazette, on 2nd May 1962 but was given effect to from 6th April 1960, when the Bill was published in the Gazette. Transfers made after the latter date with a view to defeating the provisions of the Act were invalidated. It would thus appear that, when the principal Act was enacted, the State Government had thought that the larger number of malafide transfers can be invalidated if the Act was given retrospective effect from a date about 2 years earlier. During all these years, the State Government have not had any occasion to review this policy. To re-open, at this stage, transfers made nearly two decades ago would appear to be warranted by the amount public good likely to be served by such an extraordinary step. It is not unlikely that such a measure would only promote unsettled conditions in land rights without resulting in any tangible or substantial benefit.

(ii) As regards the discriminatory character of the Bill, a reference may be made to the explanation to sub-clause (1) of the proposed clause 23-A according to which "transfer" does not include partition. If the then Revenue Minister's announcement in March 1958 is presumed to have occasioned large scale malafide transfers, it would be reasonable to presume that a large number of such transfers would have been through partition. If partition is not disregarded, transfers which are no more than a legal fiction (since the land is retained with the family) are validated while transfers which may really convey the interest to another person would become void. It is natural that the larger number of malafide transfers should have taken place through the device of partition and, by its refusal to interfere with partition the Bill will in effect discriminate against bonafide transfers while protecting malafide and collusive transfers.

(iii) As regards the legal position, the proposed amendment would fall foul of the second proviso to Article 31-A of the Constitution. As per the said proviso. it has been laid down that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the

time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof.

(iv) The proposed legislation in so far as it omits to make provision for payment of compensation at the market value of any estate referred to in the said proviso. In view thereof, the Bill to the aforesaid extent would be unconstitutional. The mere fact of inclusion of the parent Act in the Ninth Schedule (item 46) would not save amendment proposed to be made.

In view of the consideration referred to above it may not possible to recommend to the President to grant his assent for the Tamil Nadu Bill referred to above.

On 4th May 1981, a reply was sent to the Government of India pointing out that the Bill seeks to plug out the loopholes in the Land Ceiling legislation and to achieve real purpose of ceiling law and also pointing out that the Government of Tamil Nadu have already stated that the Bill would have to be included in the Ninth Schedule to the Constitution so that the law cannot be challenged as violative of the second proviso to clause (1) of Article 31-A of the Constitution. On 4th May 1981, the Chief Minister sent a letter to the Prime Minister. On 12th October 1981, the Deputy Secretary to the Government of India in Lr. No. 17/68/80-Judl. addressed to the Secretary to the Government of Tamil Nadu, Law Department, has stated that the President's assent was withheld. It was stated in that letter as follows :—

"With reference to your letter No. 21045/80-1, dated 30th August 1980 on the subject noted above, I am directed to return herewith two authentic copies of the Bill withholding President's assent from the Bill under Article 201 of the Constitution of India. Their receipt may kindly be acknowledged". The Government of India in the letter, dated 22nd January 1982 stated the reason as follows:—

"I am directed to refer to your letter No. 21045/80-9, dated 5th January 1982, on the subject cited above and to say that the matter was considered at length and the Government of India was of the view that the transactions sought to be set aside by the Bill were made nearly two decades ago. During the intervening period the land involved may have changed hands several times and the present owner in all likelyhood, would not have been a party to the malafide transaction. If small landholders and genuine cultivators are exempted, and if transactions made through partitions were exempted the residual cases will be few and will not justify the extraordinary measure the Bill contemplates. The State Government had pointed out that the scheme of partition exists in the principal Act which was enacted with the assent of the President. While this is not denied, the Government of India have, from time to time, urged the State Government to reconsider these provisions which have resulted in quite some land remaining outside the ceiling law and note should be taken of these suggestions. In brief, the exemption of transactions made through partitions was discriminatory and repugnant to the avowed purpose of the Bill. Further, more, the Government of India was not in favour of disturbing settled and long standing rights in land unless there were compelling reasons and the reasons do not seem to exist in this case.

The legislation in so far as it omits to make provision for payment of compensation at the market value of any estate referred to in the second provision to Article 31-A of the Constitution infracts the the guarantee afforded by the said proviso. In view thereof, the Bill to the aforesaid extent would be unconstitutional and that the mere fact of inclusion of the parent Act in the Ninth Schedule (Item 46) would not save the amendment proposed to be made."

Thus, it will be seen that the Government of India was not in favour of disturbing settled and long standing rights. It may be pointed out that this is a Bill which was passed unanimously by both Houses of the State Legislature.

Articles 256, 257 and 258 :

As stated in page 34 of the report submitted by the State Government under the heading "Administrative Relations". Articles 256, 257, 365 and 356 are the four Articles in the Constitution which have both catalytic and fatalistic effect on the States, in view of the possible unitary exercise of executive power by the Union under those Articles. As stated at page 37 of the Report, the expressions such as (a) as to ensure compliance with laws made by Parliament and for the issue of directions as may be necessary for that purpose (Article 256).

(b) as not to impede or prejudice the exercise of the executive power of the Union and the consequential power to issue directions as may be necessary for that purpose (Article 257(1)).

(c) failure to comply with or to give effect to the directions given by the Union raising a presumption that a circumstance has arisen in which the State cannot be carried on in accordance with the provisions of the Constitution (Article 365).

(d) the report of the Governor or the satisfaction otherwise by the President for his assumption of all the functions of the governance of the State (Article 356) comprehend powers reserved by the Union under the Constitution to have an over-riding influence, over the States bringing down the theory of autonomy of States to a catastrophic minimum. This is so because the use of such power during the three decades in the past have ex-necessities demonstrably proves that there has been excessive or misuse of such powers resulting in extra-ordinary steps being taken and the edifice of State autonomy made to crumble. We have already expressed the view that the chain reaction between Articles 256 and 257, 365 and 356, which is in the nature of catalytic influence is bound to result in a fatalistic instrusion into the autonomy of the State. Articles 256, 257, 365 and 356 are therefore to be deleted; For the hopes of the States in having preserve them as reserve measure have become dupes and as the Administrative Reforms Commission itself said the assumption of governance

by the President (under Article 356) has not become exceptional feature but a normal phenomenon and such a drastic medicine prescribed in the Constitution is being administered a daily food as a matter of course instead of being resorted to as a last resort. The Government are also of the view that Articles 357 and 360 should also be omitted.

Planning :

As regards the suggestion made by the Chairman the local bodies can be entrusted with planning and some functions can be processed by the State Government, it is submitted that the various laws governing local bodies provide for this and in particular, the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) contains provisions regarding the regulation of planning, including planning for the Metropolitan City of Madras.

Entry 52 of the Union List :

As stated at pages 17-18 of the Report submitted by the State Government, the Industries (Development and Regulation) Act, 1951, has been passed with reference to this entry and Parliament has brought many items within the scope of this Act with the result that the Legislative power under entry 24 of List II, viz., "Industries subject to the provisions of entries 7 and 52 of List I" becomes actually ineffective because, to the extent Parliament has included any industry within the scope of the Industries (Development and Regulation) Act, 1951 or any other Act under entry 52 as a controlled industry, the legislative competence of the State Legislature is deprived of. This certainly affects the federal structure of the Constitution in the sense that the State Legislative is made incompetent in respect of the controlled industries coming under the Acts enacted by Parliament under entry 52 of List I.

Further, the expression "in public interest" is so wide that any and every industry can be brought within the scope of entry 52. It was for this reason that the Government of Tamil Nadu suggested that the core industry of crucial importance for national development should be specified in the entry itself and this Government has recast entry 52 as at page 18 of the Report submitted by the State Government. The request of the State Government is that the Commission should make an exercise on this subject and suggest specifically as to what entry should be specified in entry 52 itself. The Chairman's suggestion that if the Commission goes into details, it will be risky, requires reconsideration and the Commission may accept the suggestion of this Government that the entry 52 itself should specify the industries without giving any room for the Parliament or the Central Government to encroach on the Legislative powers given to the State Legislature under entry 24 of List II and on the co-extensive executive power of the State Government.

GOVERNMENT OF TRIPURA

Memorandum

MEMORANDUM

Commission has sent questionnaire containing several parts. We do not feel it necessary to give answer to each question separately. We propose to give a compact statement as follows before the Commission.

We do not agree with the view that our Constitution is basically sound and flexible enough to meet the challenge of the changing times. We have already amended our Constitution of 45th times during the period of 34 years. People of India will remain grateful if the Commission can find out any other Constitution of any worthy democratic country which has undergone so many changes within a span of 34 years.

The difficulties, issues, tensions and problems which have arisen in Union-State relationships are mainly due to substantial defects in the scheme and fundamental fabric of our Constitution. It is also true that over the years these relationships have not been worked out in conformity with the minimum guarantee laid down in the Constitution to protect the interest of the States.

These difficulties, problems and issues cannot be resolved without major constitutional amendments. The particulars of the distortions have not been mentioned in the questionnaire and, therefore, no definite answer can be given. Change of executive procedure, practice are absolutely necessary. These are creating hindrances in respect of Union-State relationships. But only change of executive procedures and practices will not solve the problem unless the Constitution itself is suitably amended. Advisory body, according to experience gained by us during these years, have no value and it is the common feeling that the positive recommendations of the Advisory bodies are not acted upon if it adversely affects the vested interest.

Yes, we do agree that the protection of the independence and insurance of the unity and integrity of the country is of paramount importance. But we are sorry to say that there is no effective provision in the Constitution in this regard. Rather our experience is that for temporary political gain and in the interest of capitalist and imperialist countries divisive forces have been given opportunities to be active in our country.

Constitutional provisions regarding the obligations of the Centre and the State in respect of the country as a whole and to one another are not reasonable. The provision require further considerations so that fullest autonomy are given to State in respect of the matters with which only States are concerned.

According to the provisions our Constitution, India i.e. Bharat is a Union of States. Under Article 3 of the Constitution power has been given to the parliament to (a) form a new State, (b) alter areas, boundaries and name of the existing States, after observing certain procedures. Whatever might be the power given to the parliament, concept of 'State' as contemplated in our Constitution cannot witheraway not to speak of its complete abolition. From the scheme of our Constitution it is apparent that our Constitution is neo-federal in character. Distribution of different powers—executive, legislative and judiciary between the Centre and the States amply suggest that India is a federal country, though the peculiar orthodox characteristics like agreement between the States, separate Constitution of the States etc. are not present.

We think that Parliament shall have the right to convert union Territories into State, but must not have other powers any right as given to it under Article 3 of the Constitution. If such powers are given to the Parliament divisive forces shall always try to put pressure upon the Central Government to pass necessary enactment in exercise of its power under Article 3 of the Constitution and in fact this power of the Parliament has created so many problems in our country.

We must not overlook that by much controversial 42nd amendment in the preamble we have included the word 'Socialist' and it is expected that such insertion was not without any meaning. In the present political system we can find two types of federalism : (1) Socialist Federalism and (2) Capitalist Federalism. If we look at the Constitution of USSR we shall see a model of socialist federalism. Of course, Soviet Constitution, 1977 has been possible only after a long period of socialist rule in that country. But even for socialist rule in the country, Constitution must have some provisions through which socialist economy can be established in the country and thereby socialist federalism can be achieved.

It is too late in the day to argue that only by inserting the term 'Socialist' in the preamble of the Constitution, a country can be changed into a socialist country.

To make federalism and democracy as contemplated in our Constitution meaningful we have to amend our Constitution. The Constitution as it stand today, in many fields has spent its force, and in other fields it has been used to throttle democracy and it is being used to oppress weaker section of the people. Sonorous words used in the preamble of the Constitution displaying left ideals do not melt ice any more. In reality social justice and dignity of human beings have ruthlessly been ravished during this entire post constitutional period. Poor citizens have been exploited ruthlessly and capital has been accumulated in few hands. All these were/are possible because provisions of our Constitution do permit such

situation to exist and continue. Basic fabric of our Constitution encourages growth of capitalism and exploitation of majority of people. Keeping this basic fabric intact, introduction of the word 'Socialist' in the preamble of the Constitution does not make our country a Socialist country. Socialism, by this time, has been well established in many countries and it has an internationally accepted meaning and system of administration. Inclusion of the word 'Socialist' in our Constitution does justify that the provisions of the Constitution should be so amended so that socialist economy can be established to make way for socialist federalism. Our Constitution must have provisions through which socialist economy and socialist rule can be established to make the introduction of the word 'Socialist' in the preamble of the Constitution meaningful. Our entire Constitution should be amended so that the socialist federalism, socialist economy, socialist society can be achieved and established and justice in socialist way can be administered, because under the present capitalist system no body can expect those in our country.

While the basic nature of the Constitution framed in 1960 was declared to be federal in principle, its content was excessive centralisation. Furthermore, in its actual working it became still more centralised. The fact that the same political party was in the saddle at the Centre and in all the States for nearly three decades facilitated this process.

The States were made to surren der 'Voluntarily the rights that they had in the original provisions of the Constitution. Many of the amendments made to the Constitution during the last 37 years deprived the States of whatever element of autonomy they originally had.

That is why, the moment other parties started heading the administration at the State level, the question of Centre-State relations became the subject of hot debate. Once the non-Congress State Governments started agitating for greater powers and resources, the Congress-led State too started joining the demand. The memorandum submitted by the State Governments to the successive Finance Commissions will show that there is hardly any difference between some of the Congress-led and other State Governments in protesting against the inroads made into the State resources—a process that has been uninterruptedly going on during this entire period.

The entire question of the relations between the Union and the States, therefore, requires thorough re-examination. In the very framing of the Constitution the federal principles and State autonomy were to a large extent violated. We do not agree with the propositions that there is nothing wrong with the Constitution as it was framed and that what is wrong is only its working. At the same time, we hold that in its actual working the Constitution came to be distorted, ever the limited extent of autonomy that found a place in the Constitution has been eroded. We, therefore, suggest a thorough re-examination of the basic provisions of the Constitution. Before proceeding to spell out how this should be done, let us explain our general position with regard to Centre-State relations.

We stand for the unity of the country and fight all forces of disintegration, we definitely stand for an effective and efficient Centre capable of defending the country, organising and consolidating its economic life and adequately armed with powers to discharge its other jobs like foreign policy, communications, foreign trade etc.

Unfortunately, this urge for unity among the people, their desire that India should be protected against external aggression has been exploited by the ruling party to appropriate dictatorial powers to the Centre, abrogeting and eroding the powers of the constituent States. The ruling party's idea of a strong centre is a dictatorial Centre carrying out its behests. The fact that the notorious 42nd amendment of the Emergency days reduced the States to the position of a subordinate dependent of the Government of India, showed that an attack on their powers was the inevitable requirement of authoritarian rule. The question of Centre-State relations therefore, not only relates, to the question of defending Indian Unity, it has become an issue in the struggle between the forces of dictatorship and democracy.

This is not accidental. The Constitution that was framed after independence reflected the needs of the capitalist path of development which required India as unified, single, homogenous market. It reflected the needs of the big capitalists allied with landlords, she considered the demand of democracy, state autonomy or equality of languages, as obstacles to their economic domination and political power.

We state that it is but natural that in such a situation the contradiction between the Central Government and the States should have grown. Underlying these contradictions often lies the deeper contradiction between the big bourgeisie of this or that State on the other. This deeper contradiction gets constantly aggrevated due to the accentuation of the unevenness of development under capitalism.

The pre-vested interest policies of the Centre, its compromise with feudal forces and imperialist agencies, the economic crisis, the improverishment of the masses resulted in attacks on democratic rights and the rights of the States.

This process was accompanied by abject economic dependence of the States on the Centre. The Centre decides the amounts of public borrowing to be done by the States, it monopolises credit made available by the banking sector and makes the States dependent on adhoc grants sanctioned by it. All these together with the method of determining the size of the State plan reduced planning in the States to a mockery and makes it an adjunct of the Central plan, to be curtailed or expanded according to the convenience and needs of big business which dominates the thinking is Central plans. Backwardness and perpetuation of unevenness result from this. Planning in States is not geared to the needs of the people of the States or to the genuine need of all India development.

Over the years this concentration of the political and economic power at the Centre has been making inroads into whatever federal elements there were in the Constitution. The Emergency with its Constitutional Amendment Acts, enabled the sending of the

Central Reserve Police to the States without the prior consent of the State Governments, with the further provisions that these forces when deployed in the States would take their orders only from the Central Government. The unilateral powers of the Centre to declare some areas of the entire State as 'Disturbed Area' to send Army, is one more instance of its autocracy. These optimised the process of extremes centralisation.

The Centre was armed by the Constitution with sufficient powers to intervene and deal with any problems arising in any part of the country. Added to this are the powers which the Centre assumed for itself during the thirty-year-long central rule of one party, with most of the State being ruled by the same party. These enormous powers were often used against opposition parties duly electcd in State elections. By misusing the Governor's power, minority ministries of the ruling party were installed and the verdict of the electorate was nullified.

Similarly by withholding presidential assent to bills passed by the State legislatures, the Centre has succeeded in sabotaging progressive legislation passed in the interests of the people. The process of agrarian and educational reform started by the 1957-59 Government of Kerala were blocked by the Centre. Recently the agrarian legislation passed by the left Front Government of West Bengal was sent but has not received President's assent, though months have passed since the Legislature voted it. The measure to grant recognition to trade Union on the basic of secret ballot passed by an earlier Left Front Ministry was killed using the same device of withholding assent. The Andhra Bill to abolish the Upper chamber in the State has also been now blocked.

The defence of the unity of India, the preservation of democracy, the coordination of planned economic development and other basic tasks require full and real coordination of the activities of the Central and State Government. That is why we propose autonomy for the States. Without this, India unity will not be durable, the feeling of being one people and one country will be weakened. Against the attack of divisive forces what is required is a strong sense and urge for unity, State autonomy will go a long way in fulfilling this need. The State Legislatures and Governments must have sufficient freedom and powers to fulfil the desires and mandates of the people electing them. Denial of this freedom to the elected legislatures and Government of States, as if the mandate received by the ruling party at the Centre is all that matters, reduces the constituent federal units to the status of dependencies, and lops off one arm of Indian democracy.

We do not believe that a correct solution of the question will *ipso-facto* solve the problems of the Indian people. Their solution relates to changing the basic structure of society. But arming the States with autonomous powers, relating the dectatorial grip of the Centre and the ruling party will help people to fight the grip of the vested interests on the States and the Central Government.

Article 263 of the Constitution of India should be amended and reformulated to ensure that the provisions relating to inter-State Council are made mandatory so as to make it incumbent under the provisions of the Constitution to form an inter-State Council. The Council should be constituted as follows :—

(i) The Prime Minister should be its Chairman.

(ii) The Council should also have a Vice Chairman and this post of Vice Chairman should be filled up by annual rotation by the State Chief Ministers.

(iii) Only the Prime Minister and all the Chief Ministers of different States should be the member of the Council. The Council should meet at least four times during the year and the agenda of the meeting should be decided upon by the Prime Minister in consultation with the Vice Chairman. There should be provisions for emergency meetings to discuss particular situations when the invocation of Article 356 or Article 365 are under contemplation. The Council should have a permanent secretariat to be financed jointly by the Union and States.

The aforesaid Inter-State Council should have among others, the following functions:—

(a) to give its view on any proposals for interreference with the boundaries of a State, or other matters covered by Article 3 of the Constitution;

(b) to offer its view in case a bill passed by a State Legislature has been referred to the President for his consideration;

(c) to consider proposals for removing a serving Governor;

(d) to decide whether directives are to be issued under Articles 256 and 257 and to reach decisions under Article 365 where such situations are expected to arise;

(e) to decide whether President's rule should be imposed in a State under Article 356;

(f) to formulate guidelines to be followed by the Governor of a State; and

(g) to lay down the functions and responsibilities of the permanent agency to supervise and monitor the distribution of resources between the Union and the States.

(h) The National Development Council be supplemented by a properly constituted Inter-State Council in terms of Article 263 as suggested hereinabove with weightage given to the representation of the State Governments. The Planning Commission should be converted into a Secretariat of the inter-State Council and its proposals must be decided upon by the Council, again with appropriate weightage given to the points of view of the State Governments. The Union Ministries must not be allowed to impose their ideas on the Planning Commission and the role of centrally sponsored schemes must be drastically reduced. National Development Council as stated hereinabove should be substituted by the inter-State Council to be set up in terms of duly amended Article 263 as suggested hereinabove.

Article 247 to 254 of the Constitution should be so amended so that the Parliament's powers to legislate on items belonging to the State List do not exceed beyond the period of six months and each of such proposed legislation must first be approved by the inter-State Council, and any proposal to renew any such proposal must have the prior approval of the inter-State Council. Constitution should be amended so that Concurrent List is totally abolished and the items mentioned in the Concurrent List are 'enblock' included in the State List *i.e.* List-II. The residuary powers mentioned in List I should, instead of keeping them in the hands of Central Government, be given within the jurisdiction of the State Government.

All India Services may be retained. But provisions must be there so that the officers belonging to All India Services while serving in a particular State should be, for all purpose, within the disciplinary jurisdiction of that State Government and not under the Central Government.

Unity in diversity is the philosophy which we pursue. Each State has its own peculiarities, tradition, culture, language etc. Therefore, only State can, by way of proper scheme of education, maintain and flourish those traditions, cultures, peculiarities etc. Advancement and also preservation of those cultures, traditions, languages etc. are eminently necessary for the meaningful integration and unity of our nation.

Education should be given exclusively within the domain of State so that each State can make best endeavour, without intervention from the Centre, to flourish and advance the cultures, traditions, languages, etc. of the State.

While enlarging the scope of the State sphere, we must also try to preserve and strengthen the Union authority in subjects that could be carried out only by the Central authority and not by any single State, such as Defence, Foreign Affairs including Foreign Trade, Currency and Communication and Economic Coordination.

Heavy industries, electric power, oil and coal or irrigation schemes which concern more than one States have to be kept in the Union List, so that there can be a common policy. In matters concerning industrial licensing, etc. major modifications in regard to allocation of powers between the Centre and the States are called for. The list in the Seventh Schedule should be reformulated so that the States may be given exclusive powers in respect of most of the industries.

The right of Central Reserve Police or other Police forces the Union Government may raise to operate in the States, should be withdrawn. The subject of law and order and the Police should be fully in the States sphere and the Centre should not interfere with its own specially created forces.

Role of the Governor

This is another provision taken over from the provisions British made Constitution and written into the 1950 Constitution. The Governor under the Constitution was the appointee of the British Government and was responsible to it through the Governor General. The only change made in the new Constitution of free India is that the Governor is an appointee of the Central Government which means the agent of the ruling party at the Centre. The Office has in fact been used by the ruling party at the Centre to deny the people of States to have Governments of their choice and impose on them unwanted Government, etc. The office has also been used to provide for the leader of some faction in the ruling party who has become inconvenient to its 'high Command'. It is, therefore, ridiculous for any body to attribute the quality of 'impartiality' to the Governor.

The post should be abolished and, if this is not possible for any reason, the post should be filled by a somebody who enjoys the confidence of the State Legislature, no Governor to continue when there is a change in the elected legislature. The present provision leads to conflict between the elected executive, namely, the Council of Ministers and the formal head of State who is responsible not to the elected legislature but to the executive at the Centre.

The Office of the Governor is an 'opicentrum' of our Constitution. This office was created by the British imperialist to protect their interest and now it has been followed by the ruling class to protect their vested interest. In a democratic society the office of a Governor who is an appointee of the Central Government to keep a watch over the peoples' representative runs counter to the concept of democracy. Therefore, the post should be abolished and, if this is not possible for any reason, then it must be filled up by a person as stated hereinabove and the function of this post should be subject to the provisions of Article 263 as proposed.

Administrative relations

Apart from the office of the Governor, there are several other provisions which enable the Centre indirectly or directly to interfere in the administration of States. The most important of them are the powers vested in the Central Government to dismiss the State Governments, dissolve State legislature etc. These have been used in a notoriously partisan way.

All India Services have a special feature in our Constitution and thereby it can be said that the administration in our country is a peculiar fusion of Cabinet from the Government and bureaucratic Government. We cannot simply deny the dominant role of bureaucracy in the administration in the set up of our present Constitution. This position must be changed.

All India Services like the IAS, the IPS etc., whose Officers are posted to the States, but remain under the supervision and disciplinary control of the Central Government this system must be abolished. There should be only Union Services and State Services and recruitment to them should be made respectively by the Union Government and the State Government concerned. Personnel of the Union Services should be under the disciplinary control of the Union Government and those of the State Services under the disciplinary control of the respective State Government. The Central Government should have no jurisdiction over the personnel of the State Services. Appropriate

provisions must be made so that persons belonging to All India Services while serving under a State Government should remain under the disciplinary control of that State and not under the Central Government.

Financial relations

No other part of the Constitution has been subjected to such universal criticism from State Governments including those headed by the party ruling the Centre as its financial provisions. The Memorandum submitted by the State Governments to successive Finance Commission would show how wide is the gulf between the Centre and the States on the question of financial powers and resources. A complete overhauling of the entire field of financial relations is thus in order. While almost every department of administration involving heavy expenses (except defence and foreign affairs) falls within the purview of the State Government, almost all the revenue earning items are with the Centre.

The Articles regarding the Finance Commission and distribution of revenues should be amended to provide for 75 % of the total revenues raised by the Central from all sources for allocation to different States by the Finance Commission. This is necessary to end the mendicant status of the States. In what proportion and on what principle this 75% of the total realisation should be divided between the States should be decided by the Finance Commission to decide on the proportion of revenues to be distributed between the Centre and the States. Its task should be only to keep the proportion that each State should get from the total financial realisation by the Centre 75% of which is to be allotted to the States.

Article 280, Clause 3, Sub-Clause (a) which provides for "the distribution between the Union and the States of the net proceeds of the taxes which are to be or may be divided between the Union and the States" should be omitted and the entire clause be redrafted so as to make it clear that it is the duty of the Commission to make recommendations to the President as to the allocation between the State of their respective shares of the proceeds. The State must also be accorded more powers for imposing taxes on their own, and to determine the limit of public borrowing in their respective cases. To achieve these objectives the Seventh Schedule Union, States and Concurrent List should be suitably amended. However, the subject covered under this head shall be subject to the provisions of Article 263 as proposed hereinabove.

Economic and Social Planning

We have explained above that the planning and co-ordination of economic development should be the responsibility of the Centre which however should be carried out in a democratic way through Inter-State Committee in which the States should have equal representation along with the Centre and whose executive organ NDC and Planning Commission should be. The process of planning however is unfortunately being used by the Central Government and the party that controls it as it likes. Added to this are such policies of planning pursued by the ruling party as have proved their bankruptcy, national economy is as a consequence in shambles.

The real solution for the crisis emerging out of this is a total reversal of planning policies. This does not perhaps fall into the purview of the legal-constitutional changes which are under consideration by this Commission. We, however, would urge that this Commission should not accept either the drive towards centralisation of the work of all economic activity in the States in the name of Central Planning (which is demanded by the ruling party) or the abandonment of the centralised planning as is suggested by some other parties. The solution is centralised planning with the active involvement of the States in the formulation and the implementation of policies, or State autonomy under centralised but democratic guidance and high decentralisation at lower level. However, the subject covered under this head shall be subject to the provisions of Article 263 as proposed hereinabove.

Miscellaneous

We would in the end touch upon four aspects of Union-States relations which are relevant in this context. They are the language of administration, the electoral system, the special status of Kashmir within the Indian Union and special features of North Eastern Region.

Our view is that in the course of the growing economic, social and intellectual intercourse the people of different States of India will develop in practice the language of inter-communication most suitable to their needs. This natural process requires that no single language is sought to be imposed on the other linguistic groups. While we are all for encouragement to the learning of Hindi by non-Hindi speaking peoples, we are of the view that the equality of all Indian language should be recognised. All Acts, Government orders and resolutions of the Centre should be made available in all Indian languages. The use of English in the field of Administration, Legislation, Judiciary and as the medium of instruction in education should be discarded, replacing it with the people's language of the State concerned. Right of the people to receive instruction in their mother tongue in educational institutions as well as its use as the medium of education in the State upto the highest standard should be recognised. The Urdue language and its script should be protected. The Eighth Schedule should be amended to include language like Nepali.

The present electoral system enables a party with minority of votes to secure a majority of seats in Parliament or Legislatures. The disastrous consequences of this were seen during the Emergency when the Congress Government elected on a minority of votes introduced measures which made inreads into the civil liberties and democratic rights of the people, reduced the Parliament and State legislature to rubber stamps of a single party—all in the name of asserting the "Supremacy of Parliament". Whatever remained of State autonomy also came under the axe.

It is, therefore, necessary to introduce the system of proportional representation and provide for right to recall. The present special status of Kashmir within the Indian Union should be retained.

The entire North Eastern Region has been neglected for long years. Some special provisions should be made in the Constitution for the entire region including the State of Tripura for its socio-economic development so that they can be at part with other State "Regional Autonomy in Tribal Compact Areas should be introduced after amending the Constitution for the proper protection of the interests of Scheduled Tribes.

There must be a separate High Court for each of the State including the State of Tripura, otherwise it is not possible for the poor persons of the State to seek redress of their grievances from the highest Court of the State. More than 80% (Eighty percent) of the total population live below the proverty line. In the State of Tripura we do not have Bench of High Court on all the working days of High Court. At present, State of Tripura is under the jurisdiction of Gauhati High Court having its principle seat at Gauhati. The geographical position of the State is such that it is not only expensive but also takes a long time to reach Gauhati on road. Only moneyed people can go to Gauhati by air and move the principal seat. Under these circumstances the poor people of the State cannot have the benefit of administration of Justice by the highest Court of the State on all working days of the Court. To the poor people of the State, Article 226, Article 227 Sections relating to bail to be granted by High Court, urgent inter-locutery orders both Civil and Criminal which can only be issued by High Court have become illusory. Under these circumstances there is a need for a separate High Court for the State of Tripura. Administration of justice and independence of judiciary both are basic features of our Constitution. Therefore it is necessary that each State should have a High Court having its principal seat at that State so that poor people of the State can move the highest Court of the State without incurring unnecessary heavy expenditure. A common High Court for five States in North Eastern Region is in effect is denial of administration of justice to the people living in the region. Article 231 should be wiped out from the Constitution. Each State in North Eastern Region should have a separate High Court.

GOVERNMENT OF UTTAR PRADESH

(a) Replies to the Questionnaire

(b) Memorandum

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 A Federal Constitution establishes a dual polity comprising of two levels of Government one at Centre having jurisdiction over the entire country and the other at Regional level each exercising jurisdiction in its own sphere. The citizens of federal country become subject to the jurisdiction of the laws of the two Government, Central as well as Regional. The two levels of Governments divide and share the governmental functions between themselves, each having to function within the field assigned to it by the Constitution. Both these basic requirements of a federal structure are satisfied in regard to our country.

2. There are no doubt several unique features of our Constitution which distinguish it from the Constitution of other federal countries. These features are :—

(a) The Indian Constitution provides for a good deal of centralisation. The Centre has wide powers and plays a more dominant role as compared to the States.

(b) The emergency provisions provide a simple way of transforming the system into an almost unitary system so as to meet the national emergencies effectively.

(c) In certain circumstances Parliament become competent to legislate even in the exclusive State field.

(d) The process of amendment of the Constitution is not very rigid.

(e) India is a dual polity but has a single citizenship.

3. Despite these features, essential elements of federalism are present in the Indian Constitution. The Centre is, no doubt, strong yet the States are not agents of the Centre. They exist under the Constitution and not at the sufference of the Centre. Their powers are derived from the Constitution and not from Central laws. Federal provisions of the Constitution can be amended not unilaterally by the Centre but only with the Co-operation of the Centre and the States. Thus, the essential elements of federalism are clearly present in the Indian Constitution.

1.2 The Constitution has made a well-balanced distribution of powers between the Centre and the States. In a country like ours with vast area, large population, various diversities and multidimentional problems, it appears not only desirable but necessary to give the Union the supervisory role over the States. The objective of the unity and integrity of the Nation must over-ride every other consideration.

1.3 The division of power is quite apt and elaborate for normal times and is also adequate to meet the situations arising in time of emergency. There appears no need for further decentralization of powers and functions in favour of the States.

1.4 Perhaps, there does not exist a federation of the traditional type as envisaged in its abstract theory anywhere in the world. In any case, the Federal form of Government in its rigid abstract form cannot suit a country like ours.

1.5 Our Constitution is basically sound and flexible enough to meet the demands of the changing times. Whatever else may be the reasons underlying the difficulties which have arisen in the Union-State relationship the same are not due to any defect in the fabric of Constitution and such difficulties may be overcome within the framework of the Constitution without calling for any substantial amendments in the Constitution.

1.6 & 1.7 This State Government fully shares the view that the protection of the independence and insurance of the unity and integrity of the country is of paramount importance. The Constitution of India envisages a strong Centre and contains various provisions to achieve this objective. The apportionment of the legislative function and powers has been done in such a way that the matters of national importance needing uniform laws for the entire country are placed in the Union List. The Concurrent List contains such matters on which the Parliament may not feel it necessary or expedient to initiate legislation in the first instance but if at some stage a matter assumes national importance and requires to be dealt with on a uniform all India basis then the Centre can step in to enact necessary legislation. The residuary power has been left with the Centre as per Entry No. 97 of List No. I of the Constitution of India. Article 249 reserves the power with the Parliament to legislate with respect to a matter in the State List in the national interest. There are then the emergent provisions of the Constitution. During the period in which a proclamation of Emergency issued under Article 352 is in operation, Parliament shall have the power to make laws for the whole or any part of the country with respect to any matter contained in the State List. The provisions of Articles 354 to 357 also help to safeguard the unity and integrity of the Nation. During the period in which the Proclamation of Emergency is in operation, the Presidential Order can be issued under Article 354 to suitably modify the distribution of revenue

between the Union and the States as per the provisions of Articles 268 to 279. A duty has been enjoined on the Union under Article 355 to protect every State against external aggression and internal disturbances and to ensure that the Government of every State is carried on in accordance with the provision of the Constitutoin on the report of the Governor of the State, all on any of the functions and powers of the State and its authorities can be assumed by the President in situation where the President is satisfied that the Government of the State cannot be carried on in accordance with the provision of the Constitution. The Union has also the power to issue directions to a State Government with a view to ensuring that the executive power of every State is so exercised as not to impede or prejudice the exercise of the executive power of the Union. The Union shall also have the power to issue directions to any State to ensure compliance with the Central Laws (Articles 256 and 257). Failure to comply with such directions makes it lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. These powers are meant to be exercised in extraordinary situations in order to preserve the unity and integrity of the country and are, thus, reasonable and justified.

1.8 The Parliament has no doubt been empowered to form a new State by separation of territory from any State or parts of such States as also to alter the area or name of any State but no such enactment can be made unless the views of the State or States concerned have been obtained. It would appear that no question of alterations of the area or the name of any State would arise unless necessitated by some extraordinary circumstances. In our opinion, therefore, no modification of this provision is required.

PART II

LEGISLATIVE RELATIONS

2.1 Article 249 provides for enactment of law by the Parliament on a State subject if it is necessary to do so in the national interest. There is built-in double safeguard in the article itself against the possibility of its abuse. The condition precedent for exercise of such power by the Parliament is a resolution to that effect by the Rajya Sabha. Except for a few nominated members, the Rajya Sabha is constituted of the members elected from the State legislatures who are not expected to override the rights of State unless the proposed enactment is considered really necessary in the national interest. Secondly, the resolution cannot be taken as passed unless it is supported by two-thirds majority. Thus, the chances of abuse of this provision or encroachment by the Centre on the State's legislative field are negligible. So far as the State of Uttar Pradesh is concerned there has been no instance of encroachment by the Union or State legislative field under the cover of national or public interest.

2.2 There is an elaborate distribution of legislative power between the Centre and the State. A Unique feature of the division of power is the existence of a long concurrent list of subjects for the Centre and the State and it provides sufficient leverage to meet the needs of both Central and State legislation in regard to any of the subject-matter contained therein. Keeping in view the local situations a State may legislate with respect to any matter in the Concurrent List. However, if any matter assumes national importance and requires to be dealt with on uniform all-India basis, the Centre can step in to enact necessary legislation. There might have been some aberration here and there but the elaborate distribution of legislative power has stood the test of time for over 35 years. As such there is no need for any change in the distribution of the legislative powers.

2.3 It would definitely be desirable for the Government of India to consult the State Government before undertaking a legislation on a matter included in the Concurrent List. However, no statutory provision appears necessary for this purpose and it should only be by way of convention. It may also be provided as a working arrangement that in case a State Government fails to give its views within a specified time, it would be presumed that it has no objection to the proposed legislation.

2.4 The resolution under Article 249 remains in force for a particular period. This is in consonance with the purpose of the article. It may be a matter of national interest to enact a law by the Parliament on a State subject for a short period. The situation giving rise to such resolution may come to an end after some time. The law so made should, therefore, cease to operate accordingly and the right of the State Legislature restored. If it is ever considered necessary that Parliament should make permanent law in relation to a State subject, that matter may be transferred from the State List to the Union List but the exceptional power in Article 249 should only be for a particular duration and not on permanent basis.

2.5 The present distribution of legislative powers between Centre and States is quite reasonable and does not call for a change.

PART III

ROLE OF THE GOVERNOR

3.1 The framers of our Constitution had visualised the need for a strong Centre. That is why the States in India were not given the same status as the federal units of U.S.A. Although States have been vested with a share of Governmental power yet the States are to operate under the overall control and direction of the Centre. The Centre discharges its supervisory functions through the Office of the Governor, who is appointed by the President. The Constitution thus envisages dual responsibilities for the Governor, named the responsibility towards the Centre as also towards the State executive of which he is the head.

By and large, the Governors have been discharging their responsibilities as visualised by the Constitution as also up to the expectations of the people. There was no difficulty so long as the

party in power in the States and at the Centre was the same. Some difficulties did arise when this position changed. However, no such difficulty has been experienced in this State so far.

3.2 The Governor can act in the best interest of healthy State-Centre relationship only if he discharges his constitutional duties fairly and impartially as also keeping in view the public interest.

3.3 The Governor is not a mere ornamental head of the State. He has important constitutional duties to perform. It is he who appoints the Chief Minister, dissolves the house or invokes the provisions of Article 356 if constitutional machinery fails in the State. He is not a party man. He is under an oath of allegiance to the Constitution. He has, therefore, to perform his functions fairly, impartially and with the best interest of the people of the State in mind in accordance with the Constitutional provisions.

(a) In making report to the President for action under Article 356 he should not act to serve the interest of any political party. He should explore all possibilities of an alternative stable Government. Only if he has arrived at the conclusion after an objective assessment that there is no such possibility, recourse may be taken to make a report under Article 356(1).

(b) In the appointment of the Chief Minister he ought to act impartially and objectively. There is no difficulty where a political party is in absolute majority and is able to elect its leader. Difficulty arises only when no party achieves absolute majority. In such cases the Governor has to make his assessment as to the party which may be able to form a stable Government in the State. The party having the largest number of seats should be given a chance to form the Government.

(c) Prorogation of the house has to be done on the advice of the Council of Ministers. The business before the house may have exhausted for the time being or an important Ordinance may have to be repromulgated in the interest of continuity and there may be no chance of replacing Bill being passed within time. In such circumstances it is for the Government to advise for prorogation and for the Governor to act accordingly.

However, in case of dissolution of the House, occasions may arise calling for his independent action. Where the term of the house is coming to a new house has to be elected, the Governor may accept the advice of the Cabinet for dissolution of the house a little earlier than expiry of its full-term. But where a Government has lost majority in the house, the recommendation of the defeated Cabinet for dissolution of the house should not carry much weight. Dissolution is a serious matter calling for an expensive exercise of mid-term poll and it should not be resorted to without adequate grounds.

3.4 The Governor is an integral part of the State legislature. His association with a bill at some stage is, therefore, inevitable. It is possible that a Bill may be passed with such alterations as was not originally envisaged by the Government. Even after a bill has been passed, Government may decide to reconsider the matter because of strong public reaction. The requirement of assent provides a final opportunity to the Government to have a second look on the various aspects as well as effect of the proposed law, the Government having the right to send back the Bill for reconsideration by the legislature.

Reservation of the Bill for consideration of the President is chiefly required in matters on concurrent list where the State law cannot override the central law unless assented to by the President. Even otherwise, situations may be conceived where the Governor may think it prudent to bring the matter to the notice of the Central Government in view of its national importance. In Uttar Pradesh, there has not arisen any occasion when the Governor reserved any Bill for Presidential consideration or refused assent, against the advice of the Council of Ministers or against the intent, spirit or purpose of the provisions of the Constitution.

3.5 It is not correct to say that the process of Presidential assent has acted as a substantial threat to the autonomy of the State. During the period of last 35 years, there has been only one case in the year 1973 when the Presidential assent was withheld in regard to a Bill passed by the State Legislature whereby certain amendments were proposed to be made in the Code of Criminal Procedure. The reason given for withholding assent was that the new Cr. P.C. had been recently enacted by the Parliament. The Government of India was of the view that the proposals contained in the State legislation would be duly considered by them and the necessary amendment would be incorporated through a Central legislation. Subsequently, the matter was re-considered by the State Government and only a few important provisions were enacted in respect of which assent was duly given. This instance cannot be construed as a threat to the State autonomy. It has been the experience of this State Government and whenever a doubt arose in Government of India with respect to a particular provision of a new act, an informal discussion was held between the officers of the Central Government and the State and the issue was clarified and the enactment was cleared by the Centre. As such, there has been no complaint in regard to the process of Presidential assent to the Bills passed by the State legislature.

3.6 The Governor is certainly not a mere ornamental head of the State. He has useful purpose to serve and has to act in his discretion in certain eventualities. On the other hand, considering that he is the head of the State he cannot be called an agent of the Centre either, although as a part of his duty he has to maintain close link with the Centre. In our view, the Governors have generally acted fairly in accordance with the Constitution and healthy conventions and in the best interest of the people.

3.7 It will not be appropriate to provide for the procedure of removal of a Governor on the lines of provisions for removal of a Judge of the supreme Court/High Court. There should be no question of impeachment of Governor as he holds office during the pleasure of the President as is provided in Article 156 of the Constitution. As against this, the Judges of the Supreme Court/High Court are appointed to hold office upto a certain age prescribed under the Constitution and not during the pleasure of the President. There is a vital functional difference in the office of the Governor and that of a Judge. This State Government does not share the suggestion that appointment of a Governor should be guaranteed for a full-five years term. The existing provision about the appointment of the Governor during the pleasure of the President seems to be appropriate in view of the duties and functions of the office. A Governor is to act on the aid and advice of the Council of Ministers and a difference of temperament or some other exigencies of situation may warrant shifting of a Governor to another State.

3.8 and 3.9 There have been complaints (not in this State) on some occasions in the past that the Governor has not acted fairly in making his choice of the Chief Minister in unstable party position after a Ministry in the State has resigned or after polls were held in the States. The complaints so raised have, by an large, been unfounded.

3.10 The State Government is not in favour of instructions or guidelines being issued to the Governor. There would be no sanction behind such instructions and no institution to oversee its implementation. It would not be advisable to make it justiciable nor would it be appropriate to ask the Centre to oversee it since it would mean intervention in the affairs of the State.

PART IV

ADMINISTRATIVE RELATIONS

4.1 to 4.3 The Indian Federal system stands on the pillars of a strong Centre and flexible and co-operative federalism. The strength of the Centre lies in its wide legislative and financial powers and in its emergency powers. The flexibility of the Indian federalism lies in the flexible provisions of the Constitution relating to the allocation of administrative responsibility between the Centre and the State. The scheme is so designed as to permit different kinds of administrative arrangements between the two levels of Government. The executive power of the Centre extends to the whole of India in respect of matters in List I. The Centre is, however, not obliged to administer by itself all matters in its exclusive domain. If it so desires it can entrust administrative responsibility in any matter to the States. The State's executive power extends to its territory in respect of matters in List II. In matters of Lists II and III the executive power ordinarily vests with the State except where either the Constitution or a law of Parliament expressly confers it on the Centre.

If Union Laws are to be enforced in each State the proper working of the federal Government requires that the executive powers of the State Government must be so exercised as to ensure compliance with the Central laws which apply in that State. Logically these executive powers of the Union would extend to giving such directions to a State as may appear to the Government of India to be necessary for that purpose. This has been provided in Article 256. Article 257 provides for the Control of the Union over the States in certain matters. Just as in the case of conflict between valid States law and a valid Union law the Union law would prevail, so also when a question arises as to the conflict between the exercise of executive power by the Union and the States, Article 257 provides, and logically so, that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union article 257 provides that the power of the Union shall extend to giving of such directions to a State as may appear to the Govt. of India to be necessary for the purpose.

The provisions of Article 256 and 257 are essential in the interest of harmonious exercise of executive power by the Union and the State and also to effectuate provisions of our Constitution that the executive power of the Union is coextensive with its legislative power. As is provided in Articles 257(2) and (3), it is essential for securing means of communication between the States and for protecting railways which run through the States that the Union Government should have the power to require the State Government to maintain and protect such communication and such railways. It is difficult to share the view that Article 365 should be deleted. As is obvious, there must be some sanction at the back of the power of the Union to give direction to States without which the power to issue directions would be futile. As such this is purely a consequential enabling clause.

The exercise of power under Article 365 is no doubt an extreme step and should be taken only in cases of absolute necessity. In fact this power has been hardly over exercised by the Government of India during the period of past 35 years. There has been no case of exercise of this power in regard to this State. It is essential for the working of the federal Constitution that Government of India should have this power. The apprehension that the Government of India would abuse this provision does not appear justified as in actual practice the Centre would always explore the possibility of settling points of conflict by all other available means before issuing formal directions under Article 256.

4.4 The intent and purpose of Article 356 is to empower the Union Government to ensure that the State Governments function in accordance with the provisions of the Constitution. During the debate on this subject in the Constituent Assembly in answer to a question from Pt. Hridaya Nath Kunjuru, Dr. Ambedkar and categorically stated that the Centre was not being given the authority in Article 356 to intervene in provincial affairs for the sake of good Government. This power was being given to be exercised only when the

provincial Government was not carried on in consonance with the provisions laid down for the constitutional Government of the province. He further clarified that whether there was good Government or not in a province was not for the Centre to determine. The justification and need for this provision is obvious. The constitutional machinery does not ordinarily fail by individual violations of the provisions of the Constitution in the course of States' multifarious activities.

India is a vast country facing multidimensional dangers and having problems peculiar to it because of the composition of its population, the diversity of problems of border States, and other caste and class conflicts. It is in fact difficult to anticipate and lay down in advance the situations, which would pre-eminently justify the exercise of power under this provision.

4.5 This State Government shares the views that the time limit specified in clauses (4) and (5) of Article 356 though intended to be a safeguard may turn into a handicap to the efficacious use of this power by the Union. Experience has shown the existence of situations, continuous disturbed conditions and breakdown or failure of constitutional machinery for a period beyond one year. It is suggested that sub-clauses (a) and (b) of clause (5) of this article may be independent of each other thereby making it possible to continue the Presidential Rule for a period upto three years as may be necessitated by a particular situation in either of the cases covered by clause (5). The result would be that even when a proclamation of Emergency is not in operation the Presidential Rule may continue in case the Election Commission certifies that there are difficulties in holding General Election to the Legislative Assembly of the State concerned.

4.6 The present arrangement in respect of function of Union Government like census and election etc. being implemented by State Government has been working satisfactorily and needs no change.

4.7 The Central agencies mentioned in this question have to keep an overall picture of all the States in view and have also to consider the conflicting interest of the various States. As such, they have sometimes to take decisions or make recommendations which may not be welcome by some States. However, there is no justification in saying that through these agencies the Union has made inroads into the States' autonomy.

4.8 The All-India Services have not only justified their existence as instrument of administration but have also proved to be an important factor in the promotion and maintenance of national integration. The present powers enjoyed by the State Government in respect of officers of All India Service, which includes power to place under suspension and inflict minor punishment is adequate.

4.9 Article 355 is part of 'Emergency Provisions' of the Constitution and its scope is also limited. In fact, this Article broadly enjoins the duty on the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

4.10 This State Government is not in favour of the decentralisation of the broadcasting or telecasting media. Like any other media, if not centrally controlled, they may cause serious damage in sensitive areas like foreign relations, security of the nation and public morality. The media of newspapers and books can be censored and prescribed before they can cause any substantial mischief, but that would not be possible in the case of radio or television where the mischief caused is instantaneous and wide-spread.

4.11 The Zonal Council as suggested under the State's Reorganisation Act, 1956 have definitely played a positive role in fostering co-ordination and co-operation between member States on subjects of mutual interest. The State Government has not found any difficulty even when parties in power have been different at the Centre and in the States.

4.12 The setting up of an inter-State Council as envisaged under Article 263 of the Constitution will serve useful purpose to sort out inter-State and Union-State differences and issues. The functions of such a Council could include issues relating to distribution of water, energy, settlement of territorial claims etc. There appears no need for setting up inter-State Council on permanent basis. It may be constituted as and when necessary to sort out any particular differences/issues.

PART V

FINANCIAL RELATIONS

5.1 While allocating the taxating powers and Governmental functions to the Union and the States, the Constitution-makers had foreseen that the States would be confronted with the problem of non-correspondence between their resources and expenditure needs for carrying out their functions. Accordingly, they provided for devolution of some Centre taxes and duties and of grants-in-aid to States in need of assistance, on the recommendations of a statutory body, *viz.* the Finance Commission. The provision for constituting a Finance Commission at intervals of not more than five years is desirable as alterations in the scheme of transfer are called for in the light of changing finances of States, their fiscal needs and circumtances. The arrangements for statutory transfers can be said to be 'as automatic and free from interference as possible' although the terms of reference given to a Finance Commission do some what restrict the scope of its work. The scheme of devolution envisaged by the Constitution makers, however, has suffered a change as Central transfers for Plans where not visualised by them, the country having embarked upon the Development Plans later. Plan transfers have been sizable in the past, being almost at par with the Finance Commission transfers. Annexure I shows that during the years 1961-62 to 1980-81, the tax revenues raised by States ranged from 29 per cent to 33 per cent of the aggregate tax revenues of Centre and the States, while the revenue expenditure of the States ranged from 51 per cent to 57 per cent of the total revenue expenditure.

After tax devolution, States share ranged from 39 per cent to 52 per cent during the period. The revenue gap between the resources and the fiscal needs of the States has thus been partly taken care of by tax devolution and grants-in-aid under the recommendations of the Finance Commissions. The Scheme of devolution, however, cannot be said to have worked well, as the transfers have fallen short of the comprehensive fiscal needs of the States, particularly the backward States. There are large regional gaps within the national economy and the Finance Commission transfers as well as the Plans transfers have been unable to bring about a reduction in inter-State disparities. Further the award period of a Finance Commission should be coterminous with five year plans.

5.2 Annexure I shows that States own resources over the years have not been enough even to meet all non-Plans expenditure and the States have depended on federal transfers. But the constitutional provisions themselves induce such vertical fiscal imbalance and lay down the mechanism for federal transfers to States. The overall position stated by the A.R.C. Study Team on Centre-State relations thus still holds good. Among the alternatives that have been suggested in the question, alternatives (a) to (c) will require basic changes in the provisions of the Constitution, which is not considered desirable. Besides, the division of fiscal powers between the Union and the States under the Constitution is based on the principal that a tax should be imposed and collected by that layer of Government which can best collect and administer the tax. No change is suggested in the tax power of the Union and the States, and it is felt that alternatives (d) of bringing more Central taxes into the shareable pool should be adopted to enable the States to better match their resources with their growing fiscal needs. This State Government is of the view that :

(i) The surcharge on income tax should be made shareable with the States. It is being levied by the Centre on a continuous basis. The underlying assumption that surcharge on a tax would be levied only as a temporary expedient to meet any special burden has not been followed in this case. As has been suggested by the Eighth Finance Commission, the surcharge on income tax should be abolished and its incidence merged with the basic tax. In the alternative, the Constitution should be amended so as to specifically provide for the sharing of the surcharge with the States.

(ii) Corporation tax proceeds should also be made shareable with the States. Under the Finance Act, 1959, the income tax paid by the companies was classified as Corporation tax, resulting in considerable depletion of the divisible pool of income tax. Aggrieved by the said amendment, State Governments have repeatedly contended before the Finance Commissions that part proceeds from corporation tax also should devolve to them. States provide infrastructural facilities to the companies paying the corporation tax. The Eighth Finance Commission has also observed that it would only seem fair that the States have an access to corporation tax revenue.

(iii) The sharing of revenue from Union excise should be made obligatory under the Constitution. Although the sharing is permissive at present, the Finance Commissions have invariably recommended devolution of part of the proceeds of Union excise duties to the States. Even after the devolution of Central taxes and duties, it becomes necessary for the Finance Commission to recommend gap-filling grants in aid to some of the States. State's share in income tax is already 85 per cent. Accordingly, devolution of part proceeds of Union excise duties to the States is imperative.

5.3 State Governments on their own do take steps to meet the needs of specific areas for reducing the inter-regional disparities. Uttar Pradesh Government has undertaken decentralised planning in the State and nearly one-third of the annual plan outlay is being allocated for local level planning. 50 per cent of the outlay of the districts is determined on the basis of population and the remaining on the basis of selected socio-economic indicators which reflect the level of backwardness. But the capacity of Backward States in bringing about any significant reduction in the regional inequalities within the State is very limited due to resource constraints. Then there are inter-State disparities which can be reduced only by a strong Centre having elastic sources of revenue. The State Government thus agrees with the view expressed in the question, at the same time, the Centre need not enjoy more discretionary powers to use the funds available with it for the development of poorer States. In the past, transfers outside the recommendations of the Finance Commission and the Planning Commission, the so called discretionary transfers, have not subserved the equity criterion. It is thus felt that for achieving the objective, the institutional arrangements for federal transfers need be so improved that the per capita transfers to poorer States are larger to enable them to accelerate their pace of development.

5.4 The deficit in Central revenue account, noticed in the last few years, cannot be attributed to Central transfers to States on the recommendations of the Finance Commission and the Planning Commission. Annexure 5 shows that the resources transferred to States from all sources, as a percentage of Centre's aggregate receipts, have not been higher in recent years. In 1979-80, these were 50.8 per cent as compared to 53.9 per cent in 1972-73. In the context of overall scarcity of resources, it would appear necessary that the Centre as well as the States optimise their tax revenues and exercise better control over expenditure. The Centre having more elastic sources of revenue with a wide base is in a better position to raise additional resources through taxation. Deficit Financing would appear unavoidable in a developing economy, and may also be resorted to by the Centre. But the high rate of inflation that has plagued the economy during the last decade would imply a more restrictive use of deficit financing.

5.5 The devolutions made through the channel of the Finance Commission and the Planning Commission have not been able to bridge the gap in resources between the poorer and richer States. The inter-State disparities have in fact widened instead of narrowing down. A study of the ranking of the States in respect of per capita N.D.P. in selected years from 1950-51 to 1977-78 reveals that five of the six relatively backward States continued to have the lowest ranks except that Uttar Pradesh had a slightly higher ranks in 1950-51, and Andhra Pradesh and Rajasthan in some of the years (Annexure 2). The position of Uttar Pradesh declined in rank from 8 to 13. In regard to Finance Commission transfers, it may be pointed out that the backward State of Uttar Pradesh received lower than average per capita transfers under the awards of all the Finance Commissions (Annexure 3). Its share has also been less than its population ratio. Under the recommendations of Seventh and Eighth Finance Commissions, Uttar Pradesh's share in total devolution comes to 15.90 and 15.43 respectively. as compared to its population ratio of 16.32 (1971 Census). The situation does not improve if Plan transfers are also taken into account. The Statewise indices for these transfers (Annexure 4) reveals that the Uttar Pradesh secured lower than average transfers throughout and Bihar and Madhya Pradesh upto Fifth Plan. Larger per capita transfers to relatively backward States are thus called for to enable them to accelerate their pace of development and also to improve the functioning of their administrative and social services. In this context, the State Government would like to suggest the following criteria for determining the share of taxes, plan assistance and non-plan assistance to States.

(a) **Share of taxes :**

In the determination of States share in income-tax proceeds First to Seventh Finance Commission adopted only two criterial *viz.* population and contribution. The relative weightage accorded to contribution ranged from 10 to 20 per cent. The Eighth Finance Commission did recommend distribution of 90 percent proceeds on indicators of backwardness but maintained the 10 per cent weightage to contribution. A weightage to contribution yields a greater share to the more advanced States due to higher yield of income-tax in those States. As federal transfers should be conducive to reduction of inter-State disparities, the criterion of contribution is not justified in a federation like ours where the constituent units never possessed the right to levy income tax. The State Government is of the view that uniform criteria should be adopted for the distribution of the entire divisible pool of both the major taxes viz. income tax and Union excise duties.

In the distribution of Union excise duties. the Third Finance Commission onwards have given weightage to economic and social backwardness also. The Third and Fourth Finance Commissions had used partial indicators of backwardness and their distribution of Union excise was not progressive. It is from the Fifth Finance Commission onwards that the distribution of Union excise has been progressive and higher per capita shares accrued to the relatively backward States. The criteriaused, and the weightage assigned to them were, however not such as to make the total transfers progressive.

In regard to the index of backwardness, it is our considered view that the composite index of per capita income should be used in preference to any partial indicators. The Eighth Finance Commission has already used per capita income as the only criterion for adjudging the relative backwardness of States. Further, part proceeds should be earmarked for distribution exclusively among the backward States, as was recommended by the Fifth Finance Commission. On these considerations, the State Government is of the view that 50 per cent of the net proceeds should be distributed on the basis of population, 25 per cent in the inverse ratio of per capita incomes of States multiplied by population and 25 per cent to those States exclusively whose per capita income is below all States average, and the share given to them on the principle of income equilization, that is in proportion to the shortfall of the States per capita income from all State average, multiplied by the population of the State. In the alternative, if the distribution of part proceeds amongst the backward States only is not favoured, 25 per cent should be distributed on the basis of population and the remaining 75 per cent on the indicators of backwardness, as recommended by the Seventh and Eighth Finance Commissions. These principles are suggested for the distribution of income tax as well as Union excise duties.

For the distribution of additional excise duties levied in lieu of sales tax on sugar, textiles and tobacco, its distribution should be on such principles as will secure for each State a share more or less equivalent to what it would have obtained if it had continued to levy and collect sales tax on these commodities. Statewise consumption of the concerned commodities should thus be the basis of distr bution. Where reliable data of Statewise consumption of the commodities is not available, the distribution should be in proportion to the guaranteed amount of the State to the total guaranteed amount of all States, the guaranteed amount representing the income of the States from sales tax on these commodities in 1956-57, the year immediately preceding the year of replacement of sales tax by additional excise duty.

In regard to assigned taxes such as estate duty in respect of property other than agricultural land or for the distribution of the grant in lieu of tax on railway passenger fares, the existing principles for distribution appear to be fair and equitable.

Tax on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce, is also levied under Article 269 of the Constitution. At present the proceeds of Central sales tax accrue to the State from which the movement of the goods commences. This is inequitous for the relatively backward States, who have to depend on import of goods in a larger measure. While the residents of backward States have to bear the burden of the Central sales tax, it is the comparatively well-off States which reep the benefits. Sales tax being a tax on consumption, this State Government is of the

view that the receipts of Central sales tax should accrue to the State of destination and not the State of origin. At best, a small proportion of the tax would devolve on the producer States. Accordingly, it is suggested that the receipts from Central Sales Tax should be distributed in a manner that 75 per cent of the proceeds accrue to the State of Destination and 25 per cent to the State of origin of goods. In the alternative, there should be a provision for distribution of the proceeds on the basis of equitable criteria, such as population and relative economic backwardness. The tax on consignment transfers should also be levied and distributed in the same manner as it would be collected from these inter-State consignments which do not attract Central Sales Tax.

Apart from adopting such principles for tax devolution as may be conducive to reduction of inter-State disparities, an increase in the quantum of the divisible pool of Union taxes and duties is necessary for enabling the States to discharge their growing responsibilities. The statutory devolutions to States do not show a consistently rising proportion to the growing Central revenues. Despite the doubling of State's share in Union excise duties on the recommendation of the Seventh Finance Commission, the recommended transfers for the award period constituted 26 per cent of the gross collections of Central taxes. The corresponding percentage in the case of Sixth Commission was 25.4 and of the Eighth Commission is 24. If the resources transferred to States from all sources are considered as percentage of Centre's aggregate receipts, the transfers during the award period of the Seventh Commission were even lower than the transfers during the period of the Fifth Commission (Annexure 45). To enable the States to meet their Comprehensive fiscal needs, therefore, the State's share in Union excise duty should be further enlarged and fixed at 60 per cent. The sharing of corporation tax and surcharge on income-tax with the States has already been suggested.

To sum up, the State Government would suggest an increase in the divisible pool of Union excise duties to 60 per cent of the net proceeds inclusion of surcharge on income tax in the divisible pool of income tax, and sharing of part proceeds of proportion tax also with the States. In regard to distribution of the proceeds among the States, the following criteria are suggested :

(i) there should be uniform principles for distribution of the proceeds of income tax and Union excise duties,

(ii) the divisible pool of income tax and Union excise duties should be distributed 50 per cent on the basis of population, 25 per cent in the inverse ratio of per capita incomes of States exclusively whose per capita income is below all States average and the share given to them on the principle of income equalisation,

(iii) additional excise duties in lieu of sales tax on sugar, textiles and tobacco, should be distributed in proportion to the guaranteed amount of the State to the total guaranteed amount of all States, the guaranteed amount representing the income of the States from sales tax on these commodities in 1956-57, the year immediately preceding the year of replacement of sales tax by additional excise duty,

(iv) the receipts from Central sales tax should also be pooled and distributed 75 per cent of the State of destination where consumption takas place and 25 per cent to the State from where the movement of goods commences. The tax on consignment transfers should also be levied and distributed in the same manner.

(b) **Plan assistance :**

Before the fourth five year plan, Central assistance to States was not based on any specified criteria. From the fouith plan, after setting apart a lump sum amount for meeting the requirements of special category States, the balance of Central assistance was distributed under the Gadgil formula.

The formula was modified for the sixth plan and the weightage given to continuing major irrigation and power projects was done away with. This 10 per cent was added to the weightage given to per capita income, with the welcome change that 20 per cent is now distributed in proportion to the shortfall in per capita income of States whose per capita income is below the national average. Under the revised Gadgil Formula, as operative at present, Central assistance is allocated to States 60 per cent on the basis of population, 20 per cent to backward States in terms of shortfall in their per capita income from the average per capita income of all States, 10 per cent on the basis of tax effort and 10 per cent on consideration of special problems of States.

It is observed that even under the Gadgil Formula, the distribution of Central assistance has not been equitable for some of the backward States. If the total per capita Central assistance from first plan to sixth plan (Annexure 6) is considered, the two most backward States of Bihar and Uttar Pradesh receive lower than all States average transfers. For the Fifth Plan, Uttar Pradesh had a little higher allocation than the average for non-special category States, but in the sixth plan, both Uttar Pradesh and Bihar received lower than all States average.

The Criteria adopted for the allocation of Central assistance need thus be more progressive if the desired objective of accelerating the pace of development in backward States and of reducing inter-State disparities is to be achieved. A high weightage of 60 per cent is given to population which is a general measure of need and has no equilising impact. While it is accepted that population should continue as an important factor in federal transfers, it is only a significant increase in the weightage given to indicators of backwardness that can bring about the desired progressivity in these transfers. The State Government is of the view that the weightage given to shortfall in per capita income should be increased to 30 per cent and the 10 per cent distributed on the basis of tax effort should be done away with.

Tax effort of States need not be taken into account for a number of reasons. Firstly, the States have not lagged behind the Centre in raising tax revenues. Interest, tax effort measured in terms of tax ratio puts the poorer States at a disadvantage. Annexure 7 shows the per capita tax burden of the major States as percentage of their per capita income. Except for Andhra Pradesh, the tax ratio in backward States ranges from 4.88 in Orissa to 7.87 in Madhya Pradesh. For the advanced States, it varies from 7.39 in West Bengal to 10.86 in Tamil Nadu. The advanced States having a greater degree of industrialization and urbanization have a wider tax base resulting in higher yield from State taxes. It is not the additional tax effort in relation to tax potential, or achievement against the target given for additional resource mobilization, which are adopted as the basis of allocation of 10 per cent Central assistance. Instead, the per capita total yield as a percentage of per capita State domestic product, is used for determining the share of States. As a result of this, the progressive collection of tax revenue gets a premimium and this favours the richer States. Besides, the additional resource mobilization by States increases their plan outlay to that extent and basing the allocation of part Central assistance also on tax effort is not justified.

(c) **Non-Plan assistance :**

Article 275 of the Constitution gives ample scope to the Finance Commission to take into account the differential needs of the States and to provide for the relatively large needs of backward States. But the Finance Commissions so far have made a very limited use of non-plan grants-in-aid. The quantum of grants-in-aid was 12.15 per cent of the total statutory transfers under the award of the First Finance Commission. It gradually increased to 26.12 per cent under the recommendations of the Sixth Commission but has since declined to 8.15 per cent under the recommendations of the Eighth Commission. (Annexure 8).

In regard to upgradation grants, the Seventh Commission confined these to non-developmental sectors and services. The Eighth Commission has recommended upgradation grants for health and education also, but the quantum of grants is low for some of the backward States, particularly Uttar Pradesh. The State Government is of the view that instead of assigning a residuary role to grants in aid, the Finance Commission should take into account the level of per capita non-plan expenditure of States and the comprehensive needs of the relatively backward States for upgrading the levels of administrative and social services including health and Education Services provided by them to a desirable level.

5.6 A special federal fund for ensuring "faster development in economically under-developed areas relative to other developed areas of the country" does not appear necessary for India. The present arrangement of tax devolution and grants-in-aid on the recommendations of the Finance Commission and of distribution of Central assistance for the plan on the recommendations of the Planning Commission appears to be adequate for the purpose. What is necessary is that the Finance Commission takes into account the larger needs of relatively backward States and formulates such principles for federal transfers as would secure larger per capita transfers to backward States. Plan transfers should also be on such criterion as would enable the backward States to accelerate their rate of economic growth for mitigating their backwardness.

5.7 The three principles which should serve as imperatives in the allocation of taxation functions of the Union and the States, as stated in the question, would appear to be unexceptionable. The power to levy income-tax should remain with the Centre in the interest of uniform rates thereof in the country. If the States were to exercise the power, it would lead to taxing the individual according to residence. In the case of levy of corporation tax by the States, the anomalies would be more pronounced. In the interest of the growth of common market in the federation, it is necessary that custom duties and Union excise should continue to be levied by the Centre, Union excise duties are levied on production and being origin based, differential rates would not be desirable. This State Government thus feels that none of the individual taxes in the Union List can be reasonably transferred to the States. At the same time, however, it is necessary that more Central taxes should be made shareable with the States, as it has been suggested in reply to question 5.2.

5.8 This State Government agrees that for taxes which impinge upon a common base, such as Union excise duty and sales tax, there should be an integrated approach to taxation instead of a fragmentary approach. But it is not necessary that all taxes are levied by the Centre. The cascading effect of different taxes can be avoided and a reasonable total incidence ensured by frequent exchange of information and periodical discussions on matters of taxation in a forum comprising representatives of the Central and the State Governments and some experts in public finance.

A Central levy of sales tax as suggested in the question is neither feasible nor desirable. Sales tax is basically a tax on consumption and it should be left to the judgement of a State to decide the incidence thereof on its consumers. It is an instrument of economic policy. Its structure and rates need be such as attract investment and promote industrialisation. Besides, sales tax has developed as the largest single item of States tax revenues and an effective source of additional resource mobilization. The levy of Union excise duties in lieu of sales-tax is also not a feasible proposition. The experiment has been tried in respect of sugar, textiles and tobacco and States have demonstrated in various forums that their revenue interest has suffered on account of such replacement. Accordingly, this State Government is of the view that the levy of sales tax or other taxes in the State list should not be centralised, and the power to levy them should continue with the States.

5.9 The revenue surplus which emerges on the recommendations of the Finance Commission is available to the concerned State as resource for the Plan. Finance Commission's transfers are thus

relevant for the Plan also. It may be pointed out that Central assistance in relation to States plan expenditure was 64.4 per cent during the third Plan whereafter it declined to 33.8 per cent in 1981-82. Increased tax devolution thus brought in its wake a reduction in the quantum of Central assistance as a percentage of States Plan outlay.

The categorisation of expenditure between Plan and non-Plan depends more on the period during which the expenditure is incurred rather than on the nature of expenditure. At the end of the Plan, the maintenance expenditure relating to the schemes completed during the preceding Plan period is shifted to the non-Plan account. Therefore, the comprehensive fiscal needs of a State (Plan and non-Plan) should be taken into account and the federal transfers should take care of both the needs to the extent possible.

This calls for effective co-ordination between the Finance Commission and the Planning Commission. A single organisation for dealing with both categories of transfers does not, however, appear to be practicable or desirable. A permanent Finance Commission is also not considered necessary, although its Secretariat should have continuity. Taking into account the projections made by the Finance Commission, which are based on existing level of taxation, the Planning Commission should continue to determine the Plan outlays of States in the light of additional resource mobilization proposed by them, the quantum of external aid, market borrowings and other relevant factors.

5.10 The federal transfers, particularly Finance Commission transfers can be said to have promoted efficiency and economy in expenditure. The normative approach adopted by the Finance Commission regard to appropriate returns on State Governments investments in irrigation, electricity, transport and other sectors or regarding the provisions for expenditure on emoluments of Government employees and the services makes the States more conscious of the need for securing those returns and for restricting non-Plan expenditure. On their own also, State Government's strive to restrict non-Plan expenditure in the interest of having a larger plan outlay.

The federal transfers have, however, not succeeded in narrowing down the disparities in non-Plan expenditure of States. A comparison of the per capita total non-plan revenue expenditure of individual States in 1974-75 and 1980-81 (Annexure 8) reveals that the backward States of Bihar, Uttar Pradesh and Madhya Pradesh continue to occupy the lowest ranks. Among the non-special category States, the per capita expenditure in 1974.75 ranged from Rs. 54.63 in Bihar to Rs. 149.91 in Haryana. In 1980-81, the expenditure ranged from Rs. 107.28 in Bihar to Rs. 330.95 in Maharashtra. The disparity in non-plan expenditure thus continues unabated.

5.11 This State Government does not subscribe to the view that the present mechanism of transfer of resources has inbuilt propensities towards financial indiscipline and improvidence. The forecasts presented by States are, by and large, based on the growth rates observed in the past. Any way, while reassessing the forecast, the Finance Commission adopts a fairly conservative rate of growth in expenditure and it is seldom that the actuals of receipts and expenditure leave a State with a smaller revenue gap than what was stipulated in the reassessed forecasts.

5.12 & 5.13 NOTE : Answers for 5.12 and 5.13 are given with Ans. 5.5.

5.14 States would have received a share of the proceeds if the concealed income invested in the bearer bonds had been subjected to income tax. It would thus be equitable for the Centre to share with the States the monetary benefits derived from the scheme. In regard to upward revision of the administered prices of items like petroleum, coal etc. this erodes the resource base of State Governments and their capital and operating costs. States would gain if excise duties are raised instead. The Eighth Finance Commission has also observed that if obtaining revenue is the sole criterion for increasing administered prices, the appropriate course is to increase excise duty. The State Government would suggest that there should be a statutory organisation for revising prices of petroleum, coal, iron and steel, cement etc.

5.15 The saving available to the public sector mostly comprise small saving and market borrowings. At present two-third share of the net Collections under small savings scheme is passed on to the State as interest bearing loan. The States make concerted efforts and spend considerable amounts in mobilizing small savings. There is thus no justification of allocating only two-thirds of the net collection and a higher share should be given to the States.

The Centre's repayment liability to the general public on account of small savings, is in each year, fully met from the fresh collections during that year and it is only from the balance amount that a State's share is paid by way of loan. The small savings loan is, the only loan given by the Centre to the States which indicates its origin and it is already netted for repayment. Other Central loans do not have this distinguishing feature. It is, therefore, unjustified to expect the State Governments to repay these loans which should be treated as loan in perpetuity. For market borrowings, the total kitty and the share of Centre and the States is determined by the Centre. Over the years, the shares of States in the total market borrowings has gone down. Keeping in view the plan needs of the States, this trend needs to be reversed. The Eighth Finance Commission has also observed that the "pattern of distribution of total market borrowings requires correction and the share of States ought to be raised, (Report page 8)." Besides, no formula has been laid down for the inter-State distribution of market borrowings. Till the end of the Fifth Five Year Plan, market borrowings to States were distributed on historical basis with a uniform annual step-up which perpetuated inequity in the distribution of market borrowings amongst States. During the Sixth-Five Year Plan the backward States again pressed for a higher level of market borrowings. The Planning Commission recognising the past inequity made a special allocation of market

borrowings only for backward States. However, this did not provide substantial additional resources to the backward States. For reaching the level of development of advanced States the resources of the backward States need to be suitably augmented through a higher level of market borrowings amongst States should be made in accordance wi h the revised Gadgil formula applicable for distribution of Central Assistance. Alternatively, in addition to normal limits of market borrowings given in various States, additional market borrowing limits should be provided to the States which have an adverse credit deposit ratio. This additional market borrowing should be proportionate to the extent of gap in the credit and deposits.

5.16 Article 246 of the Constitution demarcates the sphere of responsibilities of the Centre and the States in terms of their legislative powers as laid down in the Seventh Schedule. While the Centre has been entrusted with a few major responsibilities like defence, external affairs, etc. t e State have to shoulder major responsibilities for most of the development and welfare functions like irrigation, power, agriculture, education, health, social welfare, etc.

Since the Second Plan, there has been growing centralisation of revenues. On the other hand, compared with the revenues at its command, the centre assumed relatively less responsibility in the total public expenditure of the country. This resulted in increasing federal fiscal imbalance during the past few years. Thus the States, own revenues (both capital and revenue) could now finance less than 60 per cent of their total expenditure. There has been a continuous decline in the State's own revenue to finance State's total expenditure upto the end of the Fourth Plan. There has, however, been some improvement in the situation during the Fifth Plan period. This, in the context of the increasing additional resources mobilisation by the States in recent years, implies that while t eir capacity to raise their own revenues has reached the end of ladder, their expenditure needs are increasing faster owing to the increasing demand for development and welfare expenditures from the people.

Fiscal transfers from the Centres made on the recommendations of the Finance Commission in the form of share in Central taxes and grants-in-aid are non-returnable. Such transfers constitute only one-third of the total federal fiscal transfers. Transfers on the recommendations of the Planning Commission are on the other hand discretionary and usually have a mix of 30 : 70 between grants and loan. It imposes a heavy debt burden on the States. It is therefore suggested that the grant and loan components of plan transfers should be 50 : 50.

5.17 States are committed to improve the living standards of the people and undertake the Plans to accelerate the rate of growth of economy. For financing the plans, the States also resort to market borrowing and loans from financial Institutions in addition to loans from the Centre under small savings and Central assistance of which 70 per cent is in the shape of loan. The quantum of these loans is increasing progressively resulting in the increase of States debt burden. This rising indebtedness of the States can be remedied to some extent by writing off part of the Central loans. The real solution would appear to cover their growing fiscal needs and loans are secured in respect of such investments only which are likely to yield returns.

5.18 States can borrow only to the extent of yearly allocation made by the Centre. States borrowings are being subscribed primarily through nationalised banks and institutions and no difficulty is experiencec in achieving the stipulated borrowings. As already explained under question 5.15 there is need for higher allocation of market borrowings to the States.

5.19 It is true that the Centre charges from the States a higher rate of interest than what it pays to the foreign lender. In the meetings of the National Development Council, it has been repeatedly urged by the State that this should be required to pay the same rate of interest on which the Centre gets the loan from the foreign lender. Further, on an average only 50 per cent of the amount received from the foreign lender is passed on to the States for financing such States projects. For obtaining foreign credit for their projects, the States have often to agree to such conditions or incur expenditure which the States would not have otherwise incurred or sanctioned. There is thus no reason why the entire amount of foreign credit is not passed on the States and only small service charge is realised in addition to interest rates on which this is received from the foreign lender.

5.20 The Reserve Bank of India should continue to play the role of co-ordinating the market borrowing as it is in a position to channelise the reserves of the nationalised banks and other institutions into market borrowings. The borrowing limits of the States and the Centre are, however, not fixed by Reserve Bank of India, and instead are fixed by the Union Finance Ministry and the Central Planning Commission. This State Government agrees with the suggestion for setting up a Loans Council which could fix the borrowing limits of different States and the Centre on the basis of principles to be approved by the National Development Council.

5.21 Overdrafts by the States is an indication of a deeper malaise in the finances of the State Governments. Doubling of the Ways and Means Advance was a short-term measure, which was only a palliative and not a remedy. We cannot, however, blame any single Govt. for this malaise. It cannot be said that there is no laxity in fiscal administration in the States. Some Public Utilities are neither run competently nor their services pric d at a cost-plus basis, resulting in heavy losses requiring budgetary support. Secondly, there is ever capitalisation. States are under various pressures to take up too many projects, needing heavy investment, which results in wastage of resources and consequently, high capital output ratio and very low rate of returns. These collectively lead to a weak resource base for the States and their Ways and Means problems. This is further compounded by the relatively in elastic sources of revenue with the States. The deficiencies in fiscal management by the States are largely found in the Centre's fiscal management also. Though the State's problem of

Ways and Means is not a simple one, only an overall National Financial Strategy, which strives for efficiency, bereft of other considerations alone can solve this deep-rooted malaise.

5.22 Article 246 of the Constitution demarcates the sphere of responsibilities of the Centre and the States in terms of their legislative jurisdiction as laid down in the Seventh Schedule. As far as the division of sources of revenue is concerned, the Central Government enjoys a comfortable position with many elastic sources of revenue like Union Excise Duties, Custom Duties, Corporation Tax etc. which have a national tax base. In contrast, the States are given inadequate and less elastic sources of revenue. A possible exception is sales Tax. But its scope has been gradually reduced by the Central Government, by making many inroads into the coverage, like centralisation of Sales Tax on inter-State trade, taking over the power of fixing the rates of Sales Tax on declared goods and services and gradual extension of Additional Union Excise Duties in lieu of Sales Tax to more commodities. Further, some of the sources of revenue like land taxation and State Excise Duties are entangled in various types of constrains, making it difficult for the State Governments to raise more revenue from these sources. Inspite of these constraints, a backward State like Uttar Pradesh, has been able to sustain a compound growth rate of more than 16 per cent per annum in receipts of all States taxes and duties during the past 12 years (from 1970-71 to 1982-83). Indiviudal taxes, like General Sales Tax, Taxes on Vehicles, Entertainment Tax, Tax on Goods, Stamp Duty and State Excise Duties registered a compound growth rate ranging from 14.2 per cent to 19.6 per cent per annum during the same period. The per capita revenue from State Taxes and Duties rose from Rs. 15.83 in 1968-69 to Rs. 80.81 in 1981-82 and the tax ratio from 3.5 in 1968-69 to 5.6 in 1982-83. Non-tax revenue also registered commensurate buoyancy during the period. Other States have also registered similar trends. Thus, in so far as revenue from State sources and Additional Resource Mobilisation measures are concerned, the State Governments have done and are doing, whatever is possible within the given framework of the Constitution and the prevailing economic situation.

5.23 As a result of leakage of Central taxation and its avoidance there is considerable unaccounted money in circul tion. This is revealed by the response to one time measures such as special Bearer Bonds Scheme. In regard to returns on Capital investment in C ntral Public Sector undertakings, the Seventh Finance Commission had considered the return of 4.4 per cent in 1976-77 to be inadequate and while reassessing the resource forecasts of the Central Government, the Commission has assumed that the return will increase to 7.5 per cent by 1983-84. For curbing tax evasion or avoidance, the tax administration machinery need be strengthened and made more effective. Concerted efforts should be made to improve the financial working of the enterprises which are running at a loss or are not yielding proper returns. The same, however, applies to State Governments also.

5.24 The proceeds of taxes and dutiese numerated in Articles 268 and 269 of the Constitution accru to the States. In the interest of healthy Centre-State financial relations, therefore, if the rates of any of these taxes are proposed to be revised or any significant changes or concessions are contemplated it would be desirable for the Centre to elicit the views of State Governments and to consider them before proceeding in the matter.

5.25 This State Government is also of the view that the taxes and duties mentioned under Article 269 of the Constitution, which are collected by the Centre but assigned to the States, should be better exploited. Of the seven taxes and duties mentioned in the Article, only two *viz.* estate duty on property other than agricultural lands and inter-State Sales Tax are levied at present. The Fifth and Eighth Finance Commissions have examined in Article 269 and have made specific recommendations. These should be considered expeditiously by the Government of India..

5.26 The tax on railway passenger fares is one of the taxes mentioned in Article 269 of the Constitution. The tax was imposed by the Centre in 1957 but was given up in 1961, and an ad hoc grant is being given to the States in lieu thereof. Initially the grant was fixed at Rs. 12·50 crore in 1961-62. It was raised to Rs. 16·25 crore from 1966-67 and to Rs. 23·12 crore from 1981-82. The grant was due to be revised every five years. The delay in its revision and also the f ct that the quantum of the grant has been kept much lower than what would have accrued to the States, if the tax had continued, has caused considerable loss of the revenue to the States. The Eighth Finance Commission has specifically recommended that the annual grant should be increased to Rs. 95 crore. This, when implemented, would meet the major grievance of the States. The matter is, however, to be considered by the Railway Convention Committee. This State Government would suggest that as long as the tax on railway passenger fares is not re-imposed, the determination of the quantum of the grant in lieu of the tax should be specifically referred to the Finance Commissions.

5.27 No comments.

5.28 The present arrangement in regard to provision of Central assistance to States for dealing with natural calamities *inter alia* envisages that a part of the expenditure should be shared by the States. In times of natural calamities the paying capacity of the people is considerably reduced. In consequence, the resource raising capacity of the States is also adversely effected. The State would accordingly suggest the following:—

(1) The Central assistance made available to the States in the event of drought should not be in the form of advance Plan assistance and should be provided on the same terms as in the case of other natural calamities;

(2) the Central assistance should fully cover the expenditure in excess of the margin money, it should be in the nature of a grant, and only the amount granted as loan by the State Government should be given as loan;

(3) the norms adopted in fixing the ceiling of expenditure for items like repair and reconstruction of damaged houses should be suitably revised; and

(4) the procedure should be streamlined to enable the flow of Central assistance to the State Government as soon as it becomes clear that the relief expenditure would exceed the margin money.

The Eighth Finance Commission has recommended grants-in-aid to States to the extent of 50 per cent of the margin money as redetermined for each State, provided that the State spends its share of the margin money. This will be helpful to States afflicted by natural calamities.

5.29 A National Loan Corporation does not appear necessary as the nationalised banks are competent to raise loans in the national or international markets for viable projects. The idea of setting-up a National Credit Council is, however, welcome. All State Governments should have equal representation on the National Credit Council which should be entrusted with the task of assessing the available credit resources within the country, possibilities of its growth and the extent to which it can be harnessed for purposes of meeting developmental expenditure. This council should have the freedom to determine the share of the States as well as the Centre and also the distribution of the share of the States *inter se* amongst them. The idea of setting up a National Economic Council is also welcome. Here again all the States should be given equal representation in the council. The council could constitute Expert Bodies for examining different economic problems of national and local importance within the country. The annual reports of the two bodies should be placed before the Parliament for discussion and suggestions as well as before the State Legislature for their information.

5.30 It is no doubt important that public funds are spent prudently and the benefits go back largely to the people. Sinc there is non-correspondence between State resources and expenditure needs for discharging their growing responsibilities, it is necessary to ensure adequate transfer of resources from the Centre to the States. It is the State Governments which are closer to the people and have to render services which touch intimately the lives of the people.

5.31 (a) The expenditure of the State is scrutinised in considerable detail by the Finance Commission and the re-assessed estimates become a base for determining the level of transfer of resources from the Centre to the States. Although since the Sixth Commission, expenditure of the Union is also subjected to examination but in actual practice a detailed scrutiny as is done of States, expenditure is not carried out. It is, therefore, necessary that Centre's expenditure is examined in as much detail as is done for States.

(b) The conditions vary from State to State and a scheme which may be of benefit to the people of one State may not be equally beneficial t the people of another State. If, however, a particular item of expenditure on the non-plan side s not justified in view of resource constraints, it can be suitably dealt with by the Finance Commission while reassessing the forecast.

(c) The Constitution already provides for a fiscal readjustment mechanism is the shape of an independent statutory body *viz.* Finance Commission, which goes into the details of expenditure as well as details of revenue receipts. What is needed is that expenditure of the Centre is scrutinised in detail in the same manner as is scrutinised by the Finance Commission for States.

5.32 We have not encountered any operational problem in keeping the accounts as having a bearing on Centre-State Relations.

5.33 Evaluation audit is desirable but if it cannot be done promptly, its very purpose is defeated. At present evaluation starts when a scheme has been completed. If evaluation work could be taken up concurrently with the execution of the scheme, it should be possible to complete evaluation audit much earlier. It would then prove more useful.

5.34 The powers and duties conferred on the Comptroller and Auditor General of India appear to be adequate.

5.35 & 5.36 The success of Parliamentary control rests on two important factors—publicity of the account rendered to the Legislature through the instrumentality of an audit office and the responsibility of executive to the Legislature. The present arrangement appears to be adequate.

5.37 The role of the estimates committee is purely advisory, whereas public accounts committee has a statutory role. The presentation of the estimates to the Legislature provides the basis for the grants. Economy can be secured if the estimates of expenditure are carefully prepared and kept as low as possible, consistent with efficiency. The extent to which they are intelligible and can be controlled by the body to which they are intelligible and can be controlled by the body to which they are submitted, depends on their arrangement and detail. This is already being done by the Finance Department the Finance Ministry and in this way there is adequate control of Legislature over the public expenditure.

5.38 Control over expenditure is necessary initially as the stage of preparation of the estimates and thereafter during the course of expenditure. Audit examines whether the expenditure has been incurred in accordance with the objects for which it has been voted by the Legislature. An expenditure commission will perform more or less the same functions. Thus there appears to be no need for constituting an expenditure Commission.

5.39 It is felt that once the scheme has been approved in principle, details thereof should be left to the State Governments and in the interest of speedy and effective implementation of the

scheme, the States should have the freedom to make variations in details. The Centre should only be concerned that the money earmarked for the scheme was utilised on that very scheme and not diverted elsewhere. This can be ensured on the basis of accounts of utilisation. After all, the States are the beneficiary of the grants and there seems no reason for not trusting the States in such matters.

ANNEXURE I

Taxes levied by Centre and States, tax devolution and States share in total Revenue Expenditure

(Rupees in lakh)

		1961-62	1965-66	1970-71	1975-76	1980-81 (R.E.)
1	2	3	4	5	6	7
	1. Total Tax Revenue (Centre and States) . .	154318	292159	475241	1118173	1969407
	2. Tax Revenue of States	48944	86092	154562	357294	656148
	3. Devolution of Taxes	17892	27600	75562	159912	370590
	4. Tax Revenue of States as per cent of total taxes .	31.72	29.47	32.52	31.95	33.32
	5. Tax Revenue of States (including devolution as per cent of total taxes.	43.31	38.91	48.42	46.25	52.13
	6. Relative share of States in total Revenue Expenditure.	57.1*	52.2	55.0	51.2	56.4

*Relates to 1960-61.

SOURCE :—Government of India, Ministry of Finance, Public Statistics, Part II (Annual).

ANNEXURE 2

Ranking of States

	Per Capita NDP						
	1950-51	1955-56	1960-61	1964-65	1969-70	1975-76	1977-78
1. Andhra Pradesh	9	10	7	6	10	8	9
2. Assam	5	5	5	5	7	10	10
3. Bihar	14	14	14	14	14	14	14
4. Gujarat	3	4	3	3	2	3	3
5. Karnataka	7	7	8	8	8	5	4
6. Kerala	6	6	9	9	5	6	8
7. Madhya Pradesh	13	9	11	11	12	12	11
8. Maharashtra	4	2	1	2	3	2	2
9. Orissa	11	13	13	13	9	11	12
10. Punjab	2	2	4	1	1	1	1
11. Rajasthan	10	11	10	12	13	9	7
12. Tamil Nadu	12	8	6	7	6	7	6
13. Uttar Pradesh	8	12	12	10	11	13	13
14. West Bengal	1	1	2	4	4	4	5

SOURCE :—Economic and Political Weekly—Vol. XVII Nos. 14, 15 and 16 Annual Number 1982. Page 609 (A note on Regional Differentiation in India) by Krishna Bhardwaj

ANNEXURE 3

Per Capita Devolution to States by various Finance Commissions

(Rupees)

	States	Per Capita Devolution by						
		Ist F.C. (52—57)	IInd F.C. (57—62)	IIIrd F.C. (62—66)	IVth F.C. (66—69)	Vth F.C. (69—74)	VIth F.C. (74—79)	VIIth F.C. (79—84)
1	2	3	4	5	6	7	8	9
1.	Andhra Pradesh	11	29	34	39	115	178	350
2.	Assam	20	50	49	74	163	301	355
3.	Bihar	12	25	22	26	109	150	393
4.	Gujarat	..	..	41	36	112	138	361
5.	Haryana	..	..	..	..	99	121	307
6.	Himachal Pradesh	..	..	..	..	..	583	940
7.	Jammu and Kashmir	..	56	60	110	323	505	816
8.	Karnataka	3	38	34	55	104	131	343
9.	Kerala	3	28	41	67	138	225	361
10.	Madhya Pradesh	11	27	27	30	106	130	383
11.	Maharashtra	33	30	30	40	123	141	340
12.	Manipur	..	..	..	..	..	1164	1808
13.	Magh laya	..	..	..	..	..	880	1326
14.	Nagaland	..	..	17	878	2222	2720	4663
15.	Orissa	13	32	58	80	164	264	449
16.	Punjab	15	32	32	29	102	124	310
17.	Rajasthan	9	30	35	39	131	219	350
18.	Sikkim	..	..	..	..	..	..	1755
19.	Tamil Nadu	13	24	27	37	110	130	365
20.	Tripura	..	..	..	..	..	826	1284
21.	Uttar Pradesh	10	22	20	31	105	153	375
22.	West Bengal	20	39	27	34	129	186	360
		12	29	30	41	124	177	386

NOTE :—Per Capita Devolution by First Finance Commission in respect of some States are not strictly comparable due to reorganisation of States.

ANNEXURE 4

Indices of per Capita Finance Commission transfer and Per Capita Central Assistance

States	V. F.C. per Capita Transfer Indices	IVth plan Per Capita Transfer Indices	Total Transfer Indices	VIth F.C. Per Capita Transfer Indices	Vth Plan Per Capita Transfer Indices	Total Transfer Indices	VIIth F.C. Per Capita Transfer Indices	VIth Plan Per Capita Transfer Indices	Total Transfer Indices
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	99.3	85.3	93.8	106.4	99.5	103.3	94.8	88.5	92.3
2. Bihar	94.1	93.3	93.8	89.7	85.1	87.6	106.4	95.3	102.1
3. Gujarat	91.0	93.3	91.9	82.5	82.2	82.4	97.7	95.8	97.0
4. Haryana	78.4	122.3	95.7	72.4	128.3	97.7	83.1	98.3	89.0
5. Karnataka	87.8	91.7	89.4	78.3	82.2	80.1	92.9	78.3	87.2
6. Kerala	114.0	128.7	119.8	134.5	104.5	120.9	97.7	86.0	93.2
7. Madhya Pradesh	85.7	98.1	90.6	77.7	85.8	81.4	103.7	103.4	103.6
8. Maharashtra	101.4	75.6	91.2	84.3	67.1	76.5	92.0	74.0	85.0
9. Orissa	137.0	114.2	128.0	157.9	121.8	141.5	121.6	128.1	124.1
10. Punjab	86.8	115.8	98.2	74.1	105.3	88.3	83.9	94.1	87.9
11. Rajasthan	107.7	133.5	117.9	130.9	108.1	120.6	94.8	103.4	98.1
12. Tamil Nadu	94.1	77.2	87.4	78.3	88.0	82.7	98.8	68.5	87.0
13. Uttar Pradesh	91.0	93.3	91.9	91.5	103.8	97.1	101.5	92.8	98.1
14. West Bengal	105.6	77.2	94.4	111.2	77.1	95.8	97.5	65.5	85.0
15. Assam	139.0	191.4	159.7	180.0	165.8	173.6	96.1	240.9	152.4
16. Jammu and Kashmir	261.4	484.2	349.2	302.0	790.2	523.3	220.9	933.3	497.9
All States (16)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

(1) Per Capita transfers have been calculated on the basis of 1971 Census.

(2) 6th Plan per Capita allocation has been considered with 7th F.C. though there is variation in the period.

ANNEXURE 5

Resources transferred to the States as a percentage of Centre's aggregate receipts

(Rupees in crore)

Year	Total gross Transfer to the States	Share in Central Taxes	Grants-in-aid	Loans and advances	Central aggregate revenue receipt	Gross receipt	Col. 2 as percentage col. 7
1	2	3	4	5	6	7	8
1969-70	2266.3	621.7	588.2	1056 3	3050 2	4260.2	53.2
1970-71	2395.0	755.4	612.1	1027.5	3316.2	4683.7	51.1
1971-72	3043.8	944.4	890.8	1208.6	3996.4	5831.6	52.2
1972-73	3541.1	1066.6	946.9	1520.6	4545.4	6558.9	53.9
1973-74	3701.0	1173.5	951.9	1575 6	5032 3	7157.7	51.7
1974-75	3377.3	1224.4	1059.9	1093.0	6478 0	8762.0	38.5
1975-76	4183.6	1599.0	1289.3	1295.3	7958.0	10846.3	38.6
1976-77	4792.3	1689.8	1621.8	1480 7	8618.4	11930 0	40.2
1977-78	5714.9	1798 0	1950.7	1955 2	9591 5	13350 3	42.8
1978 79	7360 7	1956 8	2634.5	2769.4	11003.4	15594.7	47.2
1979-80	8578.8	3406.0	2411.2	2761.6	11061.3	16878.5	50.8
1980-81 (BE)	10008.9	3791.8	2905.6	3310.5	12540.7	19239.1	52.0
1981-82 (BE)	10217.4	4130.7	2753.2	3318.5	13919.4	20318.3	49.1

SOURCE : Central Budget.

ANNEXURE 6

Plan-wise Central assistance to States

(Per Capita in Rs.)

State	First plan 1951-56	2nd plan 1956-61	3rd plan 1961-66	3 Annual plan 1966-69	4th plan 1969-74	5th plan 1974-78 and 1978-79	6th plan allocation	From First Plan to Sixth plan	Ranks
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	19	28	58	39	53	138	208	543	6
2. Bihar	14	19	54	19	58	118	224	496	11
3. Gujarat	19	26	50	31	58	114	225	523	9
4. Haryana	..	..	..	50	76	178	231	535	7
5. Karnataka	23	30	63	40	57	114	184	511	10
6. Kerala	17	24	68	45	80	145	202	581	5
7. Madhya Pradesh	22	32	64	37	61	148	243	607	4
8. Maharashtra	14	20	39	24	47	93	174	411	14
9. Orissa	50	39	74	40	71	169	301	744	2
10. Punjab	152	50	67	38	72	146	221	746	1
11. Rajasthan	36	31	74	49	83	150	243	666	3
12. Tamil Nadu	14	29	53	32	48	122	161	459	12
13. Uttar Pradesh	13	17	46	30	58	144	218	526	8
14. West Bengal	40	22	41	27	48	107	154	439	13
Average Non-Special Category States	24	26	53	34	58	128	208	531	
Special Category States—									
1. Assam	23	28	78	58	119	230	566	1102	8
2. Himachal Pradesh	..	..	..	..	281	528	1250	2059	6
3. Jammu & Kashmir	30	56	166	149	301	1097	2193	3992	3
4. Manipur	..	..	..	..	238	697	1782	2717	5
5. Meghalaya	..	..	..	..	305	758	1960	3023	4
6. Nagaland	..	..	270	400	670	1750	4100	7190	2
7. Sikkim	..	..	..	..	..	2347	5975	8322	1
8. Tripura	..	..	..	..	186	409	1276	1871	7
Average Special Category States.	25	34	102	85	196	508	1197	2147	
Average all States	24	26	55	36	65	147	258	611	

ANNEXURE 7

Percentage Increase in Tax Ratio in 1980-81 over 1960-61

State	Per Capita Tax 1960-61	Per Capita Income 1960-61 (C.S.O. estimates)	Tax ratio (1960-61)	Tax ratio (1980-81) (calculated on Per Capita income of 1978-79	Percentage increase in the ratio 1980 over 1960-61
1	2	3	4	5	6
1. Andhra Pradesh	11	314	3.50	10.12	189.14
2. Bihar	7	216	3.24	5.06	56.17
3. Gujarat	10	380	2.63	9.62	265.78
4. Haryana	..	359	..	9.25	..
5. Karnataka	10	292	3.42	10.37	203.22
6. Kerala	12	278	4.32	10.70	147.69
7. Madhya Pradesh	8	274	2.92	7.87	169.52
8. Maharashtra	16	419	3.82	10.13	165.18
9. Orissa	5	226	2.21	4.88	120.81
10. Punjab	13	383	3.39	8.86	161 36
11. Rajasthan	9	271	3.32	5.72	72.29
12. Tamil Nadu	12	344	3.49	10.86	211 17
13. Uttar Pradesh	8	244	3.28	6.60	101.22
14. West Bengal	15	386	3.89	7.39	89.97
15. Assam	10	349	2.87	3.33	16.03
16. Jammu & Kashmir	8	267	3.00	5.27	75 67
All States	10	304	3.29	8.23	150.15

ANNEXURE 8

Statement showing ranks of States on Per Capita Non-Plan Revenue Expenditure

(Rupees 0.00)

States	Expenditure 1974-75	Rank	Expenditure 1980-81 (BE)	Rank
1	2	3	4	5
1. Andhra Pradesh	88.32	XII	197.17	IX
2. Assam	91.32	IX	182.20	XI
3. Bihar	54.03	XV	107.28	XV
4. Gujarat	113.65	V	271.87	IV
5. Haryana	149.91	I	290.82	III
6. Karnataka	111.32	VII	245.82	V
7. Kerala	124.59	IV	229.40	VI
8. Madhya Pradesh	80.35	XIII	176.97	XII
9. Maharashtra	129 83	III	338.95	I
10. Orissa	90.50	X	177.38	XII
11. Punjab	141.14	II	295.83	II
12. Rajasthan	108.08	VIII	202.23	VII
13. Tamil Nadu	113.54	VII	192.67	X
14. Uttar Pradesh	72.28	XIV	146.12	XIII
15. West Bengal	90.23	XI	197.60	VIII
16. Himachal Pradesh	193.41	IV	342.08	VII
17. Jammu & Kashmir	245.46	II	443.97	IV
18. Manipur	215.75	III	484 62	III
19. Meghalaya	172.83	V	375.40	V
20. Nagaland	605 43	I	1319 77	I
21. Sikkim	N.A.		769 05	II
22. Tripura	166.26	VI	351.93	VI

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The existing procedures for the formulation of State Plans and their finalization allow adequate inter-action between the Planning Commission and the States. The overall policy framework for National Plans is provided by the National Development Council and within these broad guiding principles for development perspectives, national priorities and targets for key areas are determined by the Planning Commission. Thereafter in keeping with the accepted concept of decentralised planning the States must have a free hand in the allocation of available resources to different sectors of development and to propose programmes and projects for the satisfaction of regional and local needs, for the optimum utilization of natural and human resources, for providing essential social services and taking up programmes for the benefit of disadvantaged sections. The formulation and implementation of centrally sponsored schemes needs to be reviewed specially in accordance with the suggestions given in reply to Q. 6.10 below :

The examination of major programmes and projects of the State by the concerned Central Ministries and by the Planning Commission is helpful to the State. The experience of the Central Ministries in dealing with similar programmes with other States also becomes available through such examination and helps in improving the quality and content of the programmes. It is, however, felt that once the Central Ministries and the Planning Commission have made their advice known to the State Government it should then be left to State Government to modify their plan programmes suitably with references to characteristic local conditions and there should be no compulsion implied or otherwise for the acceptance of uniform guidelines for all the States. It is also suggested that before the Planning Commission puts up an important policy document for the approval of National Development Council, the States should be asked to furnish their reactions and these should also be placed before the National Development Council.

6.2 The National Development Council as constituted at present remains the best forum for the determination of perspective of development and plan strategies and priorities. The National Development Council derives its strength from the fact that it is presided over by the Prime Minister, who is also the Chairman of the Planning Commission.

We agree with the view that once the development plans are approved by the Council, the States should be free to implement them and adequate financial resources should be provided to the States for implementation of the approved plans.

6.3 The present composition and procedures of the Planning Commission have stood the test of time and provide adequately for consultation and understanding with the State Governments and the Ministries of the Central Government. The following suggestions are made with the objectives of making the Planning Commission more responsive to the needs of the States and the difficulties they face in the implementation of their plans and programmes :

(i) During any year, Chief Ministers of at least two major states should be included as Members of the Planning Commission by rotation, the period of rotation being one year.

(ii) The Planning Commission should meet at least once every year with the Chief Ministers of all the States for review of the progress of the Plans and for obtaining their suggestion for the next year's plans.

6.4 The Planning Commission should retain its character as high grade Advisory Body of economists, technologists and management experts. Representation of the Central Ministries and the States is available in the National Development Council and it does not need to be duplicated in the Planning Commission. The view-points of the State Governments can be provided by the two Chief Ministers who take up membership of the Commission on rotation as mentioned in reply to Q. 6.3 above.

6.5 The Planning Commission should continue to be a Department of the Government of India as at present. This arrangements lends to the Planning Commission necessary authority and prestige of Government of India and is helpful in its dealings with the Central Ministries and the State Government as also in resolving difference of view-points between them. The Planning Commission has the responsibility of getting the decision of the National Development Council implemented. The Planning Commission should, however, not hesitate in pointing out the short-comings in policies approved by the National Development Council in case, such deficiencies come to light during the course of implementation of plans and programmes.

6.6 We agree that it is essential to consider and incorporate national priorities in the State Plans. There is no objection to the examination of States finances and plans by the Planning Commission but it must be realised that such detailed examination is not very helpful to the States in as much as the Planning Commission is not in a position to provide for the genuine and recognised needs of the State beyond the set pattern of allocation of central assistance as indicated by the Ministry of Finance. The Planning Commission should be enabled to discharge its responsibility towards the economically backward States by exclusive allocation of adequate resources to it for the implementation of essential programmes of the economically backward States.

6.7 This question has been dealt with in detail in reply to Part V of the question pertaining to financial relations.

6.8 We agree that the present system of determining the plan size operates harshly against the economically weaker States. The following suggestions are made in this regard :—

The revised Gadgil formula which forms the basis for allocation of Central assistance to the States needs to be modified further so that the

allocable central assistance is distributed amongst the various States on the following basis :—

(A) Weightage for population . . .	60%
(B) Weightage for backwardness in accordance with IATP (Income Adjusted Total Population Formula).	30%
(C) Special Problems	10%
TOTAL .	100%

(ii) The Planning Commission should, in addition, have access to adequate additional resources which could be utilised for meeting special needs of the economically backward States as assessed by the Planning Commission from time to time.

(iii) Uttar Pradesh has not been receiving adequate share in externally aided projects which provide additionality to State Plan resources. The past neglect should now be made up by linking some major power and irrigation projects with external assistance. The entire amount of external assistance should be passed on to the States as additionality to the plans except for service charges which may be retained by the Government of India.

(iv) Uttar Pradesh has three recognised backward regions namely Eastern region, Bundelkhand and the Hill region. It is necessary that special central assistance should be provided for the accelerated development of Eastern U.P. and Bundelkhand regions on the same basis as is being provided for the Hill region. Such assistance should be provided to the State on the basis of 90 % grant and 10% loan.

6.9 As stated in reply to Q. 6.8 above, the present criteria for allocation of Central Plan assistance to States are not fair to the economically weaker States. These States are obviously not in a position to generate adequate resources of their own for plan financing and must be helped by adequate flows of central assistance to enable achievement of the objective of balanced regional development and removal of poverty.

The special central assistance provided by the Planning Commission for the hill region of U.P. is generally for the same order as provided to Himachal Pradesh. The Hill region of Uttar Pradesh has serious problems of communications, lack of cultivable land, lack of irrigation sources, soil erosion, environmental degradation and absence of large industries. The special central assistance provided by the Planning Commission is not adequate to take care of these aspects and needs to be raised substantially. Uttar Pradesh has large tribal pockets in the hills, Bundelkhand and Tarai regions. Several of these tribes have not been declared as scheduled tribes upto this time and have thus been deprived of due assistance. Secondly, on account of wider dispersal of tribal population in Uttar Pradesh, it is not possible to formulate integrated tribal development plans for scattered tribal population according to prescribed guidelines. The following suggestions need consideration in the interest of accelerated development of the tribal population of the State :—

(a) Early decision should be taken regarding notification of additional tribes in Uttar Pradesh as scheduled tribes as proposed by the State Government.

(b) Special central assistance should be provided by the Government of India on the basis of entire tribal population of the State.

The present mechanism of earmarking of State Plan outlays for projects and programmes is not satisfactory. The Planning Commission generally adopts far too rigid an approach in this matter which does not take into consideration the problems of implementation of particular projects and programmes as also other problems which come up during the course of implementation during the year. The practice of earmarking of outlays should be restricted only to a few programmes of national importance and therein too the Commission should be fully responsive to State Government suggestions for modifications.

6.10 We agree with the general concept of implementation of centrally sponsored schemes in areas related to specified national objectives. The formulation and implementation of these schemes, however, needs improvement. The following suggestions are made in this regard :

(1) The process of consultation with the State Government before a new centrally sponsored scheme is taken up is inadequate. Such new Schemes should be framed in consultation with the concerned departments of the State Government. In addition draft of the scheme as finalised by the Central Ministry should also be sent to the Planning Departments of State Governments (in addition to the concerned departments) and their views should be obtained in writing before a final shape is given to the proposed centrally sponsored scheme.

(2) The new centrally sponsored schemes should be introduced at the beginning of the Five Year Plan or at the beginning of the Annual Plans. They should not be introduced during the course of the year and specially during the latter half of the year as such introduction results in serious dislocation of the States, plans priorities and sectoral allocations.

(3) The Central Ministries should adopt a more flexible policy in modifying the guidelines for different States in accordance with the characteristics of their economy and their needs. The present system of inflexible adherence to uniform guidelines sometimes goes against the objectives of deriving maximum benefits out of the investments made in the schemes.

(4) It has been the experience that the richer States have derived far greater benefits from centrally sponsored schemes as compared to the economically backward States. This aspect needs careful attention as sizable assistance is flowing to the States through such schemes.

(5) The centrally sponsored Schemes should mainly to be on the basis of 100 per cent funding by the Central Government. It is however,

recognised that the Government of India might ask for financial participation of the States in a few centrally sponsored schemes in order to relieve their burden on the respective Central Ministries. In such cases for economically backward States like Uttar Pradesh, the sharing of outlays for such schemes should be 75 percent by the Government of India and 25 percent by the State Government.

6.11 We feel that the monitoring and evaluation of programmes is inadequate both at the level of the Planning Commission as well as by the State Government. For major projects monitoring of progress has been rendered ineffective largely because of the fact that enough resources for timely completion of such projects are not being made available. This problem is of greater relevance to the economically backward resource of poor States. The Central Ministries and the Planning Commission as also the State Governments should not hesitate in dropping a scheme which has not achieved its purpose within a specified period. High power bodies should be available both at the level of the State Government as also at the Planning Commission, to assess such schemes objectively and in depth and stop their implementation as necessary.

6.12 Uttar Pradesh has been a pioneer in decentralised planning and 30 percent of the State Plan outlay have been allocated to the districts for preparation of district plans in accordance which locally felt needs and resources. The State Government accepts these plans as approved by the District Committees as such and does not make any substantial modification therein except when such modification is necessary to adhere to some a nationally accepted guidelines providing matching scheme for centrally sponsored schemes etc. Similar of flexibility regarding State Plans has to be available in the States dealings with the Planning Commission. *Ad hoc* fixation of targets of certain programmes by the Planning Commission without adequate appreciation of States conditions is not realistic.

6.13 Uttar Pradesh has a State Planning Board by the name of Rajya Yojana Ayog (State Planning Commission). Its role in practice is limited to reviewing the proposals for Five Year and Annual Plans before submission to Government of India and also reviewing the progress of the implementation of plan schemes in various sectors. The National Plan has to be more specific in sectors in which the responsibility of implementation devolves mainly on the Central Ministries and provide more flexibility in sectors for which responsibility for implementation lies with the State Governments.

PART VII

MISCELLANEOUS

Industries

7.1& 7.2 It is true that the first schedule to the IDR Act has been amended from time to time and a number of industries have been brought under its purview. This however, has been a natural result of the growing industrialisation in the country and the manufacture of new items, over a period of time. However, the mere fact of an industry being brought under the first schedule does not *ipso facto* act against the interest of any particular State. On the contrary one of the principal objectives of the IDR Act is balanced regional development and proper industrial dispersal.

To attain this objective, it is essential that the Central Government apply more thoroughly the principle of adequate regional dispersal and representation of industry, to different groups of Industry. Such industries as have been exempted from the purview of licensing are substantial both in numbers and give adequate opportunity to the small and medium industries where the investment is not very heavy, for location in terms of the economic pulls of any particular region. However, for the larger industries or industries which have a substantial impact in terms of other downstream industries, the national public interest requires that the Central Government continues to apply the IDR Act to fulfil the objectives of balanced regional development as laid down in its industrial policy and in its amendments of that policy in 1980 and subsequently. Fiscal incentives alone may not fulfil, the objective of uniform development, because the more effluent state will always out match the less effluent States.

It is noteworthy that in recent months several industries have been taken out of the purview of licensing. Within the framework of the preceding paragraphs, these changes are welcomed.

7.3 In the present procedure for industrial licensing, State Governments are not given a full and adequate opportunity to represent their case; even in the full Licensing Committee it is felt that greater weightage may be attached to the State Government view point before a final decision is taken on a licence application. In keeping with the present liberal and pragmatic policy for import of Capital Goods, it is also necessary to streamline the procedure so that decision making is actually decentralised and becomes much quicker, while at the same time it is in keeping with the central norms. For this purposes, the regional offices of the DGTD should be given adequate powers. Similar powers should be delegated to JICCI & E in the case of import of scarce raw materials and spares, so that every small matter need not be routed through CCI &E at the Centre.

7.4 Arrangements are in place for supply of raw materials and finances to small sector and to give them marketing support by way of price preference etc. However, the supply of raw materials is largely dependent on the allotment made by the Central Government to the State Government. The allotment has generally been far short of actual requirements, firstly because of chronic shortages and secondly because of inequitable distribution among the small, medium and large sectors. This inequity has to be corrected at the national level in order to enable State Governments to ensure better supply of raw materials to the small scale sector. The State organisations in charge of supply of raw materials frequently suffer from want of funds. Injection of adequate funds will enable these organisations to perform their tasks better. The major problem face

by the small sector is the inadequate availability of working capital. Effective steps need to be taken by the banks to ensure prompt sanction of adequate working capital. Suitable mechanism should be devised for this purpose, so that working capital is available at appropriate time.

Action for bridging the gap of technology would need to be taken up primarily at the national level. Apex organisations and research institutions are already involved in technological research. However no mechanism is available at present for technology transfer and establishment of necessary nexus for commercial utilization of research findings. It would be necessary to create a national level agency for working as a data-bank of such findings, with necessary linkages with the State level organisations. If necessary, new State level agencies may also be created for this purpose. The Central Government would have to play a major role in creation and financing of all these agencies.

Where requisite technology is not available within the country, it is being imported by different agencies/units on individual basis. It is necessary to route the flow of foreign technology, through a single window or institution. This could either be created as an entirely independent agency, or as a wing of the technology bank suggested in the previous paragraph. This will also obviate reckless import of technology.

7.5 It is a fact that investment of Centrally controlled national industrial financial institutions is congregating primarily in developed States, like Maharashtra and Gujarat. An analysis of their total financing, in the various States, clearly brings out the fact that backward States like Uttar Pradesh have received much less than their proportionate share, though logically speaking backward states should receive higher per capita financing vis-a-vis the developed ones. It is, therefore suggested that the national level financing institutions should go in for regional allocation of total resources, with a view to particularly help the backward States. They should be also made responsible for financing programmes of infrastructural development and rehabilitation of sick industries in these States.

7.6 & 7.7 A large, populous and backward State like Uttar Pradesh has received only about 5 per cent of Central Investment in public sector projects so far. The Central Investment decisions should be taken after giving due weightage to the level of investment so far, present state of industrialisation of a particular State and the extent of its backwardness, besides technoeconomic considerations.

7.8 The present methodology adopted for identifications of industrially backward districts/areas is satisfactory, and no need for a change is felt.

The Government of India has vide its G.O. dated 1-4-83 stated that such blocks of industrially backward districts as have investment in excess of Rs. 30.00 crores in the fixed assets of industries located in that block would cease to receive concessions. Thus, the Government of India has rightly recognised the fact of industrial backwardness being defined in terms of direct investment in the fixed assets of industries located in a particular block. The impact of these concessions has been encouraging. However the assistance granted by Government of India for development of infrastructure in zero industry districts is not adequate.

The subsidy of Rs. 2.00 crores in a project of Rs. 6.00 crores needs to be raised to reduce the ultimate cost of developed land to the prospective entrepreneurs. This will attract entrepreneure to the Zero industries districts and ensure better dispersal of investment.

Most of such projects cost well over Rs. 6 crore while the subsidy remains fixed at Rs. 2 crore resulting in high cost of developed land. Hence the same proportion needs to be maintained.

The various central incentives for promotion of industries in backward areas have been useful. However, most of them are one-time measures e.g., central capital subsidy, reduced requirement of promoters contribution etc. It is felt that introduction of some recurring concessions, like rebate on excise etc; to off-set recurring disadvantage of location in backward areas, may be thought of.

It bears mention, however, that previous experience has shown that fiscal incentives alone are not adequate for industrialization of backward areas, It is imperative to continue with an effective policy of licensing to ensure regional dispersal of investment.

Trade and Commerce

8.1 Although in theory free flow of trade and commerce cannot be questioned in the interests of national integrity but imposition of certain restrictions on trade and commerce have a direct bearing on the economy of this State and they are mostly imposed to raise revenue. Most of these imposts are State's subjects; advice of such an authority on relaxation/reduction on the restrictions can not be made mandatory and as such the usefulness of such an authority is reduced to a very large extent.

However there should be specific committees at the Central Government level. It is felt that the same objective can be better attained by setting up specific committees under union ministries concerned with the subject, where states are represented.

Supplementary Questionnaire No. 2
(On Industry)

1. As in Answer to Q. no. 7.1 and 7.2.

2. The policy of protection to 551 by reserving items for production in 551 will not work if the powers are given to the State Government as the States may have different set of policies and pull in different directions. Therefore, reservation, to be real and effective, will have to be decided at the national level.

3 & 4 The State Government are basically responsible for promoting the growth of small industries in that the State Directorate of Industries are responsible for their registration. The creation of infra-structure facilities, arrangements of raw material, power and finance through State Finance Corporation are also

acuvities fairly under the control of State Government. However, most of the critical raw material are not within the control of State Government as they are allocated to the State Government/State Institutions by various Central Departments/ Institutions. In regard to medium enterprises, the registration is the responsibility of DGTD. They also sponsor these enterprises directly for various raw materials. It is only in respect of infrastructure availability of power etc. that the State Government comes into picture. The expanded role may constitute transfer of registration of all medium enterprises to the State Government; as also their sponsoring for raw-materials. There is, however, a difference here because the registration by DGTD has a legal sanction under the IDR Act. This sanction also enables DGRD to have a better control over the monitoring of DGTD units. It would be necessary to make amendments in IDR Act for enabling the State Directorate of Industries to do so. There is a thinking in currency these days that there should be closer linkage between the small and medium enterprises, and incentives should be so structured that small enterprises are motivated to move to medium scale. There is a lot of merit in this thinking. This change over would also enable the State Government to effectively monitor both small and medium enterprises, as also ensure equitable distribution of raw material amongst them. In this connection, it would be also necessary to delegate sufficient financial powers to State Financial Institutions to enable them to undertake financing of all medium enterprises.

5. Already answered in para 7.1 and 7.2.

6 & 7 National Industrial policy has to be in keeping with the national objectives, and we are again agreement with the industrial policy resolutions. It would, however, be useful to develop a forum for regular inter-action between the Centre and the States. Such a national level forum may be introduced by Government of India, in which the Industries Ministers and officials of the Central and State Governments, as well as representatives of various Chambers of Commerce and Industry inter act freely and regularly.

8. The Government of India has reduced certain restrictions on MRTP Houses with objective of development of zero industry and backward districts. But it has been the experience that non-clearance by Department of company important projects. For the development of backward region particularly zero industry districts it is essential that MRTP clearance should be given at the time the SIA clears the projects for such areas.

Agriculture

9.1 The agro-climatic conditions and diversities of crop husbandry, no doubt, make agriculture a State subject but to meet the food requirements of teaming millions, Central assistance to boost the meagre State resources, for agriculture development, is a must. Hundred per cent assistance is necessary for the programmes which are of National importance such as oilseed and pulses production, augmentation of irrigation potential, seed multiplication, etc.

Although the implementation of all the Centrally sponsored schemes would fall under the purview of State administration yet reorientation of infrastructure in the shape of expertise would also be desirable, through central assistance.

9.2 The general concept of implementation of Central and Centrally Sponsored schemes in areas related to specified national objectives is laudable. The important point however , is the manner in which the schemes are formulated and implemented. The process of consultation should be clearly laid down and prior views of the State Governments should be obtained formally before a final shape is given to such schemes. The schemes ultimately are passed on to the State and entire burden is to be borne by the State Governments after some time. It is felt that wherever the National interests diotate implementation of a particular scheme, the Government of India should continue to bear the entire expenditure of the scheme as long as the runing of the scheme is felt necessary in the national interest.

9.3 The report between the Centre and State in respect of planning is quite congenial, but as far as priorities and programmes are concerned the ideas of the former always prevail in centrally sponsored schemes. At present the programmes are tailored to suit the outlay indicated by the Centre, whereas the outlay should be in accordance with the programmes proposed by the state. It is suggested that agricultural experts of the State should also be included in the Central working group of agricultural planning to plead the cause of the State in the right perspective.

9.4 (a&c) The support price of agricultural commodities are fixed uniformly and they do not take into account the local conditions like productivity, market price etc., which would differ from State to State. This factor needs to be taken into account. The support price on the whole has been useful in prevention of exploitation but they should be so designed as to give a remunerative return to the producer. Similarly the programmes in regard to irrigation particularly in case of major projects such as Command areas and the distribution of water particularly during lean period should be according to the agreed plan. In respect of tube well programmes the required supply of power should also be ensured from Central Grid. In the case of inputs particularly seeds, fertilizers and pesticides, the initiative of the Central Government is of utmost importance for popularising new varieties, application of fertilizers in balanced does and taking plant protection measures at the proper time, as monetary help in the shape of subsidy is very much needed for all these and this will be possible only with Central assistance. Similarly assured supply of diesel, particularly at the time of preparation of fields for sowing and irrigation, can be maintained only with Central assistance. In the case of credit however the guidelines provided by the centre to the nationalized banks for providing crop loans etc., need to be pursued more vigorously so that the banks scrupulously comply with them.

Central Assistance

9.4(b) Harnessing and development of Water Resources of the State for irrigation, generation of hydroelectric power and flood protection is the

State's subject. Due to resource constraint. Uttar Pradesh has not been able to utilise substantial part of its surface and underground water potential. The Government of India through its Central Water Commission, Central Electricity Authority, Department of Environment and Planning Commission exercise technical and financial control over the implementation of Major, Medium and Minor irrigation and multipurpose projects. Technical control is exercised by subjecting the projects to technical scrutiny and financial control by allocation of funds. The allocation for various projects are decided by the State Government, but they remain dependent on the availability of financial resources within the State substantially supplemented by Central assistance. For expenditure and timely implementation of various irrigation and multi-purpose projects it is imperative that financial resources of the State should be augmented by substantial and perceptible increase in central assistance. Having regard to the relative backwardness of the State and keeping in view the fact that bulk of its vast water and energy resources remain unutilised it is necessary that quantum of central assistance should be need based and the sectors of irrigation and energy be given more priority and funds.

External Aid

The State Government sponsors Major, Medium and Multipurpose projects and State Minor irrigation schemes for external aid through bilateral agencies and World Bank. For clearance of schemes for external aid decision of the Government of India is all important. The Government of India's discretion needs to be biased in favour of lesser developed States so that they may have the benefit of external aid liberally. In addition to and together with this the percentage cut enforced at the level of the Government of India in passing on the aid to the State may be reduced to the barest minimum.

Nodal Agency at the Centre for Clearance of Projects

When a proposal is formulated by the State Government its clearance by a number of central agencies namely, Central Water Commission, Central Electricity Authority, Planning Commission, Department of Environment and if it attracts provisions of Forests Conservation Act, 1980 approval of the Department of Forest, is a mandatory requirement. The State Government has to approach these organisations individually. A lot of time is consumed in containing their concurrence approval. There should be a "Single Window Delivery System" at the Centre which should receive proposals of the State Government and obtain approval of the various agencies/departments at the Centre. They will dispense with the need of the State Government spending years in approaching various agencies at the Centre. Further, such proposals should be processed simultaneously by the different concerned departments in Government of India and be cleared at one meeting instead of consecutive examination which is time consuming. The time thus saved would ultimately result in financial savings and restrict the quantum of cost escalation which presently accrues because of a large time gap between project formulation and its implementation.

Inter-State River Projects

Government of India has an important role to play in the implementation of Inter-State river projects on which the concerning State are unable to reach bilateral agreements. The Government of India does have authority to set up Central Boards for implementation of Inter-State River Projects under its control and with the consent of various beneficiary States. The States project their points of view to elicit maximum benefit for themselves out of the project. At times their point of view lacks total objectivity. In Inter-State water disputes Central Governments role should be more effective and decisive. The Government of India should adopt a pragmatic approach keeping in view the overall interest of the region. This would help in settling disputes quickly and in turn in quicker utilisation of the perennial natural resources in public interest.

Notwithstanding the above mentioned suggestions, Irrigation and Power provide the necessary infrastructure for the development of the State. Therefore, harnessing of resources of inter-State rivers should not be taken out of the State List.

9.4(d) Owing to evergrowing population of our country of both human being and cattle, rapid industrialisation and developmental activities of post independent years have put our forests and its dumb denizens under an unprecedented strain. The State Government under the political consideration and in the name of rapid industrialisation, roads, canals and other developmental activities, have been under great pressure to deforest forest areas and this process was going unabated. Thus the Union Government realized the need for central interference in the year 1977 and with this background Forestry was brought in the concurrent list.

Although only a brief period of about 9 years has elapsed since the Forestry has come on the concurrent list, the Union Government has taken many effective steps for the protection of Forests and Wild Life. The Government of India enacted the Forest Conservation Act, 1980 in which the concurrence of the Union Government is required for every transfer of forest land to a non-forestry use. This Act has no doubt reduced the rate of such transfer of forest land was compared to the period prior to the commencement of this Act. Similarly much of the wild life today owes its existence to the keen interest the Union Government have shown in the formulation and implementation of the Wild Life Act, 1972. In this way the Union Government's initiative in forestry policy and administration has given a fillip to the cause of forest and wild life conservation which otherwise would have been difficult for any State Government, which has also to care for the local pressures exerted on it. Thus there does not arise any problem in Centre-State relations due to Union Government's initiative in forestry policy and administration.

It may also be mentioned that the Union Government are also helping the State by providing financial resources to carry out ambitious, plans of raising plantations and doing soil conservation works in the various river valley projects which will go a long way in enriching the State's forests and water wealthe

9.5 While there is no problem in the Centre-State relations with respect to the role of agricultural research, it is however felt that the National Agricultural Research Institutes should try to supplement the efforts of the State Research Organizations in tackling the problems of local importance in addition to their role in tackling National International research problems.

At present the research work is being done directly by the Agricultural Universities of the States and the Central Organizations like I.C.A.R. are supplementing their efforts. Still the same sort of assistance by the Central Organisations to the Regional Agricultural Research Stations of the State which are conducting adoption research work, should also be made available.

Similarly in the flow of credit NABARD is playing a pivotal role, but it is felt that it would be more useful if while formulating credit schemes the stage of socio-economic development of a particular State is kept in view because all States are not equally developed and the schemes should be in consonance with their specific requirements.

Food and Civil Supplies

Procurement under Price Support Scheme

10.1 The policy regarding procurement of Rabi and Kharif foodgrains is formulated by the State Government within the framework of the guidelines received from the Government of India. Different aspects of procurement are, however, conditioned by variations in geographical, agricultural, climatic and other socio-economic conditions prevailing in different States. It is suggested that the Government of India, before finalising procurement scheme, should give proper weightage to these variations and the suggestions of the State Government resulting from their experiences in the implementation of procurement scheme. Following points may be taken into account by the Government of India while formulating these guidelines :—

(1) The support price of foodgrains is generally much below the expectations of producers and as such the cost factor prevalent in different region should be given adequate weightage in fixation of price. By and large there is no co-relation between price fixed and price suggested by the State Government.

(2) The support price of different categories of foodgrains should be announced well in advance and preferably before the start of the agricultural season.

(3) At present the Food Corporation of India does not possess adequate storage capacity with the result that foodgrains purchased under the central the pool remain undelivered causing unnecessary financial and administrative strains to the State Government. The procured foodgrains also get damaged as they remain in the open space for pretty long time. The Food Corporation of India should prepare a comprehensive plan for building adequate storage capacity and this may be reflected in coming five year plans.

(4) At present there is no long term prospective plan for the procurement of different foodgrains. It would be advisable if a long term plan for procurement is prepared by the Government of India taking into account trends in agricultural production.

(5) Incidental rates accruing to the State Government under price support scheme should be sanctioned by the Government of India well in advance.

Licensing Authority of the Roller Flour Mills

At present the Central Government is the licensing authority of the Roller Flour Mills under the Wheat Roller Flour Mills (Licensing and Control) order, 1957. It would be advisable if the powers of licensing authority under the said Order, 1957 are transferred to State Government.

Public Distribution System

Food-grains and other essential goods, distributed through Fair Price Shops, are made available to State Government by the Government of India. Due to limited availability of foodgrains and other essential commodities sometimes allotments to the State Government are not made in accordance with demands made by them. The Government of India should give due weightage to the requirements of the State Government so that those commodities may be made available to consumers for proper functioning of the Public Distribution System. In the State of Uttar Pradesh Co-operatives have been closely associated in the Public Distribution programme. Availability of finances on soft loaning pattern has been a major constraint in their proper functioning. For successful implementation of this programme it is necessary that these co-operatives or in alternative other Government agencies engaged in this programme should have an independent line of credit and finance should be made available to them on concessional rates.

Storage

The Government of India have been allotting foodgrains under public distribution system and the State Government are required to store them in their godowns before actual distribution takes place. In this respect the State of Uttar Pradesh, on account of its vastness has its peculiar positions and there are certain pockets in this State like hill districts and the Bundelkhand areas which either remain inaccessible during rains or are widely spread where food-grains and other commodities have to be stored for two or three months at a time. Due to financial constraints State Government have not been able to build up adequate storage capacity which is adversely affecting distribution programme specially in rural areas and in far flung places. The construction of godowns under public distribution system needs to be given adequate attention and it should be made a part of the Development Plan. The State Government to start with, have taken a decision to construct godowns of a capacity of 5,000 Mts. in each revenue district during Seventh Five Year Plan, with a total cost of Rs. 16.35 crores. Adequate allotment of funds should be released by

the Government of India under this programme so that required storage capacity may be built up for successful implementation of programme relating to the Public Distribution System. To ensure better distribution Tehsil and block level godowns should also be constructed in a phased manner.

Pricing

The Public Distribution System has been implemented as an anti-poverty programme and anti-inflationary measure. Foodgrains and other commodities, distributed through Fair Price Shops, are primarily meant for weaker sections of the society and specially those who live below the poverty line. The pricing struc ure for goods sold through Public Distribution System should be designed in such a manner so that prices are comparatively low and its real benefits accrue to economically weaker sections of the society. This will obviously require adequate amount of subsidy which cannot be met from the meagre financial resources of the State Government. The Government of India should help the State Government liberally in providing this subsidy. On pricing structure it is also suggested that the Government of India may think in terms of formulating a long range pricing policy in which variation in prices of foodgrains and manufactured goods should be co-related *i.e.* prices of these two sets of commodities should not be allowed to go beyond a fixed variation.

10.2 It is in the interest of both the Central and the State Governments that the arrangements for administering the Essential Commodities Act and other Central Acts/Orders affecting State's areas of responsibility is reviewed periodically. One of the arrangements may be to discuss the administering of the Esssential Commodities Act and other such regulatory Central Acts/Orders by convening a quarterly meeting of the officers concerned. However, modality of such arrangements could be worked out.

The arrangements may be reviewed under two broad heads *e.g.* (1) Administ ring of Essential Commodities Act and (2) administ ring of other Central regulatory Acts/Orders. This is necessary because the E.C. Acts also envisages penal action under section 7.

It is felt that some Central regulatory Acts/Orders do not fully meet the requirements of the State concerned. For instance The Petroleum Products (Supply and Distribution) Order, 1972, which is a Central legislation, does not give adequate powers to the State Government to deal with the situation arising out of mal-practices indulged by dealers of petroleum products. In fact, this order applies mainly to the main installations and depots. Therefore some kind of amendment is called for so that State Government are empowered to deal with the situation. Similarly bricks have also not been categorised as an essential item with the result that the State Government have not control on brick-kilns. Thus articles of common use and mass consumption should be declared as essential commodities and adequate powers in respect of these commodities should be given to State Government.

Education

11.1 We do not subscribe to the view that there is unnecessary centralisation or Central interference in the field of education. In fact, the State is free to devise its plans and stategies. The State Government thus have full authority and initiative in the matter. The Government of India merely lays down broad policies and indicate National framework with a view to ensuring minimum uniform standard of education throughout the country. There is, therefore no justification in the criticism that there is too much of Central interference in the field of education. In fact, there is urgent need for more central initiative so that vital programmes like Universalisation of elementary education, introduction of 10+2 system and providing basic minimum physical facilities in the educational institutions could get suitable priority and the requisite financial assistance. If the Central Government does not take initiative in implementing these important programmes, such backward States like U.P. may not be able to mobilise necessary resources for implementing such vital programmes with the required urgency and speed.

11.2 The University Grants Commission has done very good work during last few years to improve standard and quality of education and bring about co-ordinated action in the field of education. The U.G.C. should continue to give financial assistance to the universities. Centres of Advance Learning and Special Studies on long term basis. It should also continue to review the prescribed norms after regular intervals. U.G.C. assistance should be available for libraries, laboratories/buildings and hostel amenities on liberal basis.

While recommending pay-scales for teachers, their qualifications, method of recruitment and workload etc. must be categorically stated with a view to ensuring academic excellence and specialisation in different fields. Before making such recommendations, the U.G.C. should also keep in mind financial position of the States. It should also lay down guidelines for opening new colleges, new universities and new faculties. However, the universities should be left free to determine the courses, syllabi for various degrees. Educationally backward States like U.P. cannot afford adequate resources toward their matching share for the U.G.C. grants to the universities and colleges of the States. There is, therefore urgent need for evolving a system of weightages for educationally backward States like ours so as to ensure that educationally backward States get adequate assistance from the U.G.C. should also devise its programmes and policies in such a way as to ensure that there is no regional imbalance in the field of higher education, and opportunities of higher education are available to different States uniformly.

11.3 The process of discussion, consultation and persuasion is already being followed in evolving consensus on matters of importance to the Centre and the States. The Central Ministry of Education has evolved a system of frequent meetings of Education Ministers, Education Secretaries, Directors of Education and other concerned officers. There is also a Central Advisory Board of Education in which all important issues and programmes are discussed threadbare and consensus is evolved on them. It is

suggested that more regular and periodical meetings should be held. Similarly, there should be more frequent dialogues between Central Bodies like N.C.E. R.T. and U.G.C. and the States.

Education is in the concurrent subject but in practice the Centre has not started operating on this provision so far as effectively as it should. It is still considered to be basically a State subject. It is suggested that there should be more central initiative in the field of education.

11.4 Legal and practical difficulties have been experienced in the operation of Article 30 giving rise to litigation in the courts. This is evident from the fact that the matters have gone upto the Supreme Court in a good number of cases.

Definition of minority

It is not clear in the Article as to whether minority is to be construed in relation to the total population of the country or a particular State or a smaller local area.

2. Forum to decide the question of minority has not been specified with the result that whenever the occasion arises before any court or authority, such court or authority has to take evidence and decide the issue. It may be desirable to specify some forum where the question as to whether an institution is a minority institution or not, may be determined.

3. Who can establish a minority institution is also not clear. Whether one member of the community is sufficient to do so or there must be some specified minimum number of persons to represent the community. It is also not clear whether, the minority character of the institution is lost by inclusion of some members of the other communities.

4. The scope and extent of administration guaranteed in the article is not specific. The courts have held that the right to administer does not include the right to mal-administer. It is yet the subject matter of controversy as to upto what extent the State may have control over the administration and in what branches of administration like standard of education, syllabi, recruitment and service conditions of teachers and other employees, admission of students, choice of administrative body.

5. The term educational institution is very wide and from that viewpoint it may include institution upto the status of Universities and institution imparting education not only in minority languages, culture, religion but secular institution also. Question arises whether it covers technical, industrial institutions like Engineering, Medical Colleges. The position of these institutions may be different because uniformity in standards of education has to be achieved.

6. Thus the scope of the Article as worded, is very wide, In Uttar Pradesh all religion, other than Hinduism and all languages other than Hindi may be minority resulting in numerous minority groups, moreover the right of minority under the Article does not exhaust by the establishment of one institution by one minority. Different or some members of the some minority may establish several institutions of their choice. This means that in every district, tahsil or even smaller local areas there may be several minority communities. They may even exceed the number of non-minority institutions. Existence of Hindu, Muslim, Christian educational institutions at every place is bound to result in compartmentalisation. This is fraught with the danger of giving rise to segregation and communalism. As was observed in St. Xavier's case (1974 S.C. 1389) by the Supreme Court—Education should be agreat cohesive force in developing integrity—of the nation. Abuse or the provision of Article 30, lately sought to be made is not conducive to national integrity.

7. Earlier the State confined its educational laws to affiliation/recognition of institutions for the purposes of examinations and awarding diplomas. It did not interfere with the management. When, however, it was found that teachers/students were exploited and mismanagement was rampant then only the State had to make a regulatory measure to protect the interest of the students, teachers and other employees. Obviously it is in public interest. It is not clear whether the so-called minority institutions which may even exceed the number of majority institutions shall be allowed to be free from the right of the State to intervene howsoever the public policy may require. If not, then what is the exact import of the right to administer guaranteed in Article 30.

8. In Chakhala Sammuel's case (A.R. 1982 pp. 64) it was held that an institution imparting secular education must have some nexus with the minority community to which it belongs. That is, it should serve and promote the interest of minority community in some manner even otherwise than promoting the religious tenets culture or language. This allows commercialisation of educational institutions by the minorities for applying the profits to purposes other than promotion of religion, culture and language.

9. In the field of technical education like medicine and engineering common competitive test. If the minority institutions are to be conceded the common competitive test of the minority institutions are to be conceded the right to choose their own students and to abide by the common selection, there is the danger of sub-standard production of professionals. In St. Xaviers case the Supreme Court observed—To day education, specially Science and Technology is a pre-emptive social interest for our developing nation. Obvisously secular general education, more specially Science and Technology should play decisive role in the development and prosperity of our nation. Accordingly our State should as much interested as, may more than the religious or linguistic minorities, in the right and socially needful education of students of minorities. The students do not belong only to the minorities, they belong also to the nation. The over accentuated argument of imparting secular general education in a religious atmosphere seems to overlook this in protant national aspect.

10. In fact it is high time to reconsider the need and purpose of this separate article. Just as a member of the majority community has fundamental right to establish an educational institution for preservation of his religion, language or culture, the minority community also have the same even without the help of Article 30 as there is no discrimination between

citizens on the ground of religion, culture or language in this background a separate provision in article 30, gives room for argument that the right to establish and administer guaranteed in Article 30 is something supreme which does not admit any interference whatsoever by the State. Probably the idea behind was only to safeguard that no hindrance shall be put in the way of minorities to preserve their religion, language or culture and that they were not prevented from establishing their educational institutions if need be. It does not appear that the intention was to provide special immunity to them or to give rights more than those given to majority community. To quote from the judgement of Supreme Court in St. Xavier's case—"The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling the population but give to the minorities a sense of security and a feeling of inequality....this article cannot be converted by them into a weapon to exact unjustifiable preferential or discriminatory treatment for minority institution so as to obtain the benefits but to reject the obligations of Statutory rights". It was further observed—How could they (Constitution-makers) then intend to confer an absolute or near absolute right on a religious or linguistic minority to establish and administer an educational institution for imparting secular general education.

It therefore appears necessary to consider these aspects and suitably clarify the same.

11.5 No instance of conflict between the Centre and the State in regard to programmes of educational development has come to light so far.

Inter-Government Co-ordination :

12.1 This state has not experienced any serious irritant in its relation with the centre. Hence there is no need for establishing any advisory body such as that exists in the USA.

Uttar Pradesh

MEMORANDUM

Presented by the Chief Minister

I have great pleasure in extending a very warm welcome to the distinguished Chairman and members of this august Commission on their visit to our State, on behalf of myself and the Government of Uttar Pradesh. I also extend a welcome to the accompanying officers of the Commission.

2. I would like to express the gratitude of the State Government to the Commission for giving us an opportunity to exchange views on the subject of 'Centre-State' relations, a subject which the Commission has been entrusted by the Government of India to study and report. We are conscious that the task before the Commission is not an easy one. We have been able to establish during the last 35 years of governing ourselves under the Constitution which we gave to ourselves, that the Constitutional framework has the necessary strength, resilience and stability to safeguard and protect the essential features of a democratic society which the founding fathers of our Constitution envisaged. There have been many internal and external challenges. Notwithstanding these, the vision and hope of the great sons of India in the future of this country and their faith in the democratic processes in the march of the country towards the fulfilment of its aspiration have been largely vindicated.

3. There is no doubt that doubts have been raised, questions have been asked about the texture of the Centre-State relations as incorporated in the Constitution and our ability or otherwise in practice to actualise the intentions or vision of the framers of the Constitution. The subject of Centre-State relations has been a subject of continuous study, analysis and comment by a number of experts and committees at different points of time. The present Commission has a unique role in the study of this subject because it is the first major comprehensive study of this subject assigned by the Government of India. The task before the Commission becomes extremely complex in the context of the fact that insights into the processes of political, social, economic and cultural developments of the country since independence, and perceptions of the country's sound health and well-being in future as one Nation have to inform the critique of the working of our Constitution and more particularly the Centre-State relations. It is not merely a question of structures or mechanical relationships. It is a more complex question of inter-active forces in a governing structure which is influenced by very many other social factors. The work of the Commission is of great contemporary relevance and, in a sense of historical importance. A dispassionate and perspective statement on the subject coming from an august and wise group as yours after four decades of independence should help to set at rest doubts and strengthen our faith in the basic validity and strengths of the federal feature and unitary linkages of our Constitution while suggesting such changes as would be considered necessary based on experience and appropriate in the present socio-political milieu to the fulfilment of our future vision of a prosperous and united country. We have every hope that the report of the august Commission will be an important landmark in the evolution of the country's polity.

4. The State Government has responded in detail to the questionnaire circulated by the Commission and I would refer the Commission to the very detailed replies that we have given to the questions. In this presentation, I would confine myself to some of the essential and salient viewpoints which I, on behalf of my State Government, have the privilege to put forward. We are quite clear in our view that howsoever we may discuss the structure of the Constitution and the Centre-State relationship, we have to give the most dominant place to the concept of inviolable integrity of the country as a whole and the concept that India is one nation. Our Constitution has a federal structure with an unmistakable unitary streak. The advocates of federalism do not often realise that no true federalism exists or can exist any where. Political, social, economic and cultural realities of existence dictate the degree to which centralism moderates federalism in different situations. Even in the United States of America, quoted often as an example of liberal federalism, there have been shifts in some areas to centralism. A nascent democracy like ours, subject to external threats on the one hand and internal problems on the other, the latter arising out of the complex problems of poverty, illiteracy, etc. of an

under-developed society and the features of a multi-cultural, multi-lingual, multi-racial society postulates stronger centralism within a federal framework. This is precisely what our founding fathers had envisioned. We cannot afford to be carried away by the euphoria of the argument for liberal federalism which would compromise in reality and in practice the needed strengths for building up the country as one nation.

Legislative Relations:

We feel that the present distribution of legislative powers between the Centre and the States does not need any change. It has stood the test of time.

Provision of Article 249 regarding enactment of law by Parliament on State subjects is necessary in the national interest. There are enough safeguards provided in the Article to prevent its abuse. The provision has never been abused.

There is an elaborate distribution of legislative powers between the Centre and State. A unique feature of this distribution is the existence of a long Concurrent List of subjects. It provides sufficient leverage to meet the needs of both Centre and the State in regard to any of the subject matter contained therein. This distribution does not need any change. It will of course be desirable for the Central Government to consult the State Government before undertaking a legislation on a matter included in the Concurrent List. However, this may be done by convention and not by statutory provision.

Role of Governor:

The Constitution envisages a duel responsibility for the Governor. Firstly, the Centre discharges its supervisory functions through the office of 'Governor' and also the Governor is responsible towards State executive of which he is the head. By and large, Governors have been discharging their responsibility as visualised by the Constitution.

The Governor has the power to make report to the President suggesting action under clause (i) of Article 356. We feel, if he has arrived at a conclusion after an objective assessment that there is no possibility of formation of an alternative stable Government, he should make report under clause (i) of Article 356. Duties of the Governor also include prorogation of the houses of Legislature and dissolution of the Legislative Assembly. In case of dissolution of Assembly, occasions may arise calling for his independent action. Where the term of the Assembly is coming to an end and a new House is to be elected the Governor may accept the advice of the Cabinet for dissolution of the House a little earlier than expiry of its full term. However, when the Government has lost majority in the House, the recommendation of the defeated Cabinet for dissolution should not carry much weight.

Articles 200 and 201 provide for reservation of Bills by the Governor for the consideration of the President and the assent of the President thereto. We feel that these provisions are both useful and essential. The requirement of assent by the Governor to a Bill is also necessary. His association with the Bill at some stage is inevitable as he is an integral part of the Legislature. Moreover, it provides a final opportunity to the Government to have a second look on the various aspects of the proposed legislation. The experience of last 35 years indicates that provision of Articles 200 and 201 have not been abused and have not posed any threat to the autonomy of the States.

This State feels that there is no necessity to make a provision for impeachment of the Governor like that in case of a Judge of the Supreme Court or High Court. We also feel that there is no need of a guarantee of full term. The present arrangement in which the Governor functions during the pleasure of the President seems to be appropriate in view of the duties and functions of the office. The Governor has to act on the aid and advice of Council of Ministers and a difference of temperament or some other exigencies of situation may require shifting of a Governor to another State.

Administrative Relations

Articles 256 and 257 require the executive powers of the State to be so exercised as to ensure compliance with Central laws and for that purpose Centre may issue instructions. These provisions are essential for harmonious exercise of executive power by the Union and the State. Article 365 provides the sanction behind the power of the Union to give instructions to States without which such power would be futile. This power has hardly been exercised by the Centre in the last thirty-five years.

This State Government feels that the time limit specified in clauses (4) & (5) of Article 356, though intended to be a safeguard, may turn into a handicap to the efficacious use of this power by the Union. Experience has shown the existence of situations, continuously disturbed conditions and break-downs or failure of Constitutional machinery for a period beyond one year. It is suggested that sub-clauses (a) and (b) of cluase (5) of this Article may be independent of each other, thereby making it possible to continue the Presdidential rule for a period of three years as may be necessitated by a particular situation in either of the cases covered by clause (5). The result would be that even when a proclamation of Emergency is not in operation, the Presidential rule may continue in case the Election Commission certifies that there are difficulties in holding general elections to the legislative assemblies of the State concerned.

Article 355 enjoins upon the Union to protect States against external aggression and internal disturbances. In normal times, however, deployment of Central Reserve Police Force and other armed forces in any State may desirably be made with the concurrence of the State.

Setting up of an Inter-State Council, as envisaged under Article 263 will serve a useful purpose in sorting out Inter-State differences and issues. There is, however, no need to set up such Councils on a permanent basis. It may be constituted as and when necessary to sort out any particular issue.

Financial Relations:

The Constitution has assigned to the Centre the power to levy and administer taxes which are high yielding and reapidly growing sources of revenue. The taxes in the State list have a local base and are less elastic. At the same time, State Governments have to fulfil

their responsibilities in the fields of agriculture, education, medical and public health and law and order without adequate resources of their own. The problem of non-correspondence of States' resources with their functions needs to be effectively tackled by adequate transfer of resources from the Centre. In the past, however, the Finance Commission transfers as well as the plan transfers have falled short of the comprehensive needs of the States, particularly the backward States. As a result thereof, the inter-State disparities have not reduced.

While the State Government feels that the taxation powers of the Union and the States need no change, it would be desirable to bring more Central taxes in the shareable pool to enable the States to better match their resources with their expanding needs. It is accordingly suggested that corporation tax proceeds should also be made shareable with the States, as they provide infrastructural facilities to the companies paying the corporation tax. The Eighth Finance Commission also observed that it would only seem fair that the States have an access to corporation tax revenue. The share of States in the proceeds of Union excise duty also needs to be raised to ensure greater statutory devolution to the States.

The federal transfers should be so designed that the per capita transfers to economically backward States are larger to enable them to accelerate their pace of development. It may be pointed out that despite the weightage given to backwardness in devolution of proceeds of some of the taxes, the transfers in the past have lagged the desired progressivity. Under the recommendations of Seventh and Eighth Finance Commissions, Uttar Pradesh's share in total devolution was 15.90 and 15.43 only, as compared to its population ratio of 16.32 (1971 Census). The share was lower under the awards of earlier Finance Commissions. The situation does not improve if Plan transfers are also taken into account. To lend desired progressivity in federal transfers, the State Government would like to suggest the following criteria for determining the share of taxes, Plan assistance and non-Plan assistance to the States :

(A) **Shares of Taxes:**

(1) Uniform criteria should be adopted for the distribution of the entire divisible pool of both the major taxes *viz.*, income tax and Union excise duties.

(2) 50 per cent of the net proceeds should be distributed on the basis of population, 25 per cent in the inverse ratio of per capita incomes of States multiplied by population and 25 per cent to those States exclusively whose per capita income is below all States' average and the share given to them on the principle of income equalisation.

(3) Additional excise duties on sugar, textiles and tobacco should be distributed in proportion to the guaranteed amount of the State to the total guaranteed amount of all States.

(4) The receipts from Central sales tax should also be pooled and distributed—75 per cent to the State of destination, where consumption takes place, and 25 per cent to the States from where the movement of goods commences.

(B) **Plan Assistance :**

(5) Tax effort of the States need not be taken into account in the allocation of Central assistance.

(6) The weightage, given to shortfall in per capita income should be increased from 20 per cent to 30 per cent.

(7) The grant and loan component of Plan transfers should be 50:50.

(C) **Non-Plan Assistance :**

(8) In determining the quantum of grants-in-aid, the level of per capita non-Plan expenditure of States should be taken into account and the larger needs of the relatively backward States for upgrading the levels of administrative and social services including health and education should be provided for.

The allocation of market borrowings should be more equitable for the relatively backward States. The share of backward States in market borrowings need be suitable augmented by adopting the revised Gadgil Formula. Alternatively, in addition to normal limits of market borrowings, additional market borrowing limit should be provided to the States which have an adverse credit-deposit ratio.

State's share in the net collections under small savings schemes should also be increased from the present two-third in recognition of the concerted efforts made by them in mobilising small savings. Further, small savings loan should be treated as loans in perpetuity.

The Central assistance made available to the States in the event of drought should not be in the form of advance Plan assistance and should be provided on the same terms as in the case of other natural calamities. Further, the Central assistance should fully cover the expenditure in excess of the margin money and should be in the nature of grant. Only the amount granted as loan by the State Government should be given as loan. It is also necessary that the norms adopted in fixing the ceiling of expenditure for items like repair and reconstruction of damaged houses should be suitably revised.

Economic and Social Planning

The existing procedure for the formulation of State plans and their finalisation allow adequate interaction between Planning Commission and the States. After the national priorities and targets for key areas are fixed, the States should have a free hand in allocation of available resources to different sectors of development and to propose programmes and projects for the satisfaction of regional and local needs.

It is felt that once the Central Ministries and the Planning Commission have made their advice known to the State Government it should then be left to the State Government to modify their plan programme suitably with reference to characteristic local conditions and there should be no compulsion implied or otherwise for the acceptance of uniform guidelines for all the States.

The present composition of the Planning Commission appears satisfactory. To make it more responsive to the needs of the States it is suggested that every year Chief Ministers of atleast two major States should be included as members of the Planning Commission by rotation, the period of rotation being one year, we also feel that the Planning Commission should meet atleast once every year with the Chief

Ministers of all the States to review the progress of the plans and for obtaining their suggestions for the next year's plan. This Commission should continue to have its character of high level advisory body of economists, technologists and management experts.

This State feels that our share in externally aided projects has not been in tune with our size and requirement. The past neglect should now be made up. Similarly, additional assistance should be provided for development of backward hill areas and the Bundelkhand region of this State.

We feel that in case of centrally sponsored schemes the process of consultation with the States before the scheme is taken up is not adequate. A centrally sponsored scheme should be introduced at the beginning of a Five Year Plan and the Central Ministries should adopt a more flexible policy in modifying the guidelines for different States in accordance with the characteristics of their economy and their needs.

Industry, Trade and Commerce

One of the principal objectives of Central Government with regard to industrial development has been balanced regional development and proper industrial dispersal. With this in view, we feel, it was necessary to amend the first schedule to I.D.R. Act from time to time. Even with the licensing policy there are substantial number of industries which are exempted from the purview of licensing and they provide enough opportunity for location in terms of economic pulls of any particular region. However, for larger industries or industries which have substantial impact in terms of downstream industries the national interest requires that the Central Government continue to apply the IDR Act to fulfil the objective of balanced regional development. However, we feel that the procedure for industrial licensing should provide greater opportunity for the consideration of the State Go ernment point of view.

There is a need to improve the supply of raw material and finances to the small sector. Most of the critical raw material are allotted to the States by the Central Government. The allotment has generally been far short of requirement, firstly, because of chronic shortage and secondly, because of inequitable distribution among the small, medium and large sectors.

For bridging the gap of technology, it is suggested that a national level agency needs to be set up which should act as a Data Bank of research findings with necessary linkages with the State level organisations. Further, flow of foreign technology should also be routed through a single window or institution. In fact the agency suggested above could also be made responsible for this. It will obviate reckless import of foreign technology.

Agriculture, Irrigation and Food & Civil Supplies

The present arrangement in respect of these sectors appears to be quite satisfactory. However, in respect of centrally sponsored schemes we feel that there is need for greater consultation with the States. It is also felt that wherever the national interest dictated implementation of a particular scheme, the Government of India should continue to bear the entire expenditure of the scheme as long as the running of the scheme is felt necessary in the national interest.

Due to resource constraint, Uttar Pradesh has not been able to utilise substantial part of its surface and ground water potential for irrigation and power projects. Having regard to the relative backwardness of the State and keeping in view the fact that bulk of its vast water and energy resources remain unutilised, it is necessary that the quantum of central assistance should be need-based and the sectors of irrigation and energy be given more priority and funds. It is felt that clearance of projects by the Central Government takes a lot of time because a number of central agencies are involved. There should be a "single window delivery system" at the Centre which should receive proposals of the State Government and obtain approval of the various agencies/departments at the Centre.

At present the support price of agricultural commodities are fixed uniformally and they do not take into account the loacal conditions like productivity, market price, etc., which would differ from State to State. This factor needs to be taken into account. The support price of different categories of foodgrains should be announced well in advance and preferably before the start of the agricultural season. There is also necessity for augmenting the storage capacity of the Food Corporation of India because of certain pockets like the hill districts and the Bundelkhand areas which either remain inaccessible during rains or are widely spread where foodgrains and other commodities have to be stored for two to three months at a time. Increasing the "storage capacity" of the State Government is also necessary to make the Public Distribution System more effective.

Education

The present arrangement wherein the Government of India lays down broad policies and indicates a national framework with a view to ensuring minimum uniform standard of education and its details are left to the State Governments seems to be quite satisfactory. It is not correct to say that there is unnecessary centralisation. In fact, there is need for more central initiative.

Educationally backward States like Uttar Pradesh cannot afford adequate resources towards their matching share for the U. G. C. grants to the universities and colleges of the State. There is, therefore, urgent need for evolving a system of weightages for educationally backward States to get adequate assistance from the U. G. C.

Conclusion

I am conscious that no presentation on this subject can either be comprehensive or complete. But I do hope it has been possible to convey the basic sense of the State Government perceptions in the matter. As I have said before, structural forms and mechanistic relationships may at best conduce to or facilitate the process of building up a healthy and prosperous nation but these forms assume substance and meaning only by the manner in which we operate the system or articulate within it showing good sense, good faith and genuine concern for the future of the country and the well being of our posterity. I thank the Commission once again for giving us this opportunity.

GOVERNMENT OF WEST BENGAL

(a) Replies to the Questionnaire

(b) Statement by the Chief Minister

West Bengal

REPLIES TO THE QUESTIONNAIRE

PART I

INTRODUCTORY

1.1 to 1.6 The Government of West Bengal's views concerning issues covered by this series of questions are set forth in a detailed manner in our response to the rest of the questionnaire. There can be no question that given the area, size of population, cultural and linguistic diversities, and disparities in the levels of social and economic development characterising our country, a constitutional arrangement, which provides for a very large measure of devolution of resources and responsibilities to the constituent States, is a paramount necessity. Many of the tensions that have afflicted the nation in the more recent years are symptomatic of the discontent caused by the absence of such an arrangement. A nation featured by such immense and intricate diversities can subsist and prosper only on the basis of a relationship of mutual trust among its peoples. This trust cannot be fostered if some parts of the country, and some sections of the people, obtain a greater advantage, or suffer from a greater disadvantage, because of the overwhelming concentration of powers and resources in the hands of the Union Government and of the manner in which these powers and resources are deployed. There are several federal nations around the world, including the United States of America, the Soviet Union, China, Canada and Australia, where the existence of national and regional governments with "coordinate and absolutely independent" jurisdictions has not caused any functional disorder. It need not be any different in our case. The integrity and unity of the country is of overriding importance, but this objective can be ensured and furthered only if the States are allowed a greater devolution of resources and responsibilities rather than if the attempt is the other way round.

1.7 The constitutional provisions in regard to the respective obligations of the Union and the States need basic restructuring. Our detailed views are set forth in the subsequent sections.

1.8 Article 3 should be amended to ensure the decisions with respect to the formation, or alteration of the area, boundary or name of a State should be taken only in consultation with the Inter-State Council set up under Article 263.

PART II

LEGISLATIVE RELATIONS

2.1 The scheme of distribution of legislative powers in the Constitution is heavily biased in favour of the Union. This is the outcome of the fact that this distribution of powers has largely followed the pattern of the Government of India Act, 1935. Nothing short of a total re-structuring of legislative powers can meet the demands of a true federal entity.

To begin with, the Concurrent List should be abolished. Article 254 implies that the Concurrent List is in effect a second Union List, since in case of a conflict between a Central piece of legislation and a State law, the Central law will prevail; items covered by the Concurrent List are thus subject to the ultimate jurisdiction of the Union Government. It is our point of view that this List must be eliminated in entirety, and all items covered by it transferred to the State List.

Besides, taking advantage of the blanket provisions of Articles 248 and 249 and of entries 7, 23, 40, 48, 52, 53, 54, 56, 61 and 97 of the Union List, the Union Government has made steady encroachments into areas reserved for the States. The most glaring example is the Industries (Development and Regulation) Act and the indiscriminate expansion of the Union's hegemony by declaring its control over certain industries as being 'expedient in the public interest' in terms of Entry 52 of the Union List. Even items such as razor blades, match sticks, sewing and knitting machines, canned fruits and fruit products have been brought under the Centre's control.[1]

Again, Entry 24 of the State List provides for industries but subject to the provisions of Entries 7 and 52 of the Union List. Entry 7 of the Union List provides for industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war, and Entry 52 provides for industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest.' Furthermore, Entry 17 of the State List provides for water, that is, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of the Union List. Entry 56 of the Union List provides for regulation and development of inter-State river and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. Therefore,

[1] Certain subjects of legislation, which belong exclusively to the States, can become subjects of exclusive Central legislation, if a declaration is made by Parliament as to the expediency of control of such subjects by the Union 'in the public interest'. Thus Entry 23 in the State List provides for the regulation of mines and mineral development subject to the provisions of the Union List with respect to regulation and development under the control of the Union. Entry 54 of the Uvion List provides for the regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

to the extent to which a declaration is made by law by Parliament, the power of the State legislatures to legislate in respect of matters in Entries 17, 23 and 24 of the State List is excluded. Herein lies the potential mischief, in as much as these Entries are so enmeshed with Entries 7, 52, 54 and 56 of the Union List that the Union Legislature can, ostensibly in the name of 'Public interest', unilaterally transfer to itself legislative jurisdiction over matters reserved to the States. And the potential mischief has in several instances been rendered into actual mischief.

Parliament passed the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) in 1951, which came into force with effect from May 8, 1952. This Act specified in its First Schedule those industries which in the public interest would have to be controlled by the Centre. In course of time, a considerable number of industries, even minor ones, were added to the industries listed in the First Schedule to the Act till the basic constitutional scheme was completely upset. Without any amendment to the Constitution, 'Industries' has, for all practical purposes, been transferred into a Union subject and has ceased to be a State subject. Even items like razor blades, paper, matchsticks, household electrical appliances, cosmetics, soaps and other toilet preparations, fabrics and footwear, pressure cookers, hurricane lanterns, bicycles, dry cells, T. V. sets, agricultural implements, sewing and knitting machines, canned fruits and fruit products—have all been brought under the Centre's control.

In this connection, the role played by Governors in the interpretation of Articles 200 and 201 must also be mentioned. Since a Governor is an appointee of the Union Council of Ministers, if a piece of legislation enacted by the State Government is not to the liking of the Union Government, the Governor can be, and has been persuaded to withhold assent to the bill and reserve it for the consideration of the President[1], who, again, given Article 74 in its present form, has to abide by the decisions of the Union Council of Ministers. There is also the curious instance of Article 31A, which takes away the right of the States legislatures to enact any meaningful legislation concerning land reforms.

2.2 & 2.3 We suggest (a) the deletion of the Concurrent List and the transfer of each of the items covered by it to the State List; (b) deletion of Article 248 and introduction of an explicit provision so that the residuary powers of legislation vest with the States and not with the Union; (c) abolition of, or amendments to, Articles 249, 252 and 254, so that no State could be deprived of any legislative powers which belong to its without its prior concurrence; (d) deletion of Articles 200 and 201 in their present form, and making it obligatory on the part of the Governor to give assent to all bills passed by the State legislature on items belong to the State List.

2.4 Articles 247 to 254 should be so amended that the Union Government's powers to legislate on items belonging to the State List do not exceed beyond a period of six months; each proposed legislation must first be approved by the Inter-State Council, and any proposal to renew any such legislation must have the prior approval of the Council.

2.5 Were a reference to be made under Article 143 to the President in case of any dispute between the Union and a State on any matter of fact or law, a constitutional amendment should ensure that a decision in the matter be taken not on the advice of the Union Council of Ministers but of that of the Inter-State Council.

PART III

ROLE OF THE GOVERNOR

3.1 It is most unfortunate that the Constitution made provision for a State Governor. This arrangement was a legacy of the imperial administration. During the British days, the Governor was the head of administration of the individual provinces and reported to the Governor-General, and, through him, to the British Crown. He was thus the eyes and ears of the Governor-General and the foreign rulers. In the changed context of an independent India, with democratically elected administration in all States, the position of the Governor is altogether anamolous. Most Governors have tended to function according to the pre-independence colonial tradition, as agents of the Centre and faithfully carrying out the latter's bidding. This has been demonstrated in the choice and dismissal of the Council of ministers, in the exercise of prerogatives under Articles 200 and 356, and generally in all activities where the Governor's discretion is called for.

There are several federal constitutions, including those of the USA, Canada and Australia, where the need for an intermediary between the federal union and the federating entities has not been felt necessary. It need not be otherwise in India. The post of Governor should therefore be abolished and alternative institutional arrangements made for maintaining channels of communication between the Union and the States.

If the abolition of the post is not considered feasible, the Governor must then cease to be a nominee of the Union Council of Ministers. He must be appointed by the President, on the advice of the Inter-State Council, from a panel of three names suggested by the State legislature.

3.2 In case the post is retained, the Governor should be assigned only some symbolic functions to perform; he must also act according to the advice of the State Council of Ministers only.

3.3 With respect to (a), (b) and (c), the record indicates that, in a large number of cases, the Governor has acted not independently and on objectives considerations but in terms of the predilections of the Union Council of Ministers.[2] We are, therefore, in favour of drastic reformulation of Article 356, so that any action taken under this Article is subject

[1] The most recent and glaring example is the withholding of assent by the Governor of West Bengal to the Calcutta University (Amendment) Bill, 1984 despite its not being repugnant to the provisions of Article 254.

[2] The latest example is the dismissal of the Ministry headed by Dr. Farooq Abdullah in Jammu and Kashmir.

to prior approval of the inter-State Council or a standing committee thereof. Article 164 should be amended so that the State Assembly is convened for choosing a Chief Minister within a fortnight of the declaration of the results of the elections, or if a Chief Minister appears to have lost his majority. If Article 174 is retained, it must be so amended that the Governor is bound by the advice of the State Council of Ministers.

3.4 and 3.5 As stated elsewhere, several State Governors have used Articles 200 and 201 to serve the partisan interests of the Union Council of Ministers. The most recent example in West Bengal, already cited, is the decision of the Governor to reserve the Calcutta University (Amendment) Bill, 1984 for the consideration of the President*. These two Articles must therefore be deleted. If for some reason such deletion is not possible, a Constitutional amendment should clarify that the Governor will not act in his discretion, but only on the advice of the State Council of Ministers. There should also be a time limit laid down of one month for the Governor to make up his mind under Article 200 and six months for the President to make up his mind under Article 201, with the further provision that if a bill is passed again on its return from the President under Article 201, it shall automatically become law.

3.6 In a very large number of instances, Governors, through their functioning, have effectively thwarted the will and intention of the democratically elected State legislatures and State Governments. There is no question that in these instances they did not act impartially and fairly.

3.7 The issue of tenure is not relevant. What is important is that in case it is decided to retain the post of the Governor, he must be appointed by the President, as suggested earlier, on the advice of the Inter-State Council from a penal of names decided by the State legislature. The procedure for his removal can be the same as prescribed in the case of a judge of the Supreme Court. No person who has served as a Governor of a State shall be eligible for further appointment in any capacity under the Union Government or under a State Government, nor shall he be allowed to take up any private appointment. There should be a provision for payment of pension to a person who serves as a Governor of a State for a full tenture.

3.8 The suggested prerogative cannot be delegated to the Governor.[1]

3.9 We do not think that the procedure adopted in the German Federal Republic is suitable for our purpose. Such a procedure will also not be necessary in case the appointment of Governor and the selection of Chief Minister are made in the manner suggested above.

3.10 In case the post of Governor is retained, the guidelines to be followed by him should be laid down by the Inter-State Council and then issued in the name of the President. The question of their acceptance by the Union Government should not arise; they may, however be placed before Parliament.

PART IV

ADMINISTRATIVE RELATIONS

4.1, 4.2 and 4.3 Articles 256, 257 and 365 are repugnant to the spirit of a federal entity. Their intent is to reduce the States into administrative agents of the Union Government. This position is altogether unacceptable to us. Directives were in fact issued under Article 257 to the State Governments in 1968 to suppress the strike declared by Union Government employees. There have also been other instances where the Union Government, impliedly under Article 256, has applied pressure on State Governments to enforce Central legislation ratifying detention without trial. These three Articles are to be drastically amended. If any directive is to be issued to the States under Article 256 or Article 257, it should be issued only after adequate consultations with, and concurrence of, the Inter-State Council; action under Article 365 in any situation too must be undertaken only in case the Inter-State Council has given its seal of approval.

4.4 and 4.5 Article 356 has been blatantly misused by the Union Government to serve its partisan purposes. Both Articles 356 and 357 must be so amended as to preclude future possibilities of such misuse. The amending provision should indicate

*During 1950-83, the following Bills passed by the West Bengal Legislature have been withheld by the President:

1. The Trade Unions (West Bengal Amendment) Bill, 1969.
2. The Sri Ramkrishna Sarada Vidya Mahapitha (Amendment) Bill, 1981.
3. The Netaji Nagar College (Taking over of Management) (Amendment) Bill, 1981.
4. The Bangabasi Group of Colleges (Taking over of Management) (Amendment) Bill, 1981.
5. The Birla College of Science and Education (Taking over of Management) (Amendment) Bill, 1981.
6. The Indian College of Arts and Draftsmanship (Taking over of Management) (Amendment) Bill, 1981.
7. The Sri Ramkrishna Sarada Vidya Mahapitha Acquisition Bill, 1981.
8. The Bangabasi Group of Colleges Acquisition Bill, 1981.
9. The Netaji Nagar College Acquisition Bill, 1981.
10. The Birla College of Science and Education Acquisition Bill, 1981.
11. The Indian College of Arts and Draftsmanship Acquisition Bill, 1981.

The following Bills passed during the period between 1981 and 1983 have not yet been assented to by the President:

1. The West Bengal Majdoor, Tindal, Loader, Godownman and other Workers (Regulation of Employment and Welfare) Bill, 1981.
2. The Industrial Disputes (West Bengal Amendment) Bill, 1981.
3. The Land Acquisition (West Bengal Amendment) Bill, 1981.
4. The West Bengal Land Reforms (Amendment) Bill, 1981.
5. The West Bengal Motor Vehicles Tax (Amendment) Bill, 1983.
6. The West Bengal Primary Education (Amendment) Bill, 1983.
7. The Trade Union (West Bengal Amendment) Bill, 1983.

[1] In 1967, the first United Front Government was arbitrarily dismissed in West Bengal on the specious plea that the Chief Minister had refused to summon the Assembly on a date suggested by the Governor; the prerogative of summoning the Assembly must remain with the Chief Minister.

that the decision whether a constitutional breakdown has taken place in a State must be taken only in consultation with the Inter-State Council; fresh elections must however be held, and a new government installed, within six months. In case elections cannot be held within this period due to disruption of normal life, the President should once again consult the Inter-State Council and place it opinion before Parliament.

4.6 The present arrangements may continue.

4.7 The Inter-State Council should review the working of all these bodies and decide on the advisability of their continuance. In case a decision is reached to continue with any or all of them, not less than one-half of their membership should be nominated by the State Governments.

4.8 The experience with the All-India Services is of a mixed nature. There are certain advantages in having in the States serving officers who have a broad national outlook. At the same time, the fact thar officers belonging to the All-India Services generally tend to think of themselves as being under the discipline of the Union Government had led to complications. We would suggest that the Constitution be so amended that in case a State does not wish to make use of the All-India Services, it must be allowed the prerogative to opt out. Moreover, it must be made clear that the personnal belonging to the All-India Services, when they serve in the States, would be under the supervision and disciplinary control of the State Governments. If any appeal is to be lodged against any disciplinary action taken by a State Government against an officer, it should be dealt with by the administrative tribunals set up for the purpose. The tribunals must be independent of both the State and the Union Governments.

4.9 The provisions of Article 355 cannot be made use of to locate Central police and armed forces in a State without the prior concurrence of the State Government. Law and order is a State subject and the prerogative of the States in this matter must be fully respected. There can of course be occasions when induction of Central Police Forces might be considered necessary. In all such cases, however, the Union Government cannot take *suo moto* decision, but must act according to the wishes of the State Government concerned. Similarly, lagislations such as the Disturbed Areas Act must not be extended to any State without the prior approval of the State Government.

4.10 We are for the abolition of the Concurren List. As such, the jurisdiction over newspapers, books and printing presses should be transferred to the States. Radio and Television are being increasingly misused by the Centre. Such a situation cannot be allowed to continue. In a country with India's size, diversity and complexity of problems, it is important that the State Governments are allowed parallel jurisdiction over radio and television; the Constitution may be amended accordingly.

4.11 Till now, the institution of Zonal Councils has been only infrequently made use of. To serve the purpose they are intended to serve, the Councils must meet at regular intervals and be serviced by a permanent secretariat jointly set up by the State Governments.

4.12 Article 263 must be re-formulated to ensure that the inter-State Council is made mandatory. The Council should be constituted with the Prime Minister and Chief Ministers of the States, as its members and should become the pivotal element in the structure of Centre-State relations. The Prime Minister should be its Chairman, but the Council should also have a Vice-Chairman; this latter position should rotate annually among the State Chief Ministers. The Council should meet at least four times during the year and the agenda should be decided upon by the Prime Minister in consultation with the Vice-Chairman; there should be provision for emergency meetings to discuss particular situations where the invocation of Article-356 or Article 365 is being contemplated. A standing committee of the Council may be contemplated in case such emergency meetings are not considered feasible. The Council should have a permanent secretariat to be financed jointly by the Union and States.

The Inter-State Council should have, among others, the following functions : (a) to give its views on any proposals for interference with the boundaries of a State; (b) to offer its views on bills passed by State legislatures and referred to the President for consideration, in case Articles 200 and 201 are retained in their present form; (c) to consider proposals for removing a serving Governor; (d) to decide whether directives are to be issued under Articles 256 and 257 and to reach decisions under Article 365 were such situations to arise; (e) to decide whether President's rule should be imposed in a State under Article 356; (f) to formulate guidelines to be followed by the Governor of a State; (g) to lay down the functions and responsibilities of the permanent agency to supervise and monitor the distribution of resources between the Union and the States as indicated later: and (h) to advise the President with regard to questions and disputes under Act, 143.

Apart from our specific views on administrative relations between the Union and the States set forth in response to the questionnaire, we have one major change to suggest. This is with respect to the composition of the Council of States. The Council of States was intended to reflect, at the level of the Union, the views and interests of the constituent States. Its present composition has put paid to those hopes and intentions. While the functions and responsibilities of the Council of States for the present need not be disturbed, its composition may be so changed as to ensure equal representation from all States, whether big or small. This principle is enshrined in the constitutions of both the Soviet Union and the United States of America, and has contributed immensely to national cohesion and integrity. Article 80 of our Constitution may be so amended that we too can reap the benefits which stem from the acceptance of the principle of equal representation of the States in at least one chamber of the national parliament.

It is also important that in view of the prevailing circumstances, the special status which Article 370 of the Constitution accords to the State of Jammu and Kashmir is not interfered with.

PART V

FINANCIAL RELATIONS

5.1 The statutory devolutions, that is, devolutions to the States made in pursuance of the awards of the Financs Commissions, have comprised only a part of the total transfers from the Union to the States. Over the period since 1951, nearly 60 per cent of this total has consisted of Plan and discretionary transfers (Table 1). Plan transfers too are in effect discretionary transfers, since the Planning Commission, to all purposes, now acts accordance with the guidelines laid down by the Union Government. It is thus obvious that the hope cherished in regard to an 'automatic' and free-from-interference' arrangement has not borne fruit. Grants-in-aid of the revenue of State Governments are of course generally preferred in terms of the recommendations of successive Finance Commissions. In so far as the Finance Commission itself is however appointed by the President on the advice of the Union Government, it should be permissib:e to raise the basic question whether even the statutory transfers could be considered to be objectively determined in all circumstances. It is, besides, unrealistic to consider the transfers of the Union Government's tax receipts only. While discussing the aspect of distribution of resources between the Union and the States, the totality of resources available in the public domain ought to be taken into account.

There is a second, equally important, consideration. The interest of the States would be adequately safeguarded only if, along with improved arrangements for objectively determined resource transfers, equal attention is also paid to enlarging the area of their fiscal operations. This would imply re-alignment of the distribution of fiscal powers as delineated in the Constitution in favour of the States.

Another basic question which also relates to the sanctity of the recommendations of the Finance Commission is whether it is given to the Union Government to deny the States their dues, as recommended by the Commission, for any particular financial year.

TABLE 1

Gross Central Transfers to States, 1951-84

(Rs: crores)

Period	Statutory Transfers	Plan Transfers	Discretionary Transfers	Total
1	2	3	4	5
1951-56	447(31.2)	350(24.5)	634(44.3)	1,431
1956-61	918(32.0)	1,058(36.9)	892(31.2)	2,868
1961-66	1,590(28.4)	2,515(44.9)	1,495(26.7)	5,600
1966-69	1,782(33.3)	1,767(33.1)	1,798(33.6)	5,347
1969-74	5,421(35.9)	3,535(23.4)	6,145(40.8)	15,101
1974-79	10,873(43.0)	7,722(30.5)	6,683(26.0)	25,278
1979-84	22,757(43.1)	15,808(30.0)	14,203(26.9)	52,768
1951-84	43,788(40.4)	32,755(30.2)	31,850(29.4)	108,393

Figures in brackets indicate percentage to total

SOURCE : Report of the Seventh Finance Commission (1978) and Reserve Bank of India Bulletin, various issues.

5.2 The observations of the study team of the Administrative Reforms Committee remain relevant till this day. As can be seen from Table 2, the dependence of the State on the Union has in fact increased over the years, and, if things remain as they are, this dependence might in fact increase further in future. It is inherent in the existing arrangements that the Union's fiscal and other resources, raising powers would yield resources to it which are far in excess of its genuine requirements. The Union Government, in addition, has made several encroachments on the tax-raising and tax sharing prerogatives granted to the States by the Constitution. For instance, the device of imposing a surcharge on income tax and the redefinition of Corporation tax have deprived the States of their legitimate share of these two most important sources of revenue. The solution must therefore be two-fold. First, the States' fiscal powers should be enlarged, and whatever encroachments on these powers have taken place since the Constitution came into force should be made void. Second, the totality of resources at the disposal of the Centre, including resources raised through increases in administered prices, must be considered as a common pool and the States entitled to a share of this pool. This pool should also include the proceeds of the various borrowing programmes launched by the Union Government. At the same time, there should be a separate arrangement whereby the States are enabled to be actively associated with the formulation of the nation's monetary policy.

TABLE 2

Dependence of Staes on the Union

Aggregate Central Trasnfers[1] as Percentage of Total Disbursements by States[2]

Period	Percentage
1951-56	37.8
1956-61	39.8
1961-66	45.7
1966-69	45.2
1969-74	47.4
1974-79	42.1
1979-84	41.6

[1] Transfers on Revenue and Capital Accounts

[2] Disbursements on Revenue and Capital Accounts.

Source : Reserve Bank of India Bulletin, Various issues.

5.3. To argue that providing additional fiscal powers to the States would increase inter-State disparities is not an easily defensible proposition. Even under the existing dispensation, inter-State disparities cannot be claimed to have narrowed compared to the situation obtaining thirty-odd years ago; the pattern of resource transfers from the Union to the States has not always conformed to the objective of advancing the cause of social and economic justice. If we leave out the so-called Special Category States, aggregate transfers from the Centre in the quarter of a Century since 1956 have generally favoured their relatively better-off States rather than the low income States (Table 3). So it is not that the

protecting hand of the Union Government ensures the fiscal interests of those States which are economically weak. Once it is accepted that devolution must encompass the total resources in the public domain, a set of criteria can be adopted for ensuring that *inter se* distribution between the States places appropriate weightage to the problems encountered by the weaker States.

TABLE 3

Gross Budgetary Transfers from the Centre, 1956-81

States	Rupees per capita				Index numbers			
	Statutory	Plan	Discretionary	Total	Statutory	Plan	Discretionary	Total
1	2	3	4	5	6	7	8	9
A. High Income								
Punjab	405	443	604	1,452	78	101	159	109
Harayana	389	498	490	1,377	75	113	129	103
Maharashtra	461	291	397	1,149	89	66	104	86
Gujarat	466	355	398	1,219	90	81	105	91
West Bengal	524	314	486	1,324	102	71	128	99
Group A	471	338	449	1,258	91	77	118	94
B. Middle Income								
Tamil Nadu	446	350	274	1,070	86	80	72	80
Kerala	611	445	335	1,391	118	101	88	104
Orissa	708	536	476	1,720	137	122	125	129
Assam	742	675	659	2,076	144	153	173	155
Karnataka	465	374	384	1,223	90	85	101	92
Andhra Pradesh	504	427	381	1,312	98	97	100	98
Group B	542	436	386	1,364	105	99	102	102
C. Low Income								
Uttar Pradesh	446	390	264	1,100	86	89	69	82
Rajsthan	553	461	734	1,738	107	103	193	130
Madhya Pradesh	428	434	248	1,110	43	99	65	83
Bihar	456	363	318	1,137	88	83	84	85
Group C	459	398	332	1,189	89	90	87	89
D. Special Category								
Himachal Pradesh	1,102	1,405	498	3,005	214	319	131	225
Jammu & Kashmir	1,304	2,058	1,466	4,828	253	468	386	361
Tripura	1,519	1,125	381	3,025	294	256	100	226
Manipur	2,302	1,331	925	4,558	446	303	243	341
Nagaland	6,080	3,896	2,758	12,734	1,178	885	726	963
Meghalaya	1,702	1,764	845	4,311	330	401	222	323
Sikkim	722	3,271	1,071	5,064	140	743	282	379
Group D	1,701	1,902	1,086	4,689	338	432	286	351
ALL STATES	516	440	380	1,336	100	100	100	100

SOURCE : K.K. George, 'Centre-State Financial Flows and Inter-State Disparities in India, University of Cochin (Mimeo), 1982.

5.4 The options suggested by the question are neither exhaustive, nor should they be exclusive of one another. It is also not factually correct that large deficits in the Union Government's accounts in recent years are mostly because of devolutions made to the States. These devolutions have constituted a minor fraction of the total quantum of deficit financing each year. (Table 4.) The need to control expenditure and ensure its effective and efficient use will always be a major consideration whatever the level of resources available. Resort to deficit financing should be made only on the basis of overall national considerations and not because either the Union or the States are in difficult financial straits. If the total situation does not permit such deficit financing, the Union Government must desist from the measure and raise additional resources through other means.

TABLE 4

*Total Resource Trnsfers from the Centre to the States as percentage of the Union's aggregate resources**

1951-56	36.4
1956-61	32.3
1961-66	31.3
1966-69	31.4
1969-74	36.4
1974-79	30.7
1979-84	32.6

*Inclusive of deficit financing

SOURCE : Reserve Bank of India Bulletin, various issues.

The objective criteria for determining *inter se* distribution among the States should place the most stress on protecting the interests of the relatively poor and economically vulnerable States. Apart from the aspect of relative levels of per capita income, the incidence of poverty, illiteracy, industrial backwardness, the State of employment, etc. should be taken into account.

5.5. As already stated, the pattern of devolution of financial resources from the Union to the States has been far from equitable. No amount of exhortation upon the Union Government will improve matters unless clear-cut directives are written into the Constitution. These directives should be an integral part of the scheme of devolution of, total resources available with the Centre and should be administered by a body appointed by the Inter-State Council.

The task of monitoring resource-raising efforts as well as of economic management by the State Governments should, be left to the State legislatures and other agencies in the respective States. Once devolution has been de-linked from the so-called revenue and capital gaps and is governed by a set of objective criteria, and is accompanied by a substantial enlargement of the States' taxing and borrowing powers, the States will be on their own and will be compelled to adjust their expenditure to the resources placed at their disposal. This itself would be the biggest stimulus for cultivation of fiscal responsibility.

5.6. If the equity principles are formally embedded in the criteria for resource-sharing, no special fund is called for. The crucial issue is to ensure adequate resources for the States. In the past, the Union Government has shown a tendency to encroach into the resource-raising areas belonging to the State Governments. All such encroachments should be made void through constitutional amendments.

5.7. There is strong ground for suggesting that the jurisdiction of several fiscal items covered by Articles 268 and 269 should be transferred to the State Governments. None of the principles referred to will be affected thereby, and, given the demonstrated reluctance of the Union Government to deploy effectively the prerogatives currently enjoyed by it under these Articles, such a transfer will augment the aggregate flow of resources in the public domain.

5.8. The argument put forth can be easily overstated so as to justify the total centralisation of virtually all taxing powers, denying the States any tax-raising prerogatives whatsoever. To take the specific instance of sales taxation, which is in the State List but which the Union Government is desperately striving to transfer to the Union List through the device of additional duties of excise. No convincing case has been established through an objective analysis of the Indian tax structure that sales taxation by the States has adversely affected the national economy even in a marginal manner. In a country of India's dimension, it would not be irrational to plead for a considerable decentralisation of taxing powers so that, in both the imposition of taxes as well as their administration, due regard is paid to local conditions. In the United States, even the taxation of income is a prerogative of the federal government shares with the States. The distribution of fiscal powers in our Constitution was heavily influenced by the arrangements in the Government of India Act, 1935; it is altogether out of tune with the present circumstances. This arrangement paid but little attention to the aspects of efficiency of tax collection and of regional variations.

5.9. There is much merit in the suggestion that fiscal transfers should steer away from making any distinction between Plan and Non-Plan transfers. As practised, this distinction is mostly arbitrary. Transfers to the States should be decided upon on an assessment of overall resource available and the allocation between the States should be made with appropriate regard to the criteria laid down for ensuring inter-State equity. It is therefore only appropriate that financial transfers of all categories be decided upon and reviewed periodically by one and the same body. Were the Planning Commission so constituted as to inspire the confidence of the States, this responsibility could have been assigned to it. If the Commission however continues to be appointed in the present manner, the task of deciding the fiscal transfers should rather be assigned to an independent body to be set up under the auspices of the Inter-State Council.

5.10. This question has already been answered. Finance Commissions have attached a disproportionately large weightage to the gap-filling approach. As a result, some States have tended to overstate their gaps and some other States have had no incentives to reduce such gaps. As stated above, the existing arrangements have not led to any narrowing of inter-State disparities either.

5.11. The view expressed is by and large valid. It is important that the existing approach. which places a large premium on the aspect of filling gaps in the capital and revenue accounts, is abandoned and a set of independent and objective criteria—as already stated—are laid down for determining the allocation between the Centre and the States and the *inter se* allocation among the States.

5.12. The suggestion of the Seventh Finance Commission is well taken in so far as the choice between tax-sharing and grants in-aid is concerned. This is of course on the assumption that a solid foundation has been laid for the equitable sharing of fiscal resources between the Centre and the States and as between the States.

5.13. The objective should be to move away from the principle of grants-in-aid altogether. Once the criteria of resource-sharing take into fullest account the different aspects of economic and social disparities, there should be no occasion for considering separately the issue of grants for narrowing down disparities in the level of administrative and social services. In any event, the mechanism of grants must not be deployed to discriminate further in favour of the relatively better off States, as would appear to have been the case in the past. There may be some provision for offering grants-in-aid to cover situations of emergency, but the allocations must be made exclusively

by the body set up by the inter-State Council suggested above and not at the discretion of the Union Government.

5.14. As explained earlier, the sharable divisible pool should include the totality of resources raised by the Centre on both revenue and capital accounts and therefore, should include all conceivable sources of revenue-gathering. The case for including receipts obtained through periodic increases in administrative prices in the divisible pool derives from the consideration that such increases in the recent period has been intended largely to circumvent the constitutional requirement to share the proceeds of excise duties with the States. An allowance may however be made for that part of the increase in administrative prices which genuinely reflects an increase in costs. As regards capital receipts, such as those from special bearer bonds, the case for their inclusion in the divisible pool rests on the ground that contributions to these bonds directly affect receipts under income tax. Since the States are, under the existing dispensation, entitled to 85 per cent of the proceeds from income tax, it is only proper that contributions to the bonds too should be included in the pool. Similarly, proceeds from all schemes for revenue-raising, which are contingent upon major concessions being accorded under the income tax, such as in the case of the recently announced National Deposit Scheme, should be sharable with the States; it is not necessary to specify individual items, since it is our contention that all revenues raised by the Centre should be shared with the States.

5.15. The purport of this question is not immediately obvious. It is a matter of political judgement what proportion of the nation's total savings, including private savings, should be drafted for the public domain. What is important to point out is that while in the Union Government's total budgetary receipts, the share of tax and non-tax revenues has improved in relation to that of capital receipts since the period of the second plan (Table 5), the share of the States in the Centre's aggregate budgetary receipts has not increased over the years (Table 6). This trend is clearly relatable to the drastic decline in the amount of loans received by the States from the Union Government as a proportion of the latter's aggregate capital receipts.

5.16. The contention is not correct. The budgetary deficits of the States have not grown at a rate faster than those of the Union. As can be seen from Table 7, the overall deficits of the State Governments as a proportion of their total disbursements have remained far below the corresponding proportion of the Centre's deficits. The fiscal difficulties the States have been facing of late is attributable to the shrinking share of the States in both the Centre's capital receipts and direct market borrowings.

TABLE 5

Structure of the Union Governments Resources

(as percentage of total)

	Plan Period						
	First	Second	Third	Annual Plans	Fourth	Fifth	Sixth
1	2	3	4	5	6	7	8
Tax Revenue	57.1	43.2	44.5	42.9	47.1	50.4	49.1
Non-Tax Revenue	7.8	7.8	12.0	11.8	12.5	13.5	12.5
Total Revenue	64.9	50.2	56.5	54.7	59.6	63.9	61.6
Capital Receipts	22.5	38.4	39.0	40.7	35.5	31.7	32.3
Deficit Financing	12.5	11.4	4.4	4.6	5.0	4.4	6.1
Total	100	100	100	100	100	100	100

SOURCE : Reserve Bank of India Bulletin, various issues.

TABLE 6

Transfer to States

	First Plan	Second Plan	Third Plan	Annual Plan	Fourth Plan	Fifth Plan	Sixth Plan
1	2	3	4	5	6	7	8
Tax revenue transferred to States as percentage of Centre's gross tax revenue	17.0	19.6	15.2	17.5	23.3	19.8	26.9
Total revenue transfers (Taxes plus grants) as percentage of Centre's gross revenue	23.0	27.4	24.3	28.4	33.9	31.0	35.9
Loan transfers to States as percentage of Centre's capital resources capital receipts plus deficit financing	61.5	35.2	40.2	34.9	40.2	30.1	27.1
Total transfers as percentage of total Central resources including deficit financing	36.4	31.3	31.3	31.4	36.4	30.7	32.6

SOURCE : Reserve Bank of India Bulletin, various issues.

TABLE 7

The Union and the States : Cap tal Receipts, Deficits Market Loans

	First plan	Second Plan	Third Plan	Annual Plan	Fourth Plan	Fifth Plan	Sixth Plan
1	2	3	4	5	6	7	8
Centre's deficit as percentage of its total disbursements	12.5	11.2	4.4	4.6	4.9	4.4	6.1
States' deficit as percentage of their total disbursements	0.8	1.1	0.4	1.4	0.6	+1.5*	2.7
States' overdrafts as percentage of aggregate resort to Reserve Bank of India by Centre and States** . .	No Available	2.3	8.3	11.4	+1.3*	+5.3*	4.8
States' share in gross market loans . . .	28.8	26.6	23.7	12.9	21.0	20.2	12.7
Market loans as percentage of Centre's capital receipts	33.0	30.0	20.9	35.1	23.1	21.6	32.0
Market loans as percentage of States' capital receipts.	14.4	15.1	9.4	8.7	8.4	8.9	8.1
Share of capital receipts in States' total receipts .	31.7	35.2	38.9	35.0	33.7	26.6	23.6

*Surplus.

**Overdrafts plus ways and means advances to States plus Reserve Bank of India subscriptions to treasury bills.

SOURCE : Reserve Bank of India Bulletin, various issues.

5.17. For some States, such as West Bengal, the burden of repayment is close to 40 per cent of total capital disbursements, and has been so over a consistently long period (Table 8). A periodical review of this burden is an imperative necessity. The body proposed by us to be set up under the auspices of the Inter-State Council to decide upon Centre-State fiscal transfers should have the prerogative to recommend write-off of outstanding debts of State Governments from time to time. The rationale for such write-off is strengthened by the fact that a considerable proportion of loans to the States by the Centre has been financed through recourse of the printing press; the Centre therefore has no moral right to insist on the repayment of such loans. The viability of the State Governments, and their capacity to initiate developmental expenditure of any meaningful dimensions, will be seriously impaired if these debts persist.

5.18. There can be no question that the right of the States to borrow has been unduly restricted by the Constitution. As long as a State Government has a line of credit with the Union Government, it has at present no right to borrow from any other source without the explicit permission of the Centre. In any event, the States have no prerogative to contract public loans on their own and have to depend upon whatever borrowings are permitted by the Centres. Unlike in the 1958 when two-third of the total public borrowings were assigned to the States, the proportion has now dwindled down to around 10 per cent. (Table 9.) This is an absurd situation, and needs to be reversed. Once the right to borrow on their own is accorded to the States, it would of course be necessary to ensure that they do not transgress the limits of sound finance; the independent body to be constituted by the Inter-State Council to determine the distribution of resources between the Centre and the States could be the regulating agency for this purpose.

TABLE 8

Repayment Burden of States

(Repayments as percentage of total capital disbursements)

	1967-68	1968-69	1969-70	1970-71	1971-72
1. Andhra Pradesh	46.69	48.88	42.69	57.27	43.08
2. Assam . .	51.33	60.90	52.71	58.67	55.26
3. Bihar . .	24.34	32.35	22.43	23.09	31.88
4. Gujarat .	23.22	22.39	28.47	25.26	28.17
5. Haryana .	37.92	43.54	47.15	27.55	34.31
6. Himachal Pradesh	..	..	..	15.37	13.19
7. Jammu & Kashmir.	5.08	0.42	52.39	0.72	46.06
8. Mysore/Karnataka*	21.50	26.08	29.97	36.44	44.89
9. Kerala .	27.59	33.58	30.79	36.51	32.37
10. Madhya Pradesh	35.22	43.52	44.82	46.16	36.66
11. Maharashtra	16.97	16.58	38.79	39.37	23.33
12. Manipur .	..	..	..	12.90	31.60
13. Meghalaya .	..	..	..	22.29	5.28
14. Nagaland .	..	..	..	2.40	5.77
15. Orissa . .	40.51	49.32	44.98	50.00	37.06
16. Punjab . .	21.81	35.02	34.36	23.01	19.48
17. Rajasthan .	42.29	50.22	35.41	59.08	64.77
18. Sikkim . .	..	..	..	..	..
19. Tamil Nadu	24.78	30.97	37.58	28.40	51.73
20. Tripura. .	..	..	..	..	51.82
21. Uttar Pradesh	20.18	27.59	35.51	26.46	27.38
22. West Bengal	16.43	31.71	46.22	41.83	39.47
ALL STATES	26.62	33.24	36.03	35.54	37.61

TABLE 8—*Contd.*

	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78
1. Andhra Pradesh	40.23	51.57	15.66	17.89	15.65	14.17
2. Assam	67.08	57.72	25.86	28.62	18.83	16.12
3. Bihar	20.39	40.13	20.50	28.68	34.17	33.80
4. Gujarat	17.57	28.48	13.06	33.42	11.83	16.82
5. Haryana	28.88	21.02	24.78	28.09	16.52	14.67
6. Himachal Pradesh	18.07	28.60	19.40	27.79	18.87	13.95
7. Jammu & Kashmir	41.57	34.46	10.50	15.76	19.40	7.12
8. Mysore/Karnataka	27.47	43.24	26.56	19.01	13.47	13.87
9. Kerala	33.15	42.71	22.43	32.60	35.35	22.21
10. Madhya Pradesh	32.73	34.13	14.33	16.84	11.12	14.21
11. Maharashtra	29.22	35.22	16.77	15.94	16.11	10.32
12. Manipur	12.52	18.60	2.92	2.91	39.00	8.64
13. Meghalaya	44.40	20.08	1.63	3.58	4.43	5.25
14. Nagaland	5.28	9.31	1.14	19.28	27.72	28.28
15. Orissa	44.67	44.71	16.93	29.41	16.19	16.23
16. Punjab	14.10	18.30	20.26	21.13	19.38	42.04
17. Rajasthan	35.39	49.68	18.18	25.75	19.52	20.71
18. Sikkim	..	..	..	..	0.04	1.32
19. Tamil Nadu	33.77	37.14	14.41	24.13	15.00	13.25
20. Tripura	18.90	16.47	6.22	7.32	5.29	14.76
21. Uttar Pradesh	20.41	24.25	24.27	23.82	15.59	15.02
22. West Bengal	36.26	46.76	29.99	27.68	24.61	30.34
ALL STATES	30.02	36.50	19.61	22.98	18.44	18.17

TABLE 8—*Contd.*

	1978-79	1979-80	1980-81	1981-82	1983-84 (a)	1983-84 (b)
1. Andhra Pradesh	14.06	13.21	15.33	22.67	20.49	16.77
2. Assam	13.96	7.28	63.62	32.72	19.40	21.33
3. Bihar	18.26	13.62	7.37	12.20	17.36	19.19
4. Gujarat	16.81	5.11	8.42	18.46	15.91	16.59
5. Haryana	12.97	12.69	10.53	18.84	26.89	26.69
6. Himachal Pradesh	11.28	2.57	52.65	4.70	5.15	5.33
7. Jammu & Kashmir	21.73	8.35	13.78	44.07	20.31	19.08
8. Mysore/Karnataka	19.23	16.17	18.67	16.58	19.80	16.59
9. Kerala	21.24	9.46	9.98	47.41	17.86	16.94
10. Madhya Pradesh	11.07	8.47	9.66	11.86	14.00	13.47
11. Maharashtra	13.32	4.98	6.65	14.48	14.00	13.56
12. Manipur	6.10	26.71	61.11	13.91	11.04	11.31
13. Meghalaya	5.31	0.86	45.37	4.10	10.18	10.15
14. Nagaland	7.99	18.25	63.68	18.46	3.90	4.16
15. Orissa	14.76	12.01	26.57	18.81	22.40	19.05
16. Punjab	32.71	10.76	18.23	25.80	25.96	31.77
17. Rajasthan	15.97	30.43	29.72	27.99	21.72	24.47
18. Sikkim	3.29	2.18	2.20	4.45	4.97	4.53
19. Tamil Nadu	13.66	15.88	7.52	11.68	17.98	19.89
20. Tripura	10.05	1.67	49.51	3.05	15.33	4.84
21. Uttar Pradesh	15.32	12.41	12.43	15.84	17.30	19.78
22. West Bengal	29.30	38.38	30.81	37.94	35.18	35.96
ALL STATES	16.77	13.74	18.56	20.58	19.02	19.18

* The figures upto 1971-72 are for the State of Mysore.

(a) Revised Estimates

(b) Budget Estimates.

SOURCE : Reserve Bank of India Bulletin, various issues.

TABLE 9

Net Public Borrowing

	Total	Retained by Union Govern-ment	Allotted to States	(3) as percentage of (1)
	1	2	3	4
	(Rs. crores)			
1955-56	82	27	55	67.7
1956-57	141	77	64	45.4
1957-58	71	66	5	6.2
1958-59	2,227	181	46	30.3
1959-60	175	107	66	38.9
1960-61	134	67	67	50.0
1961-62	137	63	74	54.0
1962-63	158	73	85	53.8
1963-64	*143	..	..	..
1964-65	187	102	85	45.5
1965-66	210	104	106	50.5
1966-67	177	80	97	54.9
1967-68	168	94	74	44.1
1968-69	148	78	70	47.3
1969-70	182	139	43	23.6
1970-71	234	134	100	42.7
1971-72	398	295	103	25.9
1972-73	567	433	134	23.6
1973-74	638	471	167	26.2
1974-75	706	494	212	30.0
1975-76	728	453	275	37.8
1976-77	1,024	845	179	17.5
1977-78	1,369	1,191	178	13.0
1978-79	1,839	1,654	185	10.1
1979-80	2,148	1,961	187	8.7
1980-81	2,805	2,604	201	7.2
1981-82	3,238	2,904	334	10.3
1982-83	3,952	3,554	398	10.5

*Data on allocation to the States not available.

SOURCE : Reserve Bank of India.

5.19 We have serious reservations about the rate of interest charged and the period of repayment enforced for Union Government transfers to the States against loans or credit received from external financial institutions. The States are deprived on a number of counts. The full quantum of the loan or credit is not passed on to them; the rate of interest charged is also much higher than what the foreign agency charges. In several instances, the stipulated period of repayment too is shorter than what the foreign institution has agreed to for the Union Government. Finally, many of the conditions that are imposed are often more onerous for the State Governments than they are for the Centre. The entire arrangement should be reviewed.

5.20. The suggestion to have a National Loans or Credit Council is well taken. Such a Council, in which the Union Government, the State Governments and independent experts may be represented, should be the final authority for setting borrowing limits for the different States and for the Centre. The Reserve Bank of India, as at present constituted, cannot

fulfil this function, since it has been made into a subordinate office of the Union Government. Alternatively, the Reserve Bank of India Act should be so amended as to make the Bank an entity fully independent of the Union Government, and one in which the State Governments will have adequate representation along with outside experts.

5.21. The doubling of the limits for ways and means advances to the States in 1982 was done arbitrarily and without consultation with the States. An analysis of the data for the past few years indicates that while the Union Government has been indulging in deficit financing to the extent of close to 15 per cent of its total disbursements, the corresponding average for the States taken together is less than 3 per cent. This is an anomalous situation. The total volume of deficit financing in a year should be determined by either the National Credit Council, or, alternatively, by the Reserve Bank of India in case it can be restructured as an independent entity. The quantum of such created money should be evenly distributed between the Centre and the States; the *inter se* distribution between the States should once again be determined either by the National Credit Council or a re-structured Reserve Bank of India. The States should not obviously be permitted to have overdrafts beyond limits, just as the Union Government too must not be allowed to indulge in unbridled money creation. But the limits to created money should not be mechanically determined, and special circumstances which the States or the Centre are facing should be taken into account.

5.22. True, some of the State Governnments have been sluggish in exercising their prerogative to impose, for example, agricultural income tax and other taxes on land. It would be justifiable if individual States are set targets by the Inter-State Council in this regard. If the target is not complied with and the States are unable to offer any satisfactory explanation for their failure to attain the target set, the Council should issue a directive to the body which would determine the allocations from the divisible pool to apply a penalty clause for the defaulting States. If the States happen to be sluggish, they will have access to less resources. Once the system puts the onus on the States, the responsibility for optimising resources too can be placed squarely on them.

5.23. The Centre too has been neglecting many important areas of taxation. It has been soft in the spheres of both corporate and income taxation and has steered away from exploiting the resource-raising possibilities which Article 268 and 267 provide. The remedy lies, first, in transferring some of the relevant items to the State List, and, second, in consulting the States on the structure of rates for taxables items which belong to the Union List but the yield from which are crucially important to the States. Here too, the Inter-State Council should have the prerogative to assign targets and devise a mechanism of punishment if its directives are ignored.

5.24. The suggestion is worth consideration.

5.25. Since Article 269 has not been at all made use of by the Centre for raising additional resources the fiscal items covered by it should be transferred to the State List.

5.26. The Union Government has deprived the States of substantial revenue by the manner in which it has dealt with the tax on railway passenger fares. The compensation offered for the loss suffered by the States is of a derisory nature. The *status quo anta* should be restored.

5.27. Union Territories constitute a special category and the allocation for them should be decided on overall national considerations; the receipts from individual taxes from within their borders should not be relevant.

5.28. This is one area where the States have been experiencing considerable difficulty. Funds to fight natural calamities have to be provided for adequately and the provision of some annual amount by way of so-called margin money does not enable the States to meet the contingencies when they actually arise. Regardless of where they occure providing for natural calamities should be regarded as a national obligation. The formula suggested by the Seventh Finance Commission has not proved satisfactory. The opinion of an expert team jointly nominated by the Union Government and the State Government concerned on the requirement of funds should be considered final in the matter and the funds needed both to provide immediate relief and to repair the damage should be a charge on the Union budget; the State Government should be promptly remitted the amount thus determined.

5.29. We suggest that the State Governments be provided with adequate representation, in case necessary, by rotation, on the boards of the Reserve Bank of India and the nationalised Banks. The general guidelines of credit policy should be laid down either by the National Credit Council or the Reserve Bank of India thus reconstituted, which the financial institutions must strictly adhere to.

5.30. Under all circumstances, funds must be spent prudently. But in a huge country such as India, there are some crucial administrativ aspects involved in the collection of resources which can hardly be ignored and which suggest that some of the major taxes must be left to the care of the States.

5.31. There is wasteful expenditure on the part of both the Union and the States. Surveillance in this matter is however best left to the respective legislatures and the Comptroller and Auditor General. The major safeguard against wasteful expenditure by the Union Government is to take away some of its prerogatives for excessive resource raising, as we have suggested. Similarly, the best insurance against irresponsible fiscal behaviour on the part of the States is to inform them that once the system of financial devolutions has been restructured in the manner set forth above, they will be on their own and could not expect to the bailed out by the Union Government in the case of improvident expenditure.

5.32. The problem does not lie in the procedure suggested in Articles 150 and 151, or in the role of the Comptroller and Auditor General either. It is in the modality of appointment of the CAG, which is currently done by the President on the advice of the Union Council of Ministers in accordance with

Article 74 of the Constitution. This procedure needs to be changed. A Constitutional amendment should ensure that in the matter of the appointment of the CAG, the President is guided by the Inter-State Council and not by the Union Cabinet. Similarly, it is important that the CAG, be precluded by a constitutional amendment from accepting any employment in the private sector too following his retirement: in case necessary, his emoluments and retirement benefits might be suitably adjusted upwards.

5.33. It is important that 'performance' auditing or 'evaluation auditing' is expanded all along the line.

5.34. The Comptroller and Auditor General's powers should be extended so that certain areas of auditing, where the CAG at the moment has only a perfunctory jurisdiction, are enlarged. This applies particularly to defence expenditure and the Government's outlay on foreign trade.

5.35 and 5.36. We are generally in favour of providing greater scope to the Comptroller and Auditor-General so that, in important spheres, audit and analysis could be undertaken in depth. Wherever necessary, the CAG may be armed with additional prerogatives to enable him to inform the public on particular developments in the pattern of, and trends in, public expenditure.

5.37. The present arrangements with respect to the Estimates Committee may continue.

5.38. We do not believe that an Expenditure Commission will be of much avail. The propriety of expenditure is a matter of political judgement and is best left to the State legislatures. They should however have the benefit of detailed analysis undertaken by the CAG's office.

5.39. There are several spheres where the Union Government, in contravention of the spirit of the Constitution, tries to influence the pattern of expenditure on particular projects, on the ground that the projects are Centrally assisted or belong to a Concurrent area of jurisdiction. Such intereferences must stop. The surveillance by the CAG should be considered adequate enough to ensure that the funds are properly spent by the States.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The deficiencies in the present planning process as listed in the question are generally valid. The National Development Council does not find a place in the Constitution; it is convened by the Union Government at its discretion, and its functions have been reduced to empty rituals. The Planning Commission, which again has neither constitutional nor legal sanctity has also been converted into an appendage of the Union Government; it is the voice of the Centre which is predominant in its deliberations and decisions. It is therefore important that the National Development Council be supplanted by a properly constituted Inter-State Council in terms of Article 263, as amended, with due weightage given to representation of the State Governments. The Planning Commission should be converted into a secretariat of the Inter-State Council and its personnel must be decided upon by the Council, again with appropriate weightage given to the points of view of the State Governments. The Union ministries must not be allowed to impose their ideas on the Planning Commission and the role of Centrally sponsored schemes should be drastically reduced.

6.2 The National Development Council, as stated above, should be susbstituted by the Inter-State Council to be set up in terms of a properly amended Article 263. It must meet more frequently than the NDC does now a days, if that is not feasible, a standing committee of the Inter-State Council should be convened at regular intervals. The Planning Commission should abide by the directives of the Council and must not be allowed to assume the role of final deciding authority.

6.3 The Planning Commission, as currently constituted, not only acts in close understanding and consultation with the Union Ministries, but is in effect subservient to them; in contrast; it treats the State Governments as one would treat underlings in a feudal milieu. Its composition and functions have to be drastically changed, as suggested above.

6.4 Our proposals with respect to the reconstitution of the Planning Commission have already been set forth. It should act as a secretariat of the Inter-State Council, and its composition must give due weightage to the views of the States *vis-a-vis* those of the Union.

6.5 The Planning Commission, as reconstituted in terms of the suggestions given above, should confine itself to offer advice on the overall aspects of planning and investment.

6.6 While the fixation of particular macrolevel priorities and targets may be left to the Commission, which would make its recommendations to the Inter-State Council, detailed planning with respect to subjects which fall within the States' sphere should be left to the States. The present practice of subjecting State plans and proposals to minute scrutiny by the Commission is unwarranted and should be discarded.

6.7 Unless the Planning Commission is restructured, it would be dangerous to leave the prerogative of resource transfers to it. It would in any event be more appropriate to keep the activities of the Commission confined to the task of Plan formulation, although it must feel free to offer advice on aspects of resource raising. But the issues of resource transfers should be the prerogative of the independent agency, already suggested above, to be appointed by the Inter-State Council.

6.8 and 6.9 Once the Inter-State distribution of total resources transferred to the States has been determined on the basis of an objective, equitable formula by the body set up for the purpose by the Inter-State Council, the question of their Plan size may be left to the individual States. If, through additional mobilisation, they can increase the size of their Plan, it should not be within the ambit of the Commission to demur. The Gadgil formula, along

with its subsequent revisions, can at best be described as striving towards reaching the goal of Inter-State equity, but there are components in it, such as the weightage given to continuing irrigation and power schemes, which have operated against the interests of the poorer States. Besides, the formula has so far covered only a fraction of the total Plan assistance to the States. There is no reason why external assistance, for instance, such resources as are received via World Bank loans and IDA credits, should also not be covered by whatever formula is adopted for resource transfers to the States. This task should not be left to the Planning Commission, but delegated to the agency proposed by us to be set up under the auspices of the Inter-State Council.

6.10 The point of view is valid and the Union Government should be asked to reduce drastically the amount set aside for centrally sponsored schemes.

6.11 Monitoring and evaluation need to be strengthened at both the Union and the States levels. For such monitoring to be meaningful, uniform criteria must be adopted and an understanding reached with the Comptroller and Auditor-General on areas of respective jurisdiction.

6.12 In a country of India's size and diversities, Planning has to be decentralised right up to the village level. Such decentralisation should begin with the devolution of more responsibilities and resources to the State Governments, who in turn should agree to devolve funds and functions to district and village bodies. The districts should be the primary unit for Plan formulation, then the State, then the nation as a whole.

6.13 Unfortunately, given the predominant role till now of the Union ministries and the Planning Commission in the Planning process, the State Planning Boards have not been very effective. Unless the format of national planning is changed, the State Planning Boards are unlikely to come to their own.

PART VII

MISCELLANEOUS

Industries

7.1 The objectives as adumbrated in the Industries (Development and Regulation) Act 1951 should be re-defined. Except for a number of industries crucial for defence, or where massive investments are called for beyond the capability of a State Government, the responsibility for overall planning and licensing of industries should be transferred to the States; this, after all, was the original intention of the Constitution. Things have now come to such a pass that, over large areas, the State Governments cannot even set up a Committee to enquire into the affairs of a particularly industry without the concurrence of the Centre.

7.2 The compulsions of national public interest need not extend beyond defence industries and one or two major industries where investments are beyond the capability of a State Government. It would be unreasonable to assume that the State Governments are *per se* unmindful of the 'national' or 'public' interest ; they two are capable of defending and furthering the interests of the nation. Keeping this contest in view, a considerable number of industries can be shifted to the jurisdiction of the States.

To illustrate, the following items can be deleted from the list in the First Schedule of the IDR Act;

1. **Metallurgical Industries**
   Other products of iron and steel
   Iron and Steel castings and forgings
   Iron and steel structures
   Iron and steel pipes
2. **Electrical Equipment**
   Equipment for generation, transmission, and distribution of electricity including transformers
   Electrical motors
   Electrical fans
   Electrical lamps
   Electrical furnaces
   Electrical cables and wires
   Household appliances such as electric iron, heaters, etc.
3. **Telecommunications**
   Telephones
   Telegraph equipment
   Wireless communication apparatus
   Radio receivers, including amplifying and public address equipment
   Television sets
   Teleprinters.
4. **Transportation**
   Automobiles (motor cars, buses, trucks, motor-cycles, scooters, etc.)
   Bicycles
   Others, such as fork lifts, trucks, etc.
5. **Industrial Machinery**
6. **Machine tools**
7. **Agricultural Machinery**
8. **Earth moving Machinery**
   Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers, etc.
9. **Miscellaneous Mechanical and Engineering Industries**
   Plastic moulded goods
   Hand tools, small tools, etc.
   Razor blades
   Pressure cookers
   Cutlery
   Steel furniture
10. **Commercial, Office and household Equipments**
   Typewriters
   Calculating machines
   Air conditioners and refrigerators
   Vacuum cleaners
   Sewing and knitting machines
   Hurricane lanterns

11. **Medical and Surgical Appliances**

Surgical instruments-sterilizers, incubators, etc. and the like.

12. **Industrial Instruments**

Water meters, steam meters, electricity meters, etc. Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels etc.

Weighing machines.

13. **Scientific Instruments**

14. **Mathematical, Surveying and Drawing Instruments.**

15. **Textiles (including those dyed, printed or otherwise processed).**

made wholly or in part of cotton, including cotton yarn hosiery and rope

made wholly or in part of jute, including jute, twine and rope.

made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets

made wholly or in part of silk, including silk yarn and hosiery.

made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres.

16. **Sugar**

17. **Fermentation Industries**

18. **Food Processing Industries**

Canned fruits and fruit products

Milk foods

Malted foods

Flour

Other processed foods

19. **Rubber goods**

Tyres and tubes

Surgical and medical products, including prophylactics.

Footwear

Other rubber goods

20. **Leather, Leather Goods and Pickets**

21. **Glue and gelatin**

22. **Glass**

Hollow ware

Sheets and plate glass

Optical glass

Glass wool

Laboratory ware

Miscellaneous ware

23. **Ceramics**

Fire bricks

Refractories

Furnace lining bricks/acidic, basic and neutral China ware and pottery.

Sanitary ware

Insulators

Tiles

Graphite ceramics

24. **Cement and Gypsum Products**

Portland cement

Asbestos cement

Insulating boards

Gypsum boards, wall boards, etc.

25. **Timber Products**

Plywood

Hardboard, including fibre-board, chip-board and the like

Matches

Miscellaneous (furniture components, bobbins, shuttles, etc.).

26. **Miscellaneous Industries**

Cigarettes

Linoleum, whether felt based or jute based

Zip fasteners

Oil stoves

Printing, including litho printing.

7.3 Apart from in the case of the strategic industries, industrial licensing and capacity control should be decentralised and handed over to the States.

For the import of capital goods, there should be regional boards to process the requests from the States. A similar arrangement could be made for foreign collaboration agreements. Of course such regional boards would have to operate within the board guidelines set by the Inter-State Council and a national body for overseeing capital imports and foreign collaboration arrangements. As at present, there should also be national boards for allocating scarce raw materials, with strengthened representation of the State Governments.

7.4 While it is true that State Governments will have to make relatively more rapid progress to reach the goal of industrial dispersion, the task will be rendered considerably easier once a decentralised structure of administration and planning becomes a reality.

7.5 To the extent that the size of State Plans depends on the loans the States are able to raise either from the market or directly from the financial institutions, the quantum as well as the inter-State distribution of such borrowings are of significance. These borrowings add up to only 10 per cent of the current capital receipts of the States. As far as market borrowings are concerned, as already stated, the States at present receive only 10 per cent of the total capital raised in this manner from the market. It is equally remarkable that the share of State Governments' securities held by the Life Insurance Corporation of India, as a proportion of its total holdings, has been declining over the years : between 1969 and 1982, it fell from 35.7 per cent to 18.5 per cent. As regards their distribution between the States, the poorer States are relatively the worse off; three out of the four low-income States received resources significantly below the all-States average. The story is repeated in the case of practically all the public financial institutions; the inter-State discrepancies in the per capita flow of institutional funds is particularly glaring (Table 10).

7.6 It would be seen from Table 10 that the inter-State distribution of investments and assistance from the financial institutions is titled against the poorer States. This is a matter calling for urgent corrective action. All the financial institutions are under the direct surveillance of the Union Ministry of Finance. This is equally true of the commercial banks. In both kinds of institutions, the States must be allowed a more effective voice, whatever the instrumentality that may be devised for the purpose. It is equally desirable that whenever the State Governments consider it necessary, they should be allowed to set up their own financial institutions, including commercial banks. The latter may be subjected to certain guidelines nationally arrived at, but in no instance should the Union Government have the prerogative to decide which institutions to allow and which ones not to. The constitutional provisions may have to be suitably amended to bring about these changes.

TABLE 10

Per capita Centre-State Financial Flows 1973-83-Budgetary and Institutional

Rs. Per Capita

State	Budgetary (Net)	Commercial banks			Development Banks	ARDC	Total Institutional (4+5+6)	Institutional & Budgetary	Share of Institutions' finance in total
		Credit	Investments	Total (2+3)					
	1	2	3	4	5	6	7	8	9
Punjab	491	734	42	776	78	87	941	1,432	65.7
Haryana	447	446	74	520	113	123	756	1,203	62.9
Maharashtra	412	618	49	667	151	39	848	1,260	67.3
Gujarat	471	323	69	392	219	27	638	1,109	57.5
West Bengal	498	321	49	370	78	9	449	947	47.4
GROUP A	459	472	54	526	129	35	690	1,149	60.0
Tamil Nadu	402	327	38	365	97	19	481	883	54.5
Kerala	504	316	69	385	67	14	466	970	48.0
Orissa	659	85	35	120	31	18	169	828	20.4
Assam	749	92	40	132	35	6	175	922	18.8
Karnataka	388	315	34	349	122	35	506	894	56.6
Andhra Pradesh	492	213	50	243	59	45	347	839	41.4
GROUP B	497	244	38	282	74	26	382	879	43.5
Uttar Pradesh	500	121	28	149	37	28	214	714	30.0
Rajasthan	559	168	51	219	60	26	305	864	35.3
Madhya Pradesh	424	111	27	138	26	32	196	620	31.6
Bihar	445	83	26	109	23	20	152	597	25.5
GROUP C	477	115	30	145	34	26	205	682	30.1
Himachal Pradesh	1,171	144	61	205	58	8	271	2,022	13.5
Jammu & Kashmir	2,087	163	74	237	77	1	315	2,402	13.1
Tripura	1,904	100	49	149	17	2	168	2,072	8.1
Manipur	2,886	50	91	141	5	8	154	3,040	5.1
Nagaland	7,052	84	280	364	35	4	403	7,455	5.4
Meghalaya	2,488	55	127	182	86	..	268	2,756	9.7
GROUP D	315	125	80	205	56	4	265	2,580	10.3
ALL STATES	521	252	40	292	73	28	393	914	43.0

SOURCE : K.K. George, 'Centre-State Financial Flows, and inter-State Disparities in India' University of Cochin (Mimco), 1982.

7.7 and 7.8 In the initial years of Planning, steel plants, fertilizer factories, petro-chemical units, etc. came to be established in the public sector by and large on objective considerations, such as the availability of raw material, etc. But, over a period of time, the Union Government has utilized the mechanism of investment in public sector undertakings for the purpose of rewarding or punishing some States or regions purely on political considerations. Illuminating examples are provided by the fluctuating fortunes of proposed steel plants at Visakhapatnam in Andhra Pradesh, Salem in Tamil Nadu and Mangalore in Karnataka, and the proposed petro-chemical complex at Haldia. It is also possible to refer to the refusal of the Union Government to agree to the proposal for a ship-building yard at Haldia and an electronic complex at Salt Lake City in Calcutta

PART VIII

TRADE AND COMMERCE

8.1 A case does indeed exist for a continuous appraisal of the various fiscal, legislative as well as executive decisions and measures which the Centre and the States take from time to time and which impinge on the unfettered movement of trade and commerce within the country. Reports of such appraisals should be promptly made public and discussed widely. For instance, there is an urgent need for a study of the impact of not permitting commodities declared as 'goods of national importance' to be subject to sales tax at more than 4 per cent. or of the impact of not allowing sales tax to be levied on an exportable commodity, in so far as the consequences of such decisions affect the different States to a varying extent. Effective consultation between the Central and the States should take place, perhaps within the Inter-State Council, before action is initiated on such studies. At the same time, the Centre should not be allowed to stall indiscriminately and on its own State legislative proposals on the ground that freedom of trade and commerce is likely to be affected. As in similar other cases, the President, before deciding whether a particular piece of legislation attracts the provisions of Articles 303 to 304, should hold consultation not with the Union Council of Ministers, but with the Inter-State Council. Alternatively, the Council may lay down certain guidelines in such matters for the convenience of the President.

PART IX

AGRICULTURE

9.1 Agriculture, including animal husbandry, forestry and fisheries, should be exclusively a States subject, and therefore the present entries in the Union and Concurrent Lists, constricting this jurisdiction, should be dropped. The recent trend, with the Centre progressively encroaching in the sphere of agriculture, must be reversed.

9.2 As already stated, Central and Centrally sponsored schemes in the sphere of agriculture are repugnant to the spirit of the Constitution and should be phased out.

9.3 The Planning Commission may be set up joint working groups along with the States. Such groups should however have only recommendatory responsibilities and nothing beyond.

9.4 In a country of India's geographical expanse and agronomical diversities, it is irrational to have a uniform structure of support or procurement prices: the States should therefore be allowed greater latitude in fixing farm prices within their respective territories. Similarly, in the sphere of irrigation, only projects, which have inter-State or international implications, should be jointly sponsored by the Centre; the rest of the area should be left to the States. In the general matter of agricultural policy, the Inter-State Council, as advised by the Planning Commission, may lay down overall guidelines, but it should be for the States to evolve detailed and specific programmes. As far as provision of strategic inputs, including credit, is concerned, it is to be expected that the national institutions will co-operate with the agencies belonging to the State Governments.

9.5 The pattern of inter-State distribution of credit extended by the ARDC, which was the predecessor institution of the National Bank for Agricultural and Rural Development, has been most uneven. The role of the Indian Council for Agriculture Research has also been paternal and feudal. Such bodies, to be made effective, must be instructed to co-operate with the State Government agencies.

PART X

FOOD AND CIVIL SUPPLIES

10.1 Certainly much greater scope exists for improving Centre-State co-operation and coordination in the areas of procurement, pricing, storage, movement and distribution of foodgrains and other essential commodities. But such cooperation cannot flourish if the Union Government assumes that it is in a position to issue directives to the States on all such matters. Here again, it is for the Inter-State Council to prescribe the general guidelines for coordinated activities, while the details of operational measures should be worked out by the Centre in consultation with the States.

10.2 The States must the allowed to have their own systems of price administration, but it is important for the Inter-State Council to lay down a framework for price regulation which the States may conform to.

PART XI

EDUCATION

11.1 It is dangerous for a nation with our kind of ethnic, linguistic, social and cultural diversities and disparities in economic structure to try to enforce a rigid centralisation in the sphere of educational philosophy and policies. The transfer of education to the Concurrent List has been a grievous mistake and should be rectified: with the proposed abolition of this List, education should revert to the State List.

11.2 The University Grants Commission being a Central institution is heavily influenced by the attitudes and political biases of the Union Government. There is a need for special grants for universities which the States cannot meet, and therefore the need for a body such as the UGC, but its constitution should be such as to evoke the confidence of the State Governments.

11.3 A consensus among the States and between the States and Union Governments in this sphere is not essential. The constituent units of a nation of India's diversity and complexity must be allowed a certain measure of elbow room to pursue educational and cultural programmes of their own within a broad frame work of national objectives.

11.4 The constitutional provisions should be so modulated that, in the name of protecting minority institutions, protection is not offered to entrenched interests; genuine minority rights must not however be interfered with.

11.5. Since under the present arrangements the Governor is a representative of the Union Government, the State Governments have encountered difficulty in instances where, while processing legislations concerning educational matters, the Governors have been guided by the predilections of the Union Government and not by the wishes of the State's electorate, legislators and Government. Other instances can also be quoted where State Legislation has been held up by the Union Government, or influence has been sought to be exerted through the deployment or withholding of Central funds.

PART XII

INTER-GOVERNMENTAL CO-ORDINATION

12.1. The Inter-State Council, if it functions in the manner suggested by us, may prove to be an effective enough machinery for dealing promptly with many of the irritations and problems that might arise in Centre-State relations. Multiplicity of institutions with cognate jurisdictions might not achieve the desired ends. However, there may not be any harm in an autonomous research institute, with equal representation from the Union and the States on its governing body, which devotes itself entirely to issues and problems concerning Centre-State relations. Such an institute should be located away from New Delhi and the funding of its expenditure should be charged to the Union and the State Governments' budgets in equal proportions.

Replies to Supplementary Questionnaire on Industry

1. In this connection State Government's reply to the main questionnaire at question 7·2 may kindly be referred to. It has been stated very clearly that it would be unreasonable to assume that State Governments are *'per se'* unmindful of the national or public interests. The State Governments are capable of defending and furthering the interests of the nation. In this background it is reiterated that the regulation of industries in its different aspects should be done under the auspices of the Inter-State Council to be set up as per the suggestion of the State Government in its replies already furnished to the main questionnaire. Specially, any proposal to bring new industries under the control of the Union Government in accordance with the provisions of Schedule-I of the IDR Act should be placed before the Inter-State Council first.

2. Reservation for selected industries/items for exclusive development in small scale sector is one of the more important measures adopted for accelerating growth of SSI Sector by providing an area where SSI entrepreneurs will not face adverse competition from their larger counterparts. Accordingly, reservation of a number of industries has been done by the Government of India in the small scale sector under Notification issued by the Department of Industrial Development, Ministry of Industry, in exercise of the power conferred by Sub-Section (1) of Section 29B of the Industries (Development & Regulation) Act 1951, as mentioned in Schedule (1) of the said Notification. It is better for operation of the reservation plan that such reservation may continue to be done by centralised legislation instead of each State Govt. separately legislating on the subject. As movement of manufactured items is unrestricted throughout the country, it will lead to obvious difficulties like protected items in the SSI list of a particular State getting adversely hit by entry of such items manufactured by large and medium sectors in another State.

3. Small scale Industries being a State subject, the State Govt. is concerned directly with promotion of growth of small scale industries. This is ensured by making available essential inputs like finance, infrastructure, raw materials and marketing facilities. At present, scarce raw materials like iron and steel, paraffin wax, essential oil for soap manufacture are canalised by the Govt. of India. If allocation of such raw materials is made on the basis of installed capacity of units, existing aberrations in allocation can be avoided. Similarly, the Govt. has no control over financing institutions like banks. and industries suffer from lack of adequate and timely financial help in spite of pursuasive efforts of the State Government. Banks which have major activities in the State can have Regional Boards for over-seeing lending activities and such Boards may include nominees of the State Governments. It is felt that these steps will ensure expanded role of States in promotion of small scale industries.

Again development of small scale industries being a State subject, the objective to extend legislative protection to this sector can be better realised by separate legislation by each of the States, setting apart matters of mutual interest or issues demanding co-ordination at the national level for Parliament to codify. This task may be accomplished by circulating a model bill for the States to adopt, as was done in respect of Khadi & Village Industries Development Programme, instead of the Parliament enacting a legislation for all States for adoption.

4. Reservation of listed items in Schedule-I for Small Scale Sector is in conformity with the State Government's policies to promote growth of small scale sector. The reservation items may, however, be reviewed from time to time in consultation with the State Governments for deciding about inclusion or deletion of items.

5. In line with the replies already furnished by the State Government to the main questionnaire, it is stated that in respect of all industries falling under entry 52 of List-I of the Constitution, the Central Government should enact any legislation pertaining to these industries only after consultation with the State Governments. This consultation should be done under the auspices of the Inter-State Council or any Authority specifically set up by this Council for dealing with the subject of industries. This process of consultation will give adequate opportunity to the States to get convinced as to whether a particular piece of legislation to be enacted by the Central Government in respect of any industry under the

State purview is at all required to be brought under the control of the Central Government in public interest.

6. The Industrial policy resolutions adopted by Govt. of India from time to time have by and large reflected the spirit and determination of the Union Government towards industralisation of the country covering various sectors of the industry, including the primacy of the Public Sector, and the role and importance of small scale industry in the economy of our country. As far as the private sector is concerned, there are wide ranging opportunities for them to grow and expand in their area of operations. Of late with the more liberal import policy adopted by the Government indigenous technology is getting exposed to foreign knowhow and even in core sectors like communication private sector is getting opportunity to make investment.

If the suggestion of the State Government for the constitution of a national forum like the Inter-State Council is accepted adequate opportunity would be available for all the State Governments to voice their views about the revisions needed in the industrial policy from time to time.

7. Industrial policy resolutions as have been adopted by Government of India from time to time were conceived, drafted, formulated and approved by the Central Government. To the best of our knowledge, these drafts were not circulated among the States for comments nor were the States consulted in a formal or informal manner.

It is, therefore, suggested that in line with the suggestion already made by the State Government the Inter-State Council should have the opportunity to discuss and analyse the implications of the industrial policy framed by the Central Government in all its aspects.

It is stated in this context that the Inter-State Council should also have the opportunity to look into all the Central Industrial Investment Programmes in different regions of the country in order to ensure that such decisions are arrived at in a collective forum in the spirit of national integration and equitable opportunity for economic growth for all regions. In other words, the Union Government should not unilaterally decide upon Central Industrial Investments which, experience shows, very often give cause for complaint to the State Government.

8. M.R.T.P. Act has been framed with a view to ensuring productive and distributive justice in the sphere of economic activities by private sector. The social and economic objectives behind the provisions of the Act are unexceptionable.

In terms of this Act, a category of Companies in the private sector has been classified as M.R.T.P. Companies taking into account their large assets and turn-over. These companies are not permitted expansion of their capacity in their existing places of in view areas. There is no gainsaying the fact that because of historical factors, industrial growth had taken place in West Bengal region, more particularly in and around Calcutta, due to the efforts and investments of the Companies which have been subsequently classified as M.R.T.P. houses. But as a consequence of the existing licensing policy and procedures in respect of M.R.T.P. Units the scope for investment or expansion by them in Calcutta or other backward areas of the State are extremely limited, notwithstanding the fact that it is they who have the necessary investible resources and expertise to develop the backward areas. Hence it is observed that the policy of curbing monopoly houses has, in fact, impeded growth of industries in West Bengal. As there has been a near stagnation in the traditional industries in this region, it is imperative that the existing regulatory measures are liberalised in order to make the State economy move faster. It is accordingly suggested that in the functioning of the M.R.T.P. Commission special dispensation clauses should be provided giving weightage to the views of the State Government. This aspect needs to be examined more closely by the Sarkaria Commission.

However, we would like to emphasise in this context that those provisions in the MRTP Act relating to restrictive trade practices should be enforced in letter and spirit in the interest of fulfilling better socio-economic objectives lying behind these provisions.

Statement by the Chief Minister, West Bengal, before the Commission

The Commission on Centre-State Relations is visiting West Bengal in the wake of a great national tragedy. However, the tragedy makes it all the more important that the Commission completes its task, and sets forth its recommendations, as expeditiously as possible. Much of the tension and divisiveness currently afflicting the nation stem from factors which originate in imbalances in the existing relationship between the Centre and the federating States. Without a comprehensive restructuring of Centre-State relations, there is every fear that social and economic tension will multiply. We owe it to ourselves to ensure to that the objective conditions preclude the rise of any irrational passion in the policy.

2. The Government of West Bengal, in its reply to the questionnaire forwarded by the Commission, has endeavoured to cover the gamut of problems crucial to the re-ordering of Centre-State relations in our country. I would nonetheless like to take the opportunity of the visit of the Commission to invite attention to a number of issues which have increasingly come to the force in the more recent months.

3. We have, in our reply to the Commission's questionnaire, given our views on the role of the Governor in some detail. These views have been further strengthened by the demeanour of the Governors of Jammu & Kashmir and Andhra Pradesh respectively, in the months of July and August this year, for engineering changes in the complexion of the State Governments. In both States, the Governor, without ascertaining the views of the State legislature, used his prerogative to dismiss the democratically elected Chief Minister and install as substitute an individual of his choice. It is a depressing commentary on the state of social and political awareness in our country that members of legislatures can be induced to cross floors and disown the mandate

on the basis of which they are elected. Such floor-crossing is however being systematically further encouraged by the acts and activities of Governors, who, either on their own volition or because of directives issued by the Union Government, have proceeded to dismiss and appoint Chief Ministers in an altogether arbitrary manner. In Jammu and Kashmir, the outrage that was perpetrated has not yet been reversed, since the legislators, who were induced to change their loyalty, have not chosen to return to their original fold; but this does not condone the role played by the Governor. In Andhra Pradesh the situation was different : perhaps at no time the individual picked by the Governor to supplant the incumbent Chief Minister enjoyed the support of a majority of the members of the State Assembly. It is outrageous that the Governor refused to abide by the request of the incumbent Chief Minister to convene the State Assembly, where the latter wanted to demonstrate his majority support within forty-eight hours, but was prepared to allow the individual whom he chose to appoint arbitrarily as Chief Minister as much as thirty days to convene the Assembly and prove his majority support which in any case he failed to do.

4. There is another aspect of the matter to which I would like to draw the Commission's attention. Dr. Farooq Abdullah continued to be the Chief Minister as well as the Home Minister of Jammu & Kashmir till the late afternoon of July 1st, 1984; yet, para-military forces were being flown into the State since the early hours of that day without his knowledge and concurrence. Such induction of armed personnel from outside took place under the direct orders of the Governor. This was a gross breach of constitutional procedures and must not be allowed to happen again.

5. Taking into account these developments, we have not the least hesitation in reiterating the view that the post of Governor deserves to be abolished. I would invite the Commission to look into the provisions of the Government of India Act, 1935 concerning the role and functions of the provincial Governor. These provisions have been almost totally reproduced in our Constitution, thus burdening a supposedly federal—democratic structure with an imperial legacy. There are a fairly large number of federal nations around the world where the federal centre and the federating units are able to sustain the on-going constitutional arrangements without the presence of an intermediary such as the Governor in our Constitution. I have every hope the Commission would closely examine this issue.

6. The other most disquieting event since the State Government forwarded its reply to the Commission's questionnaire is the Union Government's decision on the recommendations of the Eighth Finance Commission. The substantive outcome of this decision is to deny the States devolution of resources to the extent of around Rs. 1,500 crores during the current fiscal year, of which an amount exceeding Rs. 300 crores would have devolved to West Bengal alone. The legality and constitutionality of the Union Government's decision can be questioned, and is going to be questioned by the State Government before the Supreme Court. Nonetheless, I strongly feel that the constitutional provisions themselves should be suitably amended so as to remove all ambiguities in such matters so that henceforth the Union Government is deprived of any alibi for no complying with the recommendations of the Finance Commission. The crux of Centre-State financial relations, which are of basic relevance for sustaining the federal polity, lies in the arrangement revolving around the periodic appointment of a Finance Commission and the implementation of its recommendations. If this arrangement is sought to be whimsically put into disarry by the Union Government, I am afraid there is bound to be widespread social and economic discontent over large parts of the country. Such a denouncement must be avoided at all costs, and whatever constitutional changes are called for must be set in motion.

7. I would also like to draw the attention of the Commission to the fact that the Finance Commission's recommendations could be put aside by the Union Government because of the provisions of Article 74 of the Constitution; as this Article now reads, the President has to abide by the advice of the Central Council of Ministers in the exercise of all his functions. I would reiterate the State Government's view that where Centre-State relations are involved, the President must be guided, not by the advice of the Central Council of Ministers, but by that of the Inter-State Council provided for in Article 263 and constituted in the manner described in our reply.

8. The Commission must have noticed the wide spectrum over which we would like the Inter-State Council to exercise its jurisdiction. This is not intended to constrict the role of Parliament, which—with a certain restructuring of the composition of the Rajya Sabha—must remain the dominant authority in our democratic system. But where vital issues affecting Union-State relations are concerned, the advice and counsel of a body like the Inter-State Council, in the composition of which the points of view of the federating States would receive due weightage, could be of immense help towards understanding issues and modulating decisions.

9. Let me now refer to a number of specific problems. Taking advantage of Article 200 of the Constitution, past Governors of the State had referred a number of important Bills passed by our Assembly to the Union Government; these Bills have not yet been assented to. I have particularly in mind the West Bengal Land Reforms (Amendment) Bill, 1981 and the Calcutta University Act (Amendment) Bill, 1984. In the case of the latter, although the subject matter of the Bill belongs to the Concurrent List, its provisions are not repugnant to any Central Act; yet the Bill has been withheld. In the case of the Land Reforms (Amendment) Bill, the Union Government has, apart from invoking the provisions of Article 31(a), also elliptically expressed its apprehension that the implementation of this amendment might adversely affect the country's export promotion efforts. The Directive Principles of State Policy in our Constitution do not mention export promotion; there is however a clear directive, in terms of Articles 38 and 39, to effect more equitable distribution of land. It is therefore imperative that the Union Government's power to intervene in legislative and administrative matters in areas where the States have

clear-cut prerogatives should be excised from the Constitution; the Commission will, I hope, recommend the necessary amendments for the purpose.

10. Our reply to the Commission's questionnaire contains a strong plea for restructuring the Council of States, the Rajya Sabha, in such a manner that all States will have equal representation on it. This principle is incorporated in the Constitutions of both the Soviet Union and the United States of America, and have gone a long way in assuaging the sense of neglect and alienation on the part of relatively small, weak, or outlying States. Given the extent of linguistic, ethnic and cultural diversities amongst the peoples of India and the wide disparities in their social and economic levels, it is impo tant that population groups inhabiting the different States do have a forum where they can articulate their points of view on an equal footing. A restructured Council of States, where all States will have the same number of representatives, could be the answer to the problem.

11. Where such a forum available, such an issue as the recognition of Nepali as an national language and its incorporation in the Eighth Schedule would perhaps have received much greater attention than has been the case. Such recognition would have been an appropriate response to the felt urge of a large number of citizens resident in West Bengal and Sikkim. I hope the Commission would make a recommendation in this matter.

12. In our reply to the Commission's questionnaire, we have dwelled at some length on the problems related to the sharing of financial and monetary resources between the Union and the States; we have also discussed the role of industrial licensing and the immense harm rendered to the cause of balanced economic growth of the country by the provisions of the Industries (Development and Regulation) Act. We have also referred to the State of economic planning in the country and the plight to which the Planning Commission has been reduced. It is my fervent hope that the Commission would carefully analyse our suggestions and proposals concerning these issues while reaching its decisions.

13. I would appeal to the Commission to look into the range of issues affecting Centre-State relations in the light of the totality of problems the nation is currently facing. The historical factors must also be taken into account here. Before the advent of the British, there was no unified administrative set-up in the country; even during the British days, there was a duality of arrangement between the princely States and the rest of the provinces directly ruled by the imperial masters. The leadership of the Indian National Congress in the pre-independence days was fully aware of this histrorical reality and was most anxious that, in post-independent India, the federal ideology should prevail and receive formal imprimature, and the different cultural, linguistic, ethnic and religious groups, who constitute the great Indian nation, be allowed a large elbow room to enable them to exploit to the full their developmental potential; it was equally important that, in the quest for over-all socio-economic advance, the interests of no particular groups were hampered in order to foster the interests of any other group or groups. Keeping in mind these postulates, the Indian National Congress, even in its August 1942 Resolution had suggested that, once the nation had on its freedom, the residuary powers in the reconstituted polity must vest in the federating State and not in the federal Centre. When the Constitution was enacted, this proposition was however reversed. I would suggest that the Constitution be so amended that the pledge of the freedom movement is redeemed.

14. I would, in this connection, reuest the Commission to examine the provisions of the constitutions of such federal countries as the United States of America, the Soviet Union, Canada and Australia. The problems India is facing are not *sui generis*. There are parallels which can be observed in similarly placed countries; appropriate lessions can be drawn from these parallels. The Commission may, for example, find the following statement by Comrade Stalin before the Central Committee of the Communist Party of the USSR of some interest. The Statement was made in the course of a discussion that took place in 1923 in the Central Committee on the Draft Constitution of the Soviet Union :

> If within the Central Executive Committee of the Union we could create two chambers having equal powers, one of which would be elected at the Union Congress of Soviets, irrespective of nationality, and the other by the republics and the national regions (the repbulics being equally represented, and the national regions also being equally represented) and endorsed by the same Congress of Soviets of the Union of Republics, I think that then our supreme institutions would express not only the class interests of all the working people without exception, but also purely national needs. We would have an organ which would express the special interests of the nationalities, peoples and races inhabiting the Union of Republics. Under the conditions prevailing in our Union, which as a whole unites not less than 140,000,000 people, of whom about 65,000,000 are non-Russians, in such a country it is impossible to govern unless we have with us, here in Moscow, in the supreme organ, emissaries of these nationalities, to express not only the interests common to the proletariat as a whole, but also special, specific, national interests. Without this it will be impossible to govern, comrades. Unless we have this barameter and people capable of formulating these special needs of the individual nationalities, it will be impossible to govern. (J. V. Stalin, Works, Volume 5, pp. 263-4, Moscow, 1953).

15. A Constitution survives, and gathers strength, if its provisions embody an arrangement whereby the governing agencies and the people they govern are kept in continuous communion with each other. We seek a re-appraisal and a re-ordering of Union-State relations in our Constitution for this purpose. I am sure that too is the goal the Commission has set for itself.

REPLIES TO QUESTIONNAIRE, MEMORANDA ETC. FROM POLITICAL PARTIES

1. NATIONAL PARTIES

BHARATIYA JANATA PARTY

MEMORANDUM

Introductory

The Indian Constitution has been described by many Constitutional experts as quasi-federal. It is not federal in the sense the American or Australian Constitution is. It has a pronounced unitary bias. However, a vast country like India can be administered only through regional governments. The existence of states as political units is, therefore, inevitable. It is desirable as well. There are peculiar problems pertaining to different parts of the country and their solutions are bound to vary from place to place. Thus, decentralisation of political power is imperative both to strengthen democracy, and to ensure efficient governance of the country.

Our Constitution has made certain arrangements for the distribution of power and functions between central and state governments. However, the implementation of these provisions has resulted in strains and tensions in Centre-State relations. We feel that in the interests of the country's unity and integrity, effective steps must be taken to remove these strains. While the Centre has to be prevented from becoming authoritarian, the States cannot become centres of parallel or conflicting loyalty. A review of Centre-State relations has become necessary in order to strike a proper balance. This note incorporates briefly the position of the BJP on problems pertaining to Centre-State relations.

We are of the opinion that nothing should be done that may weaken the unity of the country. Continuing conflict or friction between the Centre and the States must be eliminated. The provisions of the Constitution should be implemented both in law and in spirit. Unfortunately, this has not been done. The Constitution contemplates substantial decentralisation, territorial as well as functional, of powers and functions. This has not been allowed to take place. The Centre continues to grab more and more powers, and the States in their turn have not devolved powers on the Local Bodies. These imbalances have to be rectified.

The Indian Constitution is sufficiently flexible to meet the challenges of the times. Various tensions, problems and issues which have arisen in Union-State relationships exist because over the years these relationships have not been worked in conformity with the true spirit and intent of the Constitution. However, we do not think that the distortions can be rectified merely by evolving conventions and procedures. Some changes in the Constitution are also necessary.

The Rajamannar Committee, appointed by the Tamil Nadu Government way back in 1971, expressed its commitment to federalism, in its pristine form. It, therefore, recommended deletion of, or drastic revision of, a number of provisions in the Indian Constitution dealing with Centre-State relations, such as Articles 251, 256, 257, 348, 349, 355, 356, 357, 365 etc.

As already mentioned at the outset, India's Constitution makers did not conceive of India as a classical federation, and made the Constitution federal in form, but essentially unitary in content. We think this approach is sound, and do not favour changes that undermine this arrangement.

Specifically speaking, we do not favour any change in Article 251 (Inconsistency between laws made by Parliament and Laws made by Legislatures), Article 256 (Obligation of States and the Union), Article 257 (Control of the Union over States in certain cases), Article 348 (Language to be used in Supreme Court, High Courts etc.) and Article 355 (Duty of Union to protect States).

Article 3 of the Constitution which deals with alteration of State boundaries should be modified so that all changes contemplated by that Article should be given effect to only by amending the Constitution.

Article 252, 360 and 365 should be reviewed so as to avoid their misuse.

The formation of an Inter-State Council under Article 263 should be made mandatory. The Council should include the Prime Minister and all Chief Ministers.

Article 370 being a transitory Article should be deleted in the interest of national integration.

Legislative Relations

By and large we accept the distribution of legislative powers made in Lists 1, 2 & 3 of the Constitution.

There are numerous instances where Article 200 has been misused. Bills have been reserved for the consideration of the President in order to create difficulties for the State Government. Article 200 must, therefore, be amended as follows :

When any Bill relating to a subject on the State list is passed by the State Legislature, the Governor of the State should have only two options; viz.

(i) To give his assent to the Bill; or

(ii) To return the Bill expeditiously with his recommendations for any changes in the Bill; if the legislature passes that Bill either in the original form or in the amended form, the Governor shall give his assent to the Bill.

Governor shall give his assent to the Bill. He should not have any powers to reserve these Bills for the assent of the President.

When a Bill relating to some matter in the Concurrent List is passed by a State legislature, the Governor, may reserve the Bill for the assent of the President who either declares assent or refusal within three months of the receipt of the Bill. If no decision has been given by that time, it will be presumed that it has been assented to. We agree with the idea that before the Centre passes any legislation on a concurrent subject, the concerned State Governments should be consulted.

The Union Territory of Delhi, with a population of seven million, is today deprived of the opportunity of framing its own laws and running its own administration. Laws for Delhi have to be framed by Parliament, and even though there is a Metropolitan Council and an Executive Council, real executive power vests in the Central Government. The BJP thinks this situation must change and Delhi must be given a Legislative Assembly and a Council of Ministers responsible to the Assembly.

Role of The Governor

The Constitution visualized that by and large the Governor will be the constitutional head of the State. The office of the Governor is meant to be the State's link with the Centre. The position of the Governor is somewhat difficult and paradoxical. He is the constitutional head of the State Government which in turn is responsible only to the State legislature. On the other hand, he is appointed by the President which in fact means the Central Government. It is no doubt true that the Governor is appointed by the President but that does not make him an employee or servant of the Government. We recommend that this constitutional position needs to be strengthened by making certain changes in the manner of appointment of the Governor and his powers.

The Governor should be appointed for a term of five years by the President from a panel prepared by the Inter-State Council. He should be appointed in consultation with the concerned State. The Governor should be removed only by impeachment in Parliament by a procedure analogous to that provided in the case of a judge of the Supreme Court and High Court. He is not to be transferred from one State to another and he should not hold any office of profit under the State or the Central Government after the expiry of his term.

All questions about confidence in the Chief Minister by the majority of the members of the Assembly should be decided on the floor of the House. The Governor shall exercise his constitutional powers only upon and in accordance with the advice of his ministers. The Inter-State Council should prepare guidelines for the Governor to help him in the discharge of his constitutional functions.

Financial Relations

The Constitution provides for setting up of a Finance Commission and for the distribution of revenue between the Union and the States (Articles 268, 269, 270, 271, 272, 275).

We feel that the present scheme of distribution of economic resources has proved a major irritant in Centre-State relations. There is a general consensus amongst economic experts that the resentment of States on this score is justified.

We feel that :

(i) the resources for raising funds available to the States are comparatively inelastic;

(ii) the functions allocated to the States are such as lead compulsively to expanding responsibilities, particularly in the context of ambitious development plans; and

(iii) important sources for national plan financing as foreign aid, external borrowing, deficit financing, all tend to strengthen central rather than State resources.

It follows that if this grievance is to be justly met, steps must be taken to see that :

(i) the arrangements for devolution should be such as will allow the States' resources to correspond more nearly to their obligations; State's share in the divisive pool should be enlarged;

(ii) the devolutions should be made in a manner that enables an integrated view to be taken of the plan as well as non-plan needs of both the Centre and the States;

(iii) the loans and advances by the Centre should be related to the developmental needs of the States.

The State list in the Seventh Schedule to the Constitution of India incorporates subjects like public order and police; public health and sanitation; hospitals and dispensaries; relief of the disabled and unemployment; communications, that is to say, roads, bridges, ferries and other means of communication; agriculture, including agricultural education & resources, water including water supplies, irrigation and canals; production, supply and distribution of goods.

Any State Government or political party desirous of implementation its programme for which people's mandate has been obtained would need financial resources of colossal magnitude. The taxing power of the States is woefully inadequate to finance any ambitious schemes of development

If the Central Government, or rather the political party to which it belongs, decides upon a course of hostility to any State Government, it can, by misuse of those constitutional provisions, destroy the latter's economic viability and gradually make it so unpopular as to compel it to get out of office. Thus, a sore point with States is that the Centre's authority to issue industrial licences is often used in a manner so as to obstruct industrial growth. This situation should be remedied.

Under Article 268, stamp duties and duties of excise on medicinal and toilet preparations are leviable by the Government of India. They are, however, required to be collected by the States and finally assigned to them. The Union Government can render this source totally non-existent by just refusing to levy such duties.

Article 269 refers to seven kinds of taxes and duties which are both levied and collected by the Central Government but only such shares would go to the States as are prescribed by Central Law. That provision can be worked very unfairly. There is no obligation on the Central Government to levy such taxes or duties. In any event the volume of the taxation is entirely a matter for the Centre to decide and so also, the State's share therein.

Article 270 creates a pool divisible between the Central Government and the State Governments. The percentage to be assigned to the States has to be fixed by the Centre. The percentage assigned to the States may be meagre or unfair. States can be deprived of their legitimate share by the further device of calling the duty or tax a surcharge for the purposes of the Union . Under Article 271, no portion of surcharge can be claimed by the States.

Article 272 does not impose any obligation but only confers a discretion on the Central Government to share the excise duties. This dependence can be used to humiliate, starve and strangle state Governments. It is not possible to resist the claim of the States that some of the sources of revenue at present allotted to the Centre must be transferred to them, that the scope of the divisible pool must be enlarged and so too the State's share therein. Equally irresistible is their claim that additional powers to levy taxes and collect duties must be conferred on them. In our opinion the States seem to have a very sound case in respect of the following :

1. It should be made compulsory constitutional amendment for the Central legislature to impose duties and taxes of the seven kinds mentioned in Article 269. So far, out of these seven, two have been levied, namely, estate duty in respect of property other than agricultural land and tax on railway fares and freights. The Central Government has removed the latter, though a fixed subsidy has been made available to the States by way of compensation. This subsidy was fixed in 1961 and has not been increased. The Centre continues to enjoy and appropriate all the increases in rail fares and freights that have been galloping during the last few years. If the Centre does not wish to levy these duties and taxes, power must be transferred to the States.

2. Corporation tax which has so far been separated and excluded from income-tax should be included therein and shared by the Centre with the States. There is really no reason why a part of the corporation tax should not go to the States, basically, the character of both is the same. It is the States which facilitate the functioning of companies and provide the requisite infrastructure in most cases, such as electricity, water, roads and sometimes even monetary incentives. The Surcharge on the Income Tax must also be included in the divisible pool.

3. States should receive royalties on an *ad valorem* basis on all major mineral resources, the royalty must bear a reasonable relationship with the price fixed.

4. States should be permitted to tax generation of electricity within their areas as distinguished from mere sale of electricity. Generation of electric power necessarily involves the exploitation of the States' resources like rivers, lakes and rainfall.

5. The character of the Finance Commission should be suitably changed. It should not remain as it is now, a Centre-dominated institution. Article 280 should be amended so that the composition of the Commission reflects the quasi-federal character of the Indian polity. The Finance Commission should be charged with the responsibility of earmarking funds for the local self bodies out of the devolutions to the States. The composition of the Planning Commission also should reflect the quasi-federal character of the Indian polity.

BHARATIYA JANATA PARTY

State Unit—West Bengal

MEMORANDUM

My party is of the opinion that there is no need for any basic change in the Constitutional provisions or in regard to the distribution of Legislative powers between the Centre and the State. It is not the Constitutional provisions but the way they have been used that has created the present impasse.

My party is of the opinion that nothing should be done to impair the unity of the country, on the other hand we should try to strengthen to Unity of the country.

Larger powers should be given to the State in the matter of economic development of the country and the balance contemplated by the Constitution makers regarding Centre and State

relationships be restored by taking steps to suitably make provisions for preventing the mis-use of the Constitutional Powers as has been done in the past.

My party is also of the opinion that Local Self Government units should be enlarged and constitutionally protected and certain taxes and duties levied and collected by the States must be assigned to them such as Stamp Duty, Entertainment Tax, Property Tax etc.

My party is also of the opinion that Articles 292 and 293 be amended for permitting the States to borrow monies from domestic market within the limits laid down by the States Legislations. External borrowings made by the Centre, however, shall not be subject to a share by the States nor the States have any share in the Customs Duty. The royalty on the minerals resources of a State should be on the *ad valorem* basis and more resources be provided to the State in order to reduce its dependance on the Centre.

The power vasted in the Governor has been vastly mis-used and the Governor has often acted in the interest of the Ruling Party rather than a Constitutional head as provided by the Constitutional provisions.

My party is of the opinion that the test of majority in the Legislative Assembly should be determined on the floor of the House and within shortest possible time and the Governor should have no discretion in the matter. If necessary relevant provisions in the Constitution be amended to prevent abuse of power by the Governor.

Detailed reply to the Questionnaire will be forwarded to you in due course.

(Sd/-)

President

COMMUNIST PARTY OF INDIA

Central Office

MEMORANDUM

GENERAL SECRETARY : C. Rajeswara Rao

April 23, 1984

Shri R. S. Sarkaria
Chairman
Commission on
Centre-States Relations,
New Delhi

Sir,

Thanks for the Questionnaire sent to us. I am sorry that our reply to the same has been delayed.

We welcome the appointment of this Commission on this burning and important subject which has been dogging our political life for long and which has today become all the pressing because of the coming to power of governments of various parties in different States.

We are confining ourselves to the broad aspects of the problem without going into the details at this stage. Once the broad approach is settled the details can be worked out.

1. Though our constitution is broadly a federal one, what predominates it are its unitary features. The distribution of powers between the Central and the States follows the pattern which was outlined in the Government of India Act, 1935 and this fact stands out glaringly in several Articles of the Constitution and in the VIIth Schedule which enumerates the exclusive legislative powers of the Union, (List I), the States (List II) and the concurrent legislative powers of both (List III). The exclusive powers exercisable by the Union and the States are based on their respective legislative jurisdiction, that is, on the jurisdiction given them under these three Lists. All residuary matters including taxation are left within the jurisdiction of the Union. This means that the residuary powers are with the Centre.

2. As the VIIth Schedule and other provisions of the Constitution would show that the autonomy and powers of the States in the legislative, economic and financial, as well as in the administrative sphere are already much circumscribed. What has happened during nearly three decades of the Constitution is that even the restricted autonomy and powers of the States have been steadily eroded and undermined, while there has been a growing concentration of power and authority with the Centre. Not only certain provisions of the Constitution but a whole number of other factors, political as well as economic, have contributed to this unhealthy and harmful development. What stands out today is a striking imbalance in Centre-State relations, the States having lost much of the substance of their autonomy.

3. The capitalist path of development and the monopoly bourgeois power plus the single-party rule at the Centre, as well as in most of the States over the past years, have of course been the main contributory factor in undermining the federal features of the Constitution on the one hand and in the concentration of excessive powers and authority with the Centre on the other.

4. Responsibility to implement most of the welfare activities lies with the States whereas the sources of revenue are limited and meagre. As a result, not only the dependence of the States on the Centre has gone on increasing, but developmental and other social welfare activities of the States have been hamstrung and even, in some critical areas, crippled. The democratic features and norms of Centre-State relations have been a casualty not only to the detriment of the States and their people, but even to that of national unity and national integration. This has encouraged fissiparous and divisive tendencies and forces.

5. In any federal structure worth the name, the federal centre derives its strength and authority in very large measure from the willing co-operation

of the constituent States which, to, must be invested with their necessary powers and authority. In order that they may be based on a strong democratic foundation, Centre-State relations must necessarily ensure that both have their legitimate due in the field of powers, authority, resources and opportunity to discharge their respective responsibilities to the people and the country. The problems we face is, however, a concentration of power and resources with the Centre, while the States badly lack them, while their development responsibilities continue expanding which is what it ought to be.

6. In no other sphere is the frustrating and restrictive impact of Centre-State relations so pervasively and acutely felt as in that of finance, economy and economy development. In this connection it is necessary to reiterate that the problem of resources for the national development arises basically from the present socio-economic order, from the capitalist path of development and from the grip of monopoly capital and other vested interests over our economy. This factor, compounded by the economic policies pursued by the bourgeois governments both at the Centre and in the States has resulted in massive denial of resources to the States and indeed in an aggravation of the resources problem.

The problem is indeed a built-in feature of the present system and it obviously cannot be solved without ending the present socio-economic order—the rule of capital—and without radical structural changes in our economy and socio-economic transformations. However, as the provision for greater resources for the States could be made in order to enable them to bring relief to the masses, raise their living standards and vigorously pursue the developmental and other social welfare and cultural activities.

7. The financial resources of the States are today too inadequate for their developmental and other welfare activities and the sources from which they can raise their revenues are also equally inelastic. As a result, the gap between their legitimate needs and their resources has gone on widening, despite all their borrowing, "overdrafts" and the so-called ways and means advances from the Centre.

8. Not only are the major sources of revenue under the exclusive jurisdiction of the Centre but banking, insurance and public financial institutions are also under its control. So are the country's economic and fiscal policies in the formulation of which the States have no say. These factors, together with the manner in which the central funds are disbursed to the States, have made the latter increasingly dependent on the Centre with an escalating negative impact on the whole spectrum of Centre-State relations.

9. The situation is further worsened by the fact that the States are denied any share whatsoever in the revenue receipts of the Centre from such major sources as customs and export duties and corporation tax. The so-called "Central assistance" under different heads such as "grants-in-aid" "discretionary grants", the state's share in the income tax receipts of the Centre, etc. are inadequate. It is the "discretionary grants", not assured assistance under the Constitution, which has begun to predominate and constitutes the major share of the total aid, giving the Central Government a powerful leverage for unjustly pressurising and influencing the policies of the States in many fields of the latter's activity. Occasionally this is used as an instrument even of political pressure on the States. This has caused much resentment in the States, although under the monopoly of one-party power, such resentment has been silenced at the official level.

10. The role of the Finance Commission, which is appointed by the Central Government and whose composition, powers and functions are open to question has made no material difference to the Centre-State relations over the question of resources.

11. The administration of the five-year plans which has given rise to demarcation between planned and non-planned sectors has been taken advantage of by the Centre, especially to establish its control over a number of subjects in the Concurrent and State Lists which come within the scope of planning. Even the conservative Administrative Reforms Committee expressed its concern at this development, which, according to it, has "tended to unite the horizontal pieces (of the so-called plan sectors in the States) into a single monolithic chunk" controlled by the Centre, although operated in the concurrent and State lists. The National planning certainly requires a well directed central authority. At the same time the initiative of the States in the matter of developmental activities should not be crippled by undue interference by the Centre. Certain guidelines or areas of operation in the matter of setting up industries and other projects based on the magnitude and strategic importance should be formmulated. Bureaucratic bungling should not be allowed to come in the way of initiative of the States.

12. It is, however, not in the financial and economic fields alone that the States are handicapped or the inroads into their powers and autonomy have taken place. The exclusive legislative jurisdiction of the States and their executive powers have taken place. The exclusive legislative jurisone pretext or another. Some provisions of the Constitution, including several entries in the Union List and concurrent list, have facilitated this. Though 'industry' is, for example, under the exclusive jurisdiction of the States, the Centre has acquired a very wide, almost unlimited range of control over many industries in the States. The trend is one of extending such sweeping jurisdiction of the Centre over matters which are supposed to be the State subjects.

13. The arbitrary resort to President's Rule in the States under Article 356, sometime even for sorting out the internal problems of the party in power, the provision for President's assent to certain categories of Bills passed by the State legislatures, the powers of the Centre to issue directions to the States, Centre's control over the All-India

services even when their cadres are under the employment of the States and the sweeping emergency provisions in Part XVIII of the Constitutional this has enormously contributed to the undermining of the federal principles and of the powers and autonomy of the States.

14. The changed political conditions, the coming to power of several non-congress governments and the growth of new consciousness about their rights and needs for rapid development in various nationalities and the tribal people and the fact that the existing imbalance in Centre. State relations is sought to be exploited by certain sections for furthering the interests of separatist and even secessionist forces lend an urgency to the democratic demand to restructure Centre-State relations.

15. The Communist Party of India is firmly of the opinion that the necessary restructuring of Centre-State relations should be given wider legislative and financial resources to the States to meet the growing needs of development, consistent with the unity and integrity of the country and its planned, integrated and all-sided economic development. Such widening of the powers of the States shall not only enable the fruition of the aspirations of the people of the States, but will also strengthen the democratic content of the relations between the Centre and the States and thereby strengthen the unity of the counry and national integrity.

16. At the same time, the Communist Party of India is of the view that it would be wrong to restrict the powers of the Centre merely to four subjects like Defence, Foreign Affairs, Communications and Currency as is being suggested by some. The Centre should have the power to work for the integrated economic development and strengthening the common economy and development with due regard to the needs and legitimate aspirations of the under developed States and regions.

17. The crux of the immediate problem is clearly one of giving wider powers to the States, raising their resources and broadening the opportunities for their democratic initiatives so that they can effectively discharge their responsibilities for promoting the well-being of the people and the progress of the States.

18. In tune with the aforesaid, the meeting of opposition parties held at Srinagar from 5th to 7th October, 1983 worked out proposals for reshaping Centre-State relations. A statement giving the full text of the same is enclosed herewith for your earnest consideration.

COMMUNIST PARTY OF INDIA

State Unit—Karnataka

MEMORANDUM

1. At the outset, we have to state that the overall relations between the Union and the States have got to be on an equitable basis. The relationship is not one of the domination but is one of partnership for achieving the best national interest. The responsibility of the Union in maintaining such a harmonious relationship is obvious and is far greater than that of the States. This is not to minimise the role of the state in maintaining amicable relationship. However, over the years, it cannot be gain-some said, that those in charge of the affairs of the Union or a party in power at the centre, have not taken a responsible and impartial view. They have failed to evolve proper standards of democratic behaviour vis-a-vis the states. As a result of such a behaviour, the centre-state relations or Union-State relations have deteriorated leading to fissiporous tendencies in the body politic. Unfortunately, such attitudes have not been of casual occurrence only but seems to be almost a policy for those at the centre or those holding political power at the Union level not to tolerate the persons in power at the State belonging to different parties. Noticeable thing is that this has been so from the beginning. Just to quote one or two instances. In the 1952 general elections in the then State of Madras, the Congress Party which was ruling at the centre was reduced to a minority in the State Legislature. The United Democratic Front headed by Shri Prakasam had total majority, but the Governor under instructions from the then Prime Minister and the Home Minister declined to call Sri Prakasam to form the ministry but called C. Rajagopalachari who was just then nominated to the Legislative Council to form the Ministry on behalf of the Congress Party. Thus a minority ministry was foisted on the Madras Legislature, without giving due respect to the wishes of the electorate solely because the then leadership of the Congress at the Centre thought it could not suffer a non-Congress Ministry in Madras. The same attitude found expression in the latest undemocratic act of dismissing the Ministry headed by N. T. Ramarao and foisting a Ministry led a faction in the Telugu Desam Party. Same fate be fell Dr. Farooq Abdullah in Jammu and Kashmir. In the same way and style, power under Article 356 has been exercised to displace non-Congress Ministries. Durgah Dar Basu has said that during 30 years on more than 60 occasions this extraordinary power has been abused. Without multiplying the instances it can be safely asserted that the party in power at the Centre have tried to frustrate the functioning of the Party in power at the State level when they do not belong to the same party. We would request the Commission to examine all the instances and point out how far there has been an abuse of power vested in the Centre either under Article 356 or under other articles or through the discretionary powers of the Governor. This examination is necessary in the interest of establishing healthy conventions so as to secure understanding and amity between the Centre and the States. Such conventions are necessary in the interest of the smooth functioning of the framework of the constitution; we are of the view that mere changes in the legal provisions governing the relationship between the Centre and State alone are not sufficient. The most important is to work it in a democratic manner.

2. In what follows we propose to answer some of the questionnaire.

PART I

INTRODUCTORY

1.1 This question appears to be somewhat academic. Legal Pundits or Political Philosophers are not agreed on the various features that go into making a federal structure. One writer examining the various definitions has said as follows :—

"From the several definitions one can bring out three important and essential features of federalism. They are :

(1) Definition of powers between centre and States which are expected to exercise their powers independently as far as possible and in concert with each other or co-operatively if necessary.

(2) Supremacy of the constitution is an explicit idea that neither the Centre nor the States can change the provisions relating to federal aspect unilateraly and,

(3) an independent judiciary to function as an arbitrator in all disputes between the Centre and the States and also between the States." To this, he has also added a concept of a strong Centre. Thus it can be found that the constitutional set up in India has certain federal features. However the unitary aspect of the concept of strong Centre is very important in the set up. Hence it is sometimes characterised as quasi federal with strong unitary tendencies.

1.2 Whatever the concept of the federation, it is necessary for various reasons to emphasize that there is need for the distribution of powers among the list to the VII schedule of the constitution and also in regard to various other matters. We agree with the various recommendations made by the Rajamannar Committee for securing what is called Greater Autonomy. Devolution of more power and more finances to the States have assumed crucial significance not merely because of the views regarding federation or federalism but because of other compelling socio-economic and political circumstances.

1.3 We agree with the view that there is urgent need for substantial de-centralisation of powers and finances at various levels and more than all, of devolution of finances to secure effective functioning and to discharge the various responsibilities. We are of the view that during a real national emergency like say the Chinese agression during 1962, the States themselves voluntarily co-operated with the Centre and agreed to the central dispensation of many matters. From our point of view the optimum constitutional provisions is to see that many irritants in the centre-state relations which have cropped up over 35 years should be removed. Our Party at the Centre has given various proposals and the opposition parties' conclave at Srinagar have approved of some of the said suggestions. We stand by those suggestions.

1.4 In the said question it is not clear what is the—traditional type referred to as has been pointed out. The writers in the constitutional law are not agreed on the various ingredients of what is called pure traditional type. However, it is not difficult to envisage the States exercising independent power in their affairs without interference by the Centre. We wish to make it clear that we stand for a strong Centre. However we do not subscribe to the doctrine of a limping federation but we want a strong centre and at the same time we want a federal units with more power and finances. We are of the view that the Centre can be strong if the federal units are also strong and have sufficient power and finances to discharge their responsibilities.

1.5 We agree with the view that the relations between the union and the states have not been promoted or developed on a proper basis in accordance with the democratic intent of the electorate. However this does not mean that there is no need for changes in some of the articles of the constitution. The legal framework providing for devolution of powers, functions and finances require restructuring. At the same time, healthy conventions and procedures have also got to be evolved. We do not agree that there is no case for any change in the provisions. There is need for change in view of altered circumstances the expectations of the people, enormous responsibilities thrown on the States, etc.

1.6 We entirely agree that the protection of the independence of the country, securing the unity and integrity of the nation is of paramount importance. Due to various reasons, the unity has been threatened and divisive forces are growing. The constitution as a whole is designed to secure the objectives mentioned in the question.

1.7 Articles 256, 257, 354 to 357 and 365 all require modifications. They are not reasonable. They require re-casting.

1.8 Article 3 of the constitution does not require any change, particularly if our suggestion of an inter-State council as provided under article 263 of the constitution is properly worked it may not become necessary to amend article 3. At any rate, the stage has not arrived for reconsidering the frame of the said article.

PART II

LEGISLATIVE RELATIONS

2.1 The complaint that the union or the centre has encroached in the State Legislative field is to true. The Rajamannar Committee appointed by the Government of Tamil Nadu have pointed a number of instances ....

2.2 The suggestions made by the opposition conclave is fully acceptable to us. ....

2.3 Prior consultation with the State Government whenever Centre wants to undertake any legislation in the concurrent list (list 3-VII schedule in the constitution) it is but fair that the State Government be consulted.

2.4 We are of the view that Parliament should not encroach on the exclusive domain of the States either under the slogan of the national interest or public interest. We do not think that such a change is necessary.

2.5 We make the following proposals:—

More Legislative Powers for the States

The legislative powers of the State should be widened and the powers of Parliament to make laws in respect of the subjects enumerated in the state list (list II) in VIIth schedule of the Constitution be removed. Article 249 which empowers Parliament to legislate with respect to a matter in list II should be deleted.

Similarly, Article 252 which empowers Parliament to legislate for two or more States on being so requested by the States, should be deleted. Both these Articles impinge upon basic federal principle. Re-adjust entries in VII schedule.

Entry 52 in list I should be amended to restrict its scope and range in relation to the power of Parliament to legislate in relation to a matter falling within the exclusive jurisdiction of the States concerning "Industry" which is in the exclusive state list under its entry 24. Parliament may, however, retain the restricted power to legislate in respect of industries of All-India importance and in the overall interest of the national economy. At present Parliament and the Central Government have virtually unlimtied power to encroach on the jurisdiction of the States in regard to "Industry" on the ground of "public interest".

The States should have the right to take over the management of the closed industries and those threatened with closure so as to enable them to protect the workers' interests.

Entry 7 of the Union List gives overriding power to the Parliament to legislate in respect of Industry not only for the prosecution of war, but also for the purpose of defence. This provision should be made more restrictive to cover industries which are directly involved in the prosecution of war or engaged in defence production. "Communications" under Entry 13 in the State list is within the exclusive jurisdiction of the States, but here again centre comes in under Entry 23 in the Union list. Certain entries in the concurrent list (List III) empower the Centre to legislate and hence also exercise its executive powers in respect of some matters which have been assigned to the exclusive jurisdiction of the States under entry 27 (production, supply and distribution of goods) and entry 28 (markets and fares) Entry 33 in the concurrent list which makes this possible requires to be reformulated for reducing the scope of the centre's power and authority in regard to matters enumerated in entries 27 and 28 in the list II. Forests should be in the State List.

Entry of the concurrent list should be restricted to the property of the Union and the acquisition and reacquisition of property for the purpose of a State should be transferred to the States list. The mandatory provision for President's assent under proviso to Article 31(C) for any law passed by a legislature has naturally to go.

Entry 55 in list I (Regulation of Labour and Safety in Mines and Oil Fields) should be transferred to the concurrent list in order to enable the States to take initiative in ensuring measures for this purpose. Entry 43 in the concurrent list should cover only such trading Corporations as are of national importance from the point of view of the overall interest of national economy and in the context of national planning. Corporations having no such importance or significane in carrying on their business in a State should be left to the exclusive jurisdiction of the concerned State.

Residual Powers

Article 248 read with Entry 97 in the Union list vests the union, that is the Centre, with the residuary powers of legislation in all matters which are not included in lists II and III, including any tax. Such residuary powers for Parliament and the Centre should be confined to only matters that concern the security of the country and national unity and national integration. The rest of the residuary powers should be left with the States. Both the above mentioned Article and the entry should be amended accordingly.

President's Rule

Article 356 should be amended. The wide powers of dissolution and suspension of the State Assembly and the dismissal of the State Ministry by the President should be deleted. In the event of a situation arising when there is no possibility of any Ministry having a majority in the Assembly, elections should be held within four months to constitute a new Assembly, the existing Government functioning as a caretaker Government.

If, however, the Parliament decided that elections cannot be held in the State concerned due to such violence as disrupts normal life, it may, for a specified time, decree the imposition of President's rule in that State.

If the post of the Governor cannot be abolished, then that Governor's powers and functions have to be redefined. The Governor was intended to be purely ornamental functionary. His must be constitutional office not subject to the control of the Government of India. Unfortunately, Governors have acted more as agents of Central Government rather than as constitutional functionaries. Their actions have in many instances brought mis-understanding between their own role and about the Centre.

Status of Governor

3.2 The Governor of a State shall have no power of discretion to assent to any bill passed by a State legislature nor shall be have such power and discretion to reserve such a bill for the President's assent except under Article 288(2). All bills passed by a State Legislature shall automatically become law.

So long as the office of Governor continues, his constitutional and legal position in relation to the Council of Ministers of the State concerned shall be the same as that of the President in relation to the Union Council of Ministers except in respect of his responsibilities under the Vth and VIth schedules (re. the Scheduled Castes and Tribes). Article 163 should be amended and brought exactly in line with Article 74 so that the Governor has no functions to exercise in his discretion. The concept of Governor being an agent of the Centre must be given no quarter or encouragement. Powers so exercised by the Governor should be subject to the review of the State Assembly and Parliament.

The Governor should be appointed by the President on the basis of a panel approved in this behalf by the concerned state legislature and the Governor shall hold office at the pleasure of the State Legislature. There should be provision in the Constitution for the impeachment of the Governor by the concerned state legislature.

State's Say in the Appointment of High Court Judges

The state legislatures should also be given a say in the appointment of the judges of their respective High Courts, including the Chief Justice. The President shall appoint such judges for a State High Court from the panel of names which has been approved by the concerned state legislature.

3.3 Before making a report under Article 356(1) Governor should send notice to the Council of Ministers. In the notice, he should specify the reasons why he is making a report to the President regarding the situation in the State i.e., he should give an opportunity to the Council of Ministers to show that there is no room for holding that the Government in the State cannot be carried on in accordance with the provisions of the Constitution. Thereafter, the President also will have to give a similar opportunity to the Council of Ministers before he proceeds to pass any orders. This procedure need not be followed in the event of a no-confidence motion against the Council of Ministers has been passed in the Legislative Assembly. Generally, the right of the people of the State to have a Government or Council of Ministers enjoying the confidence of the State legislature should not be interferred with.

While dealing with the actions of the Governor under Article 164 we must keep in view the important fact that democratically elected representatives of the people are not deprived of their constitutional right to elect their own Governments. Unfortunately, the way in which Governors have exercised power under Article 164 have come in for a lot of criticism. Hence it is necessary to amend Article 164 to make it clear that the Governor shall appoint a person as Chief Minister who commands a majority among the members of the Legislative Assembly. Governor shall not dismiss the Council of Ministers who command a majority in the Assembly. It is further necessary to clarify that Governor acts in accordance with the advise of the Council of Ministers, save in situations where the Constitution requires him to exercise discretion. It is also necessary that this discretion should not be exercised arbitrarily but should be such as to advance the cause for which discretion has been vested in him.

3.4 Power under Article 200 has been abused to a considerable extent. Hence it is necessary to clarify that the bills when once passed by the Assembly should not be subjected to discretion of the executives and should be brought into force as desired by the Legislature.

3.5 We agree with the commands made by the Indian Law Institute. There has been delay in giving assent.

3.6 In most of the cases, the Governors have acted as agents of the Centre.

3.7 We agree with the suggestion contained in question.

In addition, the Governor must be appointed in consultation with the Legislature of the State.

3.8 We do not agree with the suggestion.

3.9 The suggestion based on article 67 of Basic Law of Federal Republic of Germany may be tried. But generally it will be better that elections are held.

3.10 In view of our other suggestions regarding Governors, this becomes unnecessary.

PART IV

ADMINISTRATIVE RELATIONS

4.1 It is stated that these articles 256 and 257 are designed to have co-ordination between the executive power of the State and the executive power of the Union. It will be possible that these powers may be abused to strike at a Government in the State.

4.2 We are of the view that Article 365 should be deleted. The power is an extraordinary power and is likely to be abused. It may not be subject to judicial review. Hence it should be deleted.

4.3 If articles 256 and 257 should stand in the present form, then the suggestion contained in the ARC report may be considered.

4.4 The extraordinary power under Article 356 has invariably been abused. In 1959 the Kerala Government was dismissed on a very specious plea of failure of law and order etc. But on such a specious plea the Congress Governments have not been removed though failure of maintaining law and order situations has been present in many instances of Congress Governments. In fact, there was no failure of maintaining the law and order in Kerala in 1959. Likewise, in 1976, the Government of Tamilnadu headed by Karunanidhi was dismissed on a novel charge that he indulged in corruption.

4.5 The 44th Amendment 1978 has rightly restored the previous position. However, in order to meet an extraordinary situation referred to in the said question (as in the case of Punjab) a safeguard in the arbitrary exercise of power may be to suggest that these matters be discussed in the Inter State Council (by resolutions) or by and Parliament.

4.6 No comments.

4.7 The criticism is justified. These organisations should not function in a manner so as to impinge on the State's autonomy. This must be subject to review in the Inter State Council, and also in the National Development Council.

4.8 The feature that has come up for criticism relates to the aspect of joint control over the All India Services by the Central and State Government, the loyalty of officers belonging to All India Services should be to the Centre though serving in the State. This has led to conflict and difficult situations. (instances of administrative and police officers in Andhra Pradesh and Jammu and Kashmir has come up for criticism). In this connection, the suggestion made by the State Government are worth considering. These are as follows:—

(i) all matters relating to the policy or rules affecting the All India Services should first be placed before the proposed Inter State Council and action initiated only after obtaining the approval of the Council by means of formal resolution,

(ii) Clause 3 of the All India Services Act should be amended to replace "consultation" with the State by "concurrence" of two thirds of the State Government,

(iii) the amendment to rule 6 of the I.A.S. (Cadre) rules made administrative grievances of officers to be referred to Tribunals in order to avoid delays that occur in courts. The selection of members for these Tribunals should be subject to confirmation of the Union Public Service Commission in order to ensure that the Tribunals are manned by persons of competence and integrity.

4.9 Police and maintenance of Law and Order is a State subject. But the States have been made to depend on the Centre for supply of paramilitary forces and Central Intelligence Services, etc. The Central Government expenditure is going on increasing on police forces. The Central Government had deployed both Border Security Force units and Central Reserve Police for dealing with peaceful agitation (for example Bihar). Recently in Andhra they were deployed for purely political reasons. The Central intervention through B.S.F. units and C.R.P. should stop. Expansion of the Central forces should also stop ; C.R.P. and other similar forces should not be deployed without the consent of the State concerned except to meet a grave threat to the life and property of scheduled castes, scheduled tribes and religious and linguistic minorities.

4.10 We are of the view that Radio and Doordarshan should be made autonomous and registered as a National Broadcast Trust. The board of trustees must be appointed in consultations with Inter State Council. The opposition and the State Chief Minister must have access to the broadcast media. Newspapers and periodicals have suffered a great deal as a result of newsprint allocation. Fixation of quota of newspapers should be completely abolished and import of newsprint should be put under Open General Licence. Small newspapers may be given assistance for procurement of newsprint. Broadcasting may be brought in the Concurrent List.

4.11. Zonal Councils have hardly functioned.

4.12 Inter State Councils under section 263 should be made to function effectively. In view of the fact that several parties have come to power, the Inter State Council becomes very important as a means of maintaining harmonious relationship and arriving at a consensus. Inter State Council must deal with matters like Co-Ordination of taxes and policies, minimum wage under the Minimum Wages Act, issues relating to regional imbalance, central investment in the State, etc. This must be linked with effective functioning of National Development Council, Planning Commission etc. The Council should have an independent secretariat which should be on a permanent basis.

PART V

FINANCIAL RELATIONS

Wider Financial & Economic Powers & Greater Resources for the States

In view of the expanding developmental and other welfare activities of the states on the one hand and a yawning lack in their resources, as well as their dependence on the centre on this account on the other, it has become imperative to augment the resources of the States such dependence on their part. These are, of course, inter connected tasks. The limitations of the financial and economic powers of the states are inherent in the scheme of the Constitution which would call for some radical modifications.

The taxing powers of the centre and the states are mutually exclusive and hence it is necessary to broaden the resource-raising base of the states by transferring certain items of taxes and revenues from the union list to the state list. But even this is not going to significantly increase the resources potential of the states. What is necessary is that the Centre must make more funds available to the states under the mandatory provisions of the Constitution itself, as well as under the laws made by Parliament. The scope of "discretion" by the executive should be drastically reduced in favour of the assured transfer of resources by the centre to the states.

Include Customs, Export Duties and Corporation Tax within the Divisible Pool

Certain items of central revenues, notably customs, export duties and company taxes, etc., are not now shared by the Centre with the States. A definite proportion of the net proceeds under each of these heads should be brought within the divisible pool for obligatory transfer to the states according to the guidelines and proportion laid down by the Finance Commission, which shall take into account all relevant factors. It may be left to Parliament to determine from year to year the proportion in each case that should be put in the divisible pool. But there should be constitutional guarantee that the share earmarked for the states would not be less than 50 per cent of the net receipts under each head. Similarly, there should be constitutional guarantee to ensure that adequate financial assistance is given for development of backward regions and areas, for development of the tribal areas as well as of other backward and weaker sections.

50 per cent of the Excise Duties for the Pool

At present the net proceeds of the excise of duties of the centre are shared with the states at the rate of 20 per cent under a permissive provision of the Constitution. This sharing should be made mandatory by including the union excise duties also in the divisible pool and the proportion should be raised at least to 50 per cent of the total net proceeds of such excise duties. Article 270 should cover the excise duties also and Article 272 should be deleted.

Enlarge Scope of "Grants-in-aid"

Article 275 which provides for "grants-in-aid" by Parliament should be amended to cover a wider range of purposes for making such assured assistance to a state with a view to among other things, reducing to the minimum the discretion of the union executive, whether exercised through the Planning Commission or otherwise, in the matter of financial assistance to the state. The Plan allocations should be linked with this and such other statutory provisions as may be made by Parliament for the purpose. Not only the fiscal needs of the states, but other needs as well should be taken into account in formulating the proposal for transfer of resources from the divisible pool.

Transfer to the State List

Estate duty in the union list under Entry 87, other than Agricultural Land Estate Duty in respect of property, should be transferred to the state list in respect of not only agricultural land but also buildings and all other immovable property. Duties in respect of succession to all immovable property in a state should be transferred to the state list. Terminal taxes under Entry 89 (terminal taxes on goods or passengers carried by railways, by sea or air; taxes on railway fare and freights) should also be transferred to the state list. Taxes under Entry 90 (taxes other than stamp duties on transaction in stock exchange; and future markets), 92 (taxes on the sale or purchase of newspapers and on advertisements published therein) should go to the state list.

Financial Institutions and Banks

The financial institutions should be made to invest more and increasing funds for the development of backward states and regions.

The states should be empowered to start their own banks in the public sector.

Royalties

Royalties for mineral resources, oil, gas, etc. should be raised and calculated on ad valorem basis to enable a fair share of the natural resources to the states.

Parliament to Recommend Appointment of Finance Commission

The Finance Commission should be appointed by the President on the basis of recommendation of a panel prepared in consultation with the states and approved by Parliament. The appointment should not be left to the discretion of the union executive alone. Parliament having no effective say whatsoever in the matter. The functions of the Finance Commission should be widened so as to cover ali transfer of resources from the centre to the states. The broad guidelines for its work should be empowered to go into all aspects of the states finances as well as that of the centre, instead of its function being more or less confined to a periodical assessment of the fiscal needs of the states and to making proposals for the devolution of taxes and "grants-in-aid" to the states.

Planning Commission should be a Statutory Body

The Planning Commission strictly speaking has no legal status. This lacuna should be removed and the Planning Commission should be made a statutory body with its functions and authority clearly defined. Apart from the Prime Minister who should continue ex-officio to be the Chairman of the Commission, as well as the Cabinet Ministers (not more than three) who may be made members of the Planning Commission should be experts and these members should be appointed by a resolution by Parliament.

Associate State Planning Bodies

Provision should be made by law for associating the representatives of the states in a meaningful manner with the formulation of the plan, and in overseeing its implementation.

There should be effective coordination and cooperation between the Planning Commission and the states planning bodies whose powers and authority, as well as scope of initiative and activity in the matter of planning in the state should be increased. In their own spheres these must be made instruments of planning.

Statutory Status for National Development Council

The National Development Council should be given a statutory status and its broad functions and relation to Parliament should be defined. The main task of the NDC should be related to the development activities, particularly those relating to planned development, as well as coordination

among the states for the purpose and their coordination with the centre. The relevant centre-state problems in this connection should also be brought within the ambit of the functions of the NDC.

Loans and Debts

The question of central loans to the states needs serious consideration. A good part of the outstanding loans by the centre to the states requires to be written off to lighten the huge indebtedness of the states. This debt burden is largely due to the denial of resources to the states by the centre. The states' authority to raise loans should be increased and there should be wider accommodation in the matter of the so called 'over-drafts' by the states. In this connection the relations of the banking, insurance and other public financial institutions under the control of the centre with the state should be reviewed with a view to improving the borrowing position of the states, subject, of course, to the necessary safeguards.

The above proposals will not only make the states strong for the discharge of their responsibilities but also at the same time strengthen the democratic content of the relations between the centre and states, thereby strengthening the unity of the country and its national integration. The implementation of the principal of "the unity in diversity" depends in no small measure on the just, democratic and dynamic relations between the centre and the states.

The Communist Party of India puts these proposals before the people as its initial contribution to the national dialogue on centre-state relations.

5.1 It is to be stated that mechanism for devolution of finances and its actual working over the past 34 years has not been found satisfactory. It has not fulfilled the aspirations of the people. The growing responsibilities of the State have not been kept in view properly in the scheme of devolution.

5.2 We agree with the suggestion contained in 5.2(d) and (e).

5.3 There has been total failure in the objectives enunciated in the directive principles of state policy. One of the important directive principles is contained in 39(d) and (e). Very little has been done in this behalf but on the other hand concentration of wealth and means of production has gone on in an unchecked manner. We have big monopolies who are growing from year to year and the growth of monopolies is a source of common detriment. The growth of monopolies and the capitalist system that prevails in the country is at the root of many ills and has an impact on the Centre-State relation also. The system has produced vertical and horizontal inequalities. In this situation, it is necessary that the Centre should follow a policy of reducing the inequalities interse between the states and otherwise. It may also curb the growth of monopolies. However, it is not proper to counter-pose the giving of more financial powers to the states, to the idea of concept of a strong centre. At present, it is necessary to give more financial assistance to the states and at the same time it is also necessary to reduce the imbalance between the states. The plan has to be formulated in order to overcome the inter-state differences and reduce them to tolerable levels. We have to add that as long as the capitalist system prevails and with the growth of monopoly these inter-state differences and the uneven level of development cannot be eliminated.

5.4 Suggestions (1) and (2) are acceptable, but taxation should be on those who can afford and not through commodity taxes and administrative prices, etc. Deficit financing is not at all in national interest. Taxation should be made to fall on owners of property and producers of goods (capitalists, landlords and traders).

5.5 We agree with the view submitted by the State Government.

5.6 The suggestion based on Yugoslav constitution may be tried.

5.7 We have indicated above the taxes and sources to be transferred.

5.8 Suggestion as above.

5.9 The suggestion that the Finance Commission should deal with all plan and non-plan expenditures may be tried. However, the Planning Commission's functions as stated in the question seems to be limited.

5.10 The objective of narrowing down the disparity in public expenditure has not been achieved.

5.11 We have suggested that the states' role in planning should be greater and increased and also transfer of resources on a proper basis as above. The said suggestion would be a corrective.

5.12, 5.13 and 5.14 We have already made suggestions at the commencement and we are also in agreement with the States' view on financial transfers.

5.15 and 5.16 The question of growing indebtedness of the state has also been dealt with in the State Governments' memorandum. At the commencement we have also dealt with the question of loans, etc. We agree with the views expressed by the State Government.

5.17 The ARC study teams' observations are true. The suggestions have been made by our State Government to remedy the situation. We agree with these views.

5.18 It is true that the States' capacity to borrow has been restricted. The State Government has made the suggestion of Debt and Credit Councils on an All India basis. They may be able to look into these problems. Anyway, rescheduling of loans is an absolute necessity.

5.19 As far as possible, Centre should not charge to the States a higher rate of interest than what it pays. At any rate, the difference should be nominal and it should not be a source of revenue.

5.20 The State Government has already made a suggestion regarding credit and debt council. We assume the same views.

5.21 One of the reasons for the overdraft is the financial position of the states. At any rate, in the case of Karnataka it is not due to want of any tax effort.

5.22 It is not correct to say that the State of Karnataka has not been exploiting their own source of revenue.

5.23 Public Sector has no doubt attained high levels of interest but by and large the public sector has been used in aid of the private sector. The rapid growth of the private sector would not have been possible if the public sector particularly financial institutions had not gone out of their way to help them (even Swarajpal—disclosed this). The performance of public sector has to be assessed in detail with reference to each of the institutions. They are varied character. Some of the earning profits and some are not. There is an element of propoganda by the private sector in the criticism of the public sector. This does not mean that there is no room for improvement of working of the public sector undertaking. Bureaucratisation of the management is one of the serious obstacles. Considerable improvements both in terms of policies and administration if effected would certainly put them in a better footing. We agree with the view that there is substantial leakage in the central tax revenue.

5.24 We agree with the suggestion.

5.25 We agree with the suggestion that these taxes should be transferred to the state list.

5.26 Subject to what we have said above the suggestion to increase the grant is in order.

5.27 We are of the view that the four Union Territories must be conferred with statehood. Subject to this, the suggestion in 5.27 is correct.

5.28 The central assistance to calamities must be made adequate to cover the costs.

5.29 We agree with the suggestion made by the State Government in this regard.

5.30 No comments.

5.31 We agree with the criticism. That is why the suggestion of National Expenditure Commission.

5.32 to 5.35 No comments.

5.36 No doubt this reports are examined by the various committees of the legislature. This itself an important check; but we cannot say that it is a sufficient check since there is a big time gap and the suggestions made are not fully followed.

5.37 We agree with the suggestion.

5.38 The scope of the Expenditure Commission is different from the functions of comptroller and Auditor General.

5.39 We agree with the suggestion.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 We agree with the suggestion made by the Government so as to avoid repurcussions that are referred to in the said question. Effective functioning of National Development Council, National Credit Council, National Debt Commission is a must. The concept of decentralised planning has got to be resorted to in a vast country like ours; there is no point in the Planning Commission having a detailed scrutiny of state plans. The states must be made more and more responsible for the state plans. The Planning Commission should consist of experts and three or four ministers who have to be appointed by resolution of the Parliament. The states should be assisted in the formulation of plans.

6.2 We agree with the proposal.

6.3 The Planning Commission must take the State Government into confidence.

6.4 We prefer 6.4(i).

6.5 We agree with the suggestion.

6.6 These matters have been clarified in the memorandum given by the State Government and we agree with them.

6.7 and 6.8 We agree with the views of the State Government.

6.9 The criteria adopted by the Finance Commission for allocating central plan assistance have proved to be inequitable. As far as our state is concerned, the Government have brought out these aspects in the memorandum both to the finances commission and other bodies. We agree with the suggestion.

6.10 We agree with the view expressed by the Chief Minister of Karnataka regarding the centrally sponsored schemes. He has referred to this recently in his budget speech and also in his press interview.

6.11 ......

6.12 We agree with the view expressed in 6.12.

6.13 The formulation of the state plans have been done by the state government from time to time. Discussion in the assembly and at various levels is not adequate. People's participation in the formulation has got to be improved.

PART VII

MISCELLANEOUS

Industries

7.1 We agree with the view that the expansion of the Industries in the schedule has encroached upon the state, sphere. Article 24 in the state list also deals with the industries. Hence it is not proper to virtually take over the right of the states to legislate under Article 24 in the state list.

Parliament may however retain the restricted power to legislate in respect of industries of All-India importance in the overall interest of national economy.

7.2 As indicated above industries of All India importance should alone find a place in the first schedule.

7.3 The intervention of the centre in the field of industries on the ground of public interest may not be necessary.

7.4 . . . . . .

7.5 The state government memorandum has made some comments on the head "Market borrowings". We agree with their suggestions. Allocation of market borrowings should be on a fifty fifty basis between the centre and the states. The criteria for inter state allocation has been properly made by the state governments.

7.6 The criticism is justified. The case for Vijayanagar Steel Plant is an instance in point. More than 10 years ago the foundation stone was laid and indications were made by the Central Government that the steel plant would be taken up but nothing has happened in this behalf.

7.7 The central investment on public sector has to be decided at the national level in order to obviate this criticism ; matter should be discussed at the various All India bodies and inter-state councils and a longterm plan should be drawn up taking the potentialities of different states.

Trade and Commerce

8.1 We agree with the suggestion in 8.1.

Agriculture

9.1. So far as agricultural research is concerned the states' efforts should be supplemented by the centre in view of the paucity of resources in the state. Otherwise, we agree with the comment made by the administration i.e., State Government.

9.2 We agree with the view of the National Commission on agriculture.

9.3 The suggestion on National Commission of Agriculture is quite in order but it is not being satisfactorily implemented.

9.4 Price fixation for many agricultural commodities has led to conflict between the state and the centre sometimes. The centre must take the state into confidence and have adequate discussion.

9.5 We agree with the suggestion made by the State Government.

Food and Civil Supplies

10.1 and 10.2 We have no comments.

Education

11.1 and 11.2 We have no comments.

11.3 There is need for discussion and consultation arriving at a consensus between the state and the centre.

11.4 A comprehensive bill on education was passed recently by the State Government. So far the central clearance has not been given. It is necessary that early clearance may be given. However, we have one observation regarding denominational educational institutions. While we agree with the need for protection of such institutions, we feel that the employees employed by such educational institutions are deprived of the most elementary protections which are available for other employees in other educational institutions. We fail to see why the minimum protection given to the employees in non-minority educational institutions should not be extended to employees in the minority educational institutions. It is discriminatory to deny the employees that protection. Hence there must be an amendment to the constitution so as to secure some minimum protection to the employees employed in such institutions.

Inter-Government Co-Ordination

12.1 Such a machinery would be useful.

COMMUNIST PARTY OF INDIA

State Unit—Kerala

REPLIES

For the people of Kerala, a re-ordering of Centre-state relations is a problem of immediate, even day-to-day concern.

The question of more powers to the States has assumed an acute and urgent character, in Kerala which is be set with a host of problems generated over the last three decades of the working of our constitution.

The State Council of the C.P.I. therefore welcomes the constitution of this Commission and hopes that the Commission will be able to reach necessary conclusions and present their recommendations to the Government and the people in the shortest possible period of time. The views of the C.P.I. has already been explained to the commission by our National Council in their reply to the Commission's questionnaire in April last. The following is only a brief note of some of the major issues mainly concerning this State which we would like the commission to deal with.

We shall be presenting a more detailed memorandum of important points in due course at the Commissions convenience.

Greater Powers to the State

The experience of the last three decades clearly shows that there has been a continuous erosion of the powers of the State political, economic and administrative.

We do not subscribe to the view-point which stands for a centre which deals only with three or four subjects like defence, foreign affairs, Communications and currency. The unity and integrity of India which presently face threats from several quarters, has to be strengthened. Only with a strong sense of oneness and on urgent for unity,

free involvement and a sense of participation in nation building at the grass roots level, local initiative on the part of the people, can we successfully face these threats. It is for this that State autonomy to the maximum possible extent is sought for. Such a dispensation where the people at the State and regional level are really autonomic will strengthen, not weaken, the nation and the popular base of the centre.

It is often claimed that the States in India are co-equal with the Centre in legislative and executive authority in the respective spheres apportioned to them by the constitution and are in no way dependent on the centre. But no one can deny that there has been an all round curtailment of the State's powers, resources and capabilities, economic, financial and administrative by misuse of the various provisions of the constitution and by other means. Even the limited powers to which the States could lay claim under the constitution have been curtailed or negated, reducing the States to the position of helpless clients supplicating before an all powerful central authority.

India is called a federation. But our constitution in actual fact has features which are more of a unitary nature than federal. Political evolution after its adoption has worked in a manner which has weakened the States further. It is incumbent therefore that the role and powers of the States be enlarged, to suit the needs of the multi-lingual multi-religious, multi-cultural national if sub-continental proportions that is India.

The role of Governors

The role of Governors today is chiefly that of a representative or agent of the centre, carrying out the centre's bidding. Their role as head of the State has become marginal. To effect a change in the situation, in our view, the appointment of Governors should be made from out of a panel submitted by the State Government concerned. His position should be in no way be different from that of the President. Their duties and functions, tenure of office and guide-lines for work should be reviewed and suitably re-enunciated. The relative articles of the constitution may be amended along these lines.

Art. 248 gives Parliament powers to legislate in subjects which would come within list II or III (State list and concurrent list of the seventh scheduled) in the name of national interest should be deleted.

Art. 200, 201, authorizing the Governor to withhold assent to any bill passed by the State Legislature, or reserve it for consideration of the President may be deleted. Kerala's experience in the matter is unhappy, if not bitter.

Article 356, which authorise the President to dissolve the legislature of a State on the ground of a breakdown of administration has been grossly misused in the past against the spirit and purpose of the framers of the constitution. The article may be reviewed and amended suitably to prevent any misuse. The maximum period of operation of a proclamation under 356(4) may be limited to six months.

Article 365 giving the centre powers to declare that the administration has suffered a breakdown in a State for the reason of failure to carry out directions of the centre may be deleted.

The States shall have full and effective control over and regulate the work and conduct of members of the All India Services, during their tenure of service under the State Governments. Necessary provisions in this regard may be made by legislation.

The Judiciary

A Judges' Council consisting of the all the sitting members of the Supreme Court may be formed to make recommendations regarding appointment of judges of the Supreme Court. They shall also make recommendations regarding the appointment and transfers of judges of the High Courts in consultation with the Chief Minister and the Chief Justice of the States concerned.

Inter-State Council

The formation of an Inter-State Council as provided for in Art. 263 of the constitution shall be made mandatory. Such council consisting of the Prime Minister and Chief Ministers of the States shall deal with disputes between States and issues of Common interest to the States and the Centre.

National Development Council

The functioning of the existing non-statutory national development council, so far has been only of marginal value. The Council may be given constitutional basis. It shall be constitute in such manner that proper representation is given to States. It shall have as members, Chief Ministers of the States and the Prime Minister. The Council shall be the highest authority on issues of economic and social policy. It shall be charged with the task enunciation and supervision of economic development programmes. The Planning Commission should function as the instrument to work out the policies enunciated by the council and keep liaison with the states.

Economic and Financial

The skewed-up character of the relation between the centre and the states is most evident in the realm of economic policy and in financial matters.

Under the label of a mixed economy and a "Society oriented to Socialism" what is developing in India is a society based on private enterprise and the profit motives.

Unevenness is a basic law of development of Capitalism.

It is not only the concentration of wealth at one end and the spread of abject poverty on the other that characterises this type of development. Under this pattern of development, a few metropolitan centres grow in economic activity means of production wealth and power all get concentrated, while vast outlying areas of the country are reduced to the position of backward agricultural appendages, suppliers of raw materials and cheap labour

power and a market for the products of native and foreign capitalist. Most of the states fall into the latter Category. It is just impossible for a capitalistic Social structure to remedy regional and sectoral imbalances.

The programmes of industrialization which we call "five year plans" cannot halt or reverse this process. Under the plan, priorities are decided from Delhi. A uniform pattern of development in various areas is workèd out and imposed on every state irrespective of the local needs, resources or aspirations. It is the bureaucracy technocracy, sitting in Delhi who decide what development project should be taken up in which part of our farflung country. This has proved wasteful and counter-productive and have blocked local initiative. As against this, local grassroot level planning should be adopted and encouraged, to be coordinated and integrated into a nation plan at the Centre.

In the absence of such an approach states like Kerala have suffered.

Kerala produces valuable commercial crops giving them priority over food crops, much of which is exported and earns considerable foreign exchange for the nation. But the centre does not yet own its binding obligation to supply necessary foodgrains to Kerala in which it is short, by over 50%.

Non-resident Keralites make remittances from abroad, which adds to upto a huge sum. Most of the savings generated from these, are mobilized by central agencies and centrally owned financial institutions on a big scale. The report of the Thavaraj Committee appointed by the State Government which went into this question of savings and deposits has reported the facts. But not even a part of this money comes back to Kerala in the shape of capital, for whichever sector, public or private.

The State Government, however is prevented under existing law and central policy from marshalling any considerable part of these remittances.

Kerala Coconut, Oil, Rubber, copra, cocoa, minerals, etc. go to the metropolitan areas where they are processed into value-added finished goods, and bring profits to big business.

Inspite of the State possessing many varieties of raw materials over some of which it holds a monopoly, and labour with skills of a high order, a good infrastructure water, electric power, etc. deployment of the public sector capital resources by the centre not only remains small but declines year by year.

The State has almost reached 100% literacy, the goal set forth by the directive principles of the constitution. Life expectancy has gone up-Birth rate has fallen. The socio-economic infrastructure is well development. But it is as if Kerala has to be peralized for implementing the directive principles of the constitution. Unemployment mounts and is of the highest rate in India. For a population of 4% of the total the percentage of unemployed in Kerala is 10% of the total. Half of this figure consists of educated unemployed youth. The traditional industries Kerala which employ millions of our labour force have been languishing for three decades. Roads, hospitals, schools built up at high cost, cannot be maintained and have to fall into disuse. At the same time money is misspent in an infructuous manner to conform to the "Central Pattern".

What the centre allots to the state are loans and Ways and Means advances and only a minor part of the transfer to the States is by way of grant.

As in known 70% of the transfers from centre to states is what is classified as "discretionary" grants a which more often than not are made on arbitrary considerations.

The Centre has recently excluded several articles from liability to pay State Sales Tax and subjected them to levy of additional excise duty which goes wholly to central Coffers. This has resulted in substantial loss of income to the State exchequer, reckoned to be of the order of Rs. 183 crores.

The State's own revenue resources have shrunk year by year. Capital resource transfer in the public sector especially for industry has always been nominal, when it comes to Kerala.

At the same time the state is denied relief due on the ground of economic backwardness. The formula for determining backwardness adopted is so unrealistic and mechanical that Kerala has been left out.

Whenever the centre grants increases in D.A. to their staff the State Governments are also forced to follow suit. States like Kerala whose finance are already shattered are driven to a situation in which whatever meagre resources are available have to be diverted to meet these inescapable commitments. There is no scope for further taxation. Since D.A. etc. are non-plan items of expenditure the centre refuses assistance. The result is, each year the financial position of the State gets worse. The States economy is in doledrums, with declining productivity, depleted natural resources, agricultural pests, and on top of it a severe unprecedented drought. The import policy of the centre has resulted in prices of cash crops like copra, crashing, affecting not only the states revenue but the whole economy as well. It is now irretrievably in the red. While the centres' allotments go on shrinking, the overdrafts swell day by day. At the same time the plan size gets smaller and smaller and development has almost ground to a halt.

Borrowing by the State Government is not possible on any large scale because it in the centres' policy that only 10% of the total public borrowings could go to the states.

Having undergone as we do all this experience, in Kerala we submit the following suggestions :—

1 The present division of revenue between the centre and states be drastically modified so that the states are apportioned 70% of the total revenue (including corporation tax,

surcharge, additional duties, special duties etc. now assigned to the Centre).

2. The Finance Commissions function should be only to apportion the States' total shares between the different stages on the basis of these specific problems and actual needs.

3. The present practice of reckoning more than 70% of the total transfer to states as discretionary should be discontinued and criteria and procedure laid down for transfers as grants on a statutory basis on the recommendation by a Finance Commission.

4. Revenue arised by the Centre by increasing the administered prices of such goods as Iron and Steel, almunium coal, etc. be shared between the centre and states.

5. A National Loans Council be constituted for raising and utilizing public loans and apportioning them between the centre and states. Such council shall have representatives of the state at ministerial level.

6. Instead of treating the major part of plan assistance as loans, the states should be assisted to the extent of 70% of plan allotments as grants.

7. The current liabilities of states like Kerala be written off.

8. The existing restrictions on inter state trade on such articles as food grains, pulses etc. be reviewed and done away with the centre should take responsibility to supply foodgrains, Kerosine etc. to states.

9. Incursions of the centre into areas like industry which under schedule 7 is under the state list through legislation such as the industrial Development and Regulation Act and the rules and regulations of various centrally sponsored institutions, Boards and Corporations be reviewed and necessary changes effected, with a view securing the States' rights and prerogatives.

10. Representatives of state governments be nominated to central and state Boards of the Reserve Bank. Activities now undertaken centrally by such bodies like Employees Provident Fund, Employees State Insurance etc. be handed over to the states.

It is hoped the commission will give serious attention to the peculiar problems of outlying states like Kerala in making their recommendations.

COMMUNIST PARTY OF INDIA

STATE UNIT — WEST BENGAL

MEMORANDUM

Introduction

Our party is of the view that although our State structure is federal in appearance, practically all power and authority are concentrated in the Central Government. The constituent states of the Indian Union enjoy only limited autonomy and power. The distribution of power between the Centre and the States follows the pattern which was outlined by the British rulers in the Government of India Act, 1935.

Our party is of the view that the constitutional structure and practice we have today not only prevent the full integration of the various nationalities and their languages and cultures which feature immense and intricate diversities, but also foster disparities, disharmonies and tensions as are evident today.

In any federal structure worth the name, the federal centre derives its strength and authority in a very large measure from the willing co-operation of the constituent states. To ensure this, the powers of the states shall have to be widened so as to enable the fruition of the aspirations of the people of the states, strengthen the democratic content of the relations between the centre and the states and thereby strengthen integrity and unity of the country.

Legislative Relations

The way the constitution has distributed legislative powers between the centre and the states makes a mockery of the federal concept. The centre has been given enormous powers to encroach upon the jurisdiction of the states.

The blanket provisions of Articles 248 and 249 of the constitution and numerous entries of the Union List in Seventh Schedule such as 7, 23, 40, 48, 52, 53, 54, 61, 97 etc. empower the Union Government to abridge the legislative powers of the states even in the fields reserved for them.

For example, entries 7 and 52 of the Union list empower the Union Government to expand its jurisdiction at will over industry which is a state subject. The Union Government has already invoked these powers to extend its control over small industries like razor blades, match sticks, canned fruits, etc.

Likewise entries 23, 54 and 56 of the Union List curtail the jurisdiction of the states over subjects like highways, mines and minerals development and inter-state rivers and river valleys.

Such powers of unilateral transfer of legislative jurisdiction over matters reserved for the states given to the Union legislature is a gross encroachment on rights which states should normally enjoy in a federal set up.

Then again Article 249 which empowers the Union legislature to legislate with respect to any matter in State list and Article 252 which empowers parliament to legislate for two or more states on request imping upon basic federal principle.

All these powers given in the above mentioned articles and entries to encroach upon the legislative jurisdiction of the states should be removed and the legislative powers of the states should be widened.

The concurrent list makes provisions for further erosion of states rights. For example, entry 27 on the State list makes production, supply and distribution of goods a state subject. But entry 33 on the concurrent list abridges the right of the state legislatures to legislate on these matters. The scope of Centre's powers in regard to these matters should be reduced.

The concurrent list also introduces a lot of anomaly in the legislative powers of the Centre and the States, for it is made largely irrelevant by Article 254 which says that in case of a conflict between the Union and State legislations on any matter of that list, the central law will prevail.

Article 248 read with entry 97 on the Union List vests the Centre with powers to legislate on all matters, including taxation, not enumerated in the State or concurrent lists. This is a sweeping power which should be restricted only to matters concerning the security and integrity of the country. The rest of the residuary powers should vest in the states.

Role of Governor

Many governors in post-independent India have tended to act as Centre's agents. They have on many occasions dismissed in exercise of their prerogatives, duly elected Council of Ministers still enjoying the confidence of the legislature and have otherwise acted against the desire of the state Governments and have thus thwarted the will and intention of the democratically elected state legislatures.

If the abolition of the Governors' post is not considered feasible at the moment, he should be appointed by the President strictly on the basis of a panel approved by the concerned state legislature and should hold office at the pleasure of the State legislature. There should be a provision in the constitution for the impeachment of the Governor by the concerned state legislature.

Governors should have no right to withhold the assent to bills passed by State legislatures.

Articles 200 and 201 should be deleted and all bills passed by the State legislature on matters enumerated in the State list should automatically become law.

The Governor's position in relation to the Council of Ministers of the State should be the same as that of the President in relation to the Union Council of Ministers except in respect of his responsibilities under the V and VI schedules, on provisions as to the administration and control of scheduled and tribal areas.

Administrative Relations

Not only in the field of legislative relations, but also in matters of administrative relations, the constitution gives enough power to the centre to reduce the states to the status of administrative agents of the Union Government.

Articles 256 and 257, for example, empowers the Union Government to direct any state government to do things which it may find contradictory to its electoral mandate. In the past these two clauses have been invoked by the Union Government to pressurise state governments to suppress central government employees strike and to ratify the union legislation on detention without trial.

(*) These clauses should be drastically amended to allow the states the right to be consulted before any Central directive is served on them.

Then there is Article 356 which gives wide powers to the President to suspend or dissolve any elected state legislature and to dismiss an elected state Ministry. The Article has been grossly misused by the Union Government to get rid of State Governments which are not to its liking.

(*) Article 258A should be so amended that no power of any State be entrusted to the Centre without prior approval of the concerned State Government.

This Article and the consequential Article 357 should be drastically amended to prevent their misuse. The wide powers given to the President under Article 356 should be deleted.

In the event of a situation arising when there is no possibility of any ministry having a majority in the state legislature, a fresh election should be held within four months to constitute a new legislature and the existing cabinet should function as a caretaker government. In case the Parliament feels that no election can take place within the specified time due to disruption of normal life, it may, for a specified period, decrease the imposition President's rule in that State.

The other major administrative irritants to a healthy centre-state relation are Articles 154(II)(B) which authorises Parliament to confer by law functions on any authority subordinate to a state, Article 355 which empowers the Union Government to deploy central police and armed forces in a state at will and Article 360 which empowers President to interfere in a State's administration on the plea of a threat to financial stability.

All these powers of the Union Government should go. No State authority should be placed under the Executive jurisdiction of the Centre and cadres belonging to all India service working under a state government must be completely subject to the discipline of the concerned state government. Central forces should not be deployed in any state without prior consent of the state government except to meet grave threat to the life and property of scheduled castes and tribes and of religious and linguistic minorities. Article 360 should be deleted.

To improve Centre-State relations, Article 263 should be restructured to make establishment of inter-state councils mandatory and to extend its power. This Council should be a statutory body.

The Council will deal with disputes between the states and also between centre and states. It should include representatives of the state legislatures and should be constituted on the recommendation of the Parliament which should also determine its composition, powers and duties.

It is also important that the special constitutional status given to Jammu and Kashmir under Article 370 should continue.

The Scheduled and Trial Areas

Article 244(A) should be amended with a view to creating autonomous regions within a given state together with the democratic institutions for self-government. Parliament should decide the kind of democratic institutions necessary, as well as their composition, powers, functions, etc.

Financial Relations

Our party is of the view that the present economic imbalance, deprivation and backwardness of many states are the consequence of the over-centralisation of financial powers and resources.

The highly centralised economic and financial administration as it exists today has resulted in a system where priorities are imposed from above and bear diminishing relevance to the aspirations of the people. Given the overwhelming concentration of resources in its hand, the Centre has often been discriminatory in allocation of resources as between region and region and state and state.

Wider Financial & Economic powers & Greater Resources for the States

In view of the expanding developmental and other welfare activities of the States on the one hand and a yawning lack in their resources, as well as their dependence on the Centre on this account on the other, it has become imperative to augment the resources of the states and reduce such dependence on their part. These are, of course, interconnected tasks. The limitations of the financial and economic powers of the states are inherent in the scheme of the Constitution which would call for some radical modifications.

The taxing powers of the Centre and the states are mutually exclusive and hence it is necessary to broaden the resource-raising base of the states by transferring certain items of taxes and revenues from the Union List to the State List.

But even this is not going to significantly increase the resources potential of the states. What is necessary is that the Centre must make more funds available to the states under the mandatory provisions of the Constitution itself, as well as under the laws made by Parliament. The scope of "discretion" by the executive should be drastically reduced in favour of the assured transfer of resources by the Centre to the states.

Include Customs, Export Duties and Corporation Tax within the Divisible Pool

Certain items of Central Revenues, notably customs, export duties and company taxes, etc. are not shared by the Centre with the states. A definite proportion of the net proceeds under each of these heads should be brought within the divisible pool for obligatory transfer to the states according to the guidelines and proportion laid down by the Finance Commission, which shall take into account all relevant factors. It may be left to Parliament to determine from year to year the proportions in each case that should be put in the divisible pool. But there should be constitutional guarantee that the share earmarked for the states would not be less than 50 per cent of the net receipts under each head.

This is important because the share of total resource transfer from the centre to the states has, if anything, decreased over years, more markedly since 1969. During the period of the Fifth Finance Commission (1969-74) this share constituted 36.4 percent of the total. The same came down to the level of 32.6 percent during the period of Seventh Commission (1979-84). There should be constitutional guarantee to ensure that adequate financial assistance is given for development of backward regions and areas, for development of the tribal areas as well as of other backward and weaker sections.

50 percent of the Excise Duties for the Pool

At present the net proceeds of the excise duties of the Centre are shared with the states at the rate of 20 per cent under a permissive provision of the Constitution. This sharing should be made mandatory by including the Union excise duties also in the divisible pool and the proportion should be raised atleast to 50 per cent of the total net proceeds of such excise duties. Article 270 should cover the excise duties also and Article 272 should be deleted.

Enlarge Scope of "Grants-in-Aid"

Article 275 which provides for "grants-in-aid" by Parliament should be amended to cover a wider range of purposes for making such assured assistance to a state with a view to, among other things, reducing to the minimum the discretion of Union executive, whether exercised through the Planning Commission or otherwise, in the matter of financial assistance to the state. The plan allocations should be linked with this and such other statutory provisions as may be made by Parliament for the purpose.

Not only the fiscal needs of the states, but other needs as well should be taken into account in formulating the proposal for transfer of resources from divisible pool.

The criterion for *inter se* distribution among states should take account of the incidences of poverty, illiteracy, industrial backwardness, state of employment along with such gross indicator as level of per capita income.

Transfer to the State List

Estate duty in the Union List under Entry 87, other than Agricultural Land Estate Duty in respect of property, should be transferred to the State List in respect of not only agricultural land, but also buildings and all other immovable property. Duties in respect of succession to all immovable property in a state should be transferred to the State List. Terminal taxes under Entry 89 (Terminal taxes on goods or passengers carried by railways, by sea or air; taxes on railway fares and

freights should also be transferred to the State List. Taxes under Entry 90 (taxes other than stamp duties on transaction in stock exchange; and future markets), 92 (taxes on the sale or purchase of newspapers and on advertisements published therein) should go to the State List.

Financial Institutions and Banks

The financial institutions should be made to invest more and increasing funds for the development of backward states and regions.

The states should be empowered to start their own banks in the public sector.

Royalties

Royalties for mineral resources, oil, gas, etc. should be raised and calculated on ad-valorem basis to enable a fair share of the natural resources to the states.

Parliament to Recommend Appointment of Finance Commission

The Finance Commission should be appointed by the President on the basis of recommendation of a panel prepared in consultation with the states and approved by Parliament. The appointment should not be left to the discretion of the Union Executive alone. Parliament having no effective say whatsoever in the matter.

The functions of the Finance Commission should be widened so as to cover all transfer of resources from the Centre to the States. The broad guidelines for its work should be laid down by Parliament. The Finance Commission should be empowered to go into all aspects of the state finances, as well as that of the Centre, instead of its functioning being more or less confined to a periodical assessment of the fiscal needs of the states and to making proposals for the devolution of taxes and "grants-in-aid" to the states.

Economic and Social Planning

The existing planning relationship between the Centre and the States is superficial and arbitrary. The States' partnership in the planning process should be strengthened.

Among the deficiencies in the present planning process, the ambiguous status of the National Development Council and the Planning Commission are to be specially noted.

The National Development Council do not have any constitutional sanction behind it. The Union Government convenes its meetings, as and when it chooses, for consultation with the states. The discussions are seldom meaningful. It is, therefore, our proposal that the National Development Council be given a statutory status. The main task of the N.D.C. should be related to activities in the field of planned development as well as co-ordination with the centre. The related Centre-State problems should also be brought within the purview of the N.D.C.

Likewise, the Planning Commission should also be made a statutory body with its functions and authority clearly defined. Apart from the Prime Minister, who should continue ex-officio to be the Chairman, and other Cabinet Ministers. who may be made members of the Commission, all other members should be experts appointed by a resolution of the Parliament.

Provision should be made by law to associate the representatives of the states in a meaningful manner with the formulation of the plan and in overseeing its implementation.

There should be effective co-ordination and co-operation between the Planning Commission and the States Planning Bodies whose power and authority should be increased. The State Planning Bodies should be made real instruments of planning in the States.

The present authority of the Planning Commission and the Union Finance Ministry to offer discretionary grants to the states must be drastically curtailed. Such discretionary grants to the states must be drastically curtailed. Such discretionary transfers now account for more than 70 per cent of the total transfers to the states and constitute a major source of arbitrary behaviour on the Part of the Centre. All financial transfers should belong to the jurisdiction of the Finance Commission.

Under the existing arrangements 70 per cent of the Central Plan assistance to the states comes in the form of loans. All such assistance should be treated as grants.

COMMUNIST PARTY OF INDIA (MARXIST)

Central Committee

REPLIES

PART I

INTRODUCTION

In this part we would like to make some general observations on the circumstances in which the constitution was framed and came into operation on January 26, 1950 and how it has been working for the last 34 years. We are approaching this question not from the legal-juridical but from the historical-political angle. For, although couched in legal-juridical terms, the Constitution of India, as the constitution of any country in the world, expresses certain socio-political relations, Examination of the constitution and its working should therefore begin with the examination of the socio-political forces at work.

The British rulers who were in control for a century and a half set up a highly centralised administration in the country. Every aspect of administration was thus centralised in Delhi which in turn was controlled from London. Never before in the long history of this country did it have such a centralised administration.

Facing as the freedom movement did such a highly centralised administration, it had to forge the unity of the entire people cutting across caste, communal, linguistic differences and develop the unity of India based on democracy, equality and brotherhood. Since this posed a serious challenge to their alien rule, the British started devising ways and means to disrupt the growing popular unity.

Thus began the operation of the notorious "divide and rule" policy, setting the non-Hindu religious minorities, the depressed and backward castes, the mercantile and other monied interests in the cities, landlords, feudal elements including landlords and princes of native states etc., against the Congress which voiced the demand for political freedom. The "constitutional reforms", introduced in successive stages, insisted on "safeguards" for all these vested interests including European planters, merchants and industrialists.

While using all these forces in its game of disrupting the unity of the freedom movement, the British rulers had the "Hindu Muslim Problem" as the trump card in their hands. The leaders of the freedom movement of course saw the danger which this posed to the Indian unity. However, representing as they did the narrow upper-strata of society, they were unable to rally the mass of the working people on a programme of full democracy and genuine secularism. The culmination of the freedom struggle therefore was a compromise with the foreign rulers and their Indian allies.

The unity of India which the leaders of the freedom movement and the people at large wanted to preserve, thus came to be disrupted. The united India for whose freedom thousands had laid down their lives and lakhs underwent all manner of suffering was cut in two. This operation led to unprecedented carnage, straining the relations between the Hindu and the Muslim, the Muslim and the Sikh.

Framed as it was against this historical background the new constitution preserved most of the special powers which the British made constitution of 1935 had conferred on the Governors in states; the office of the Governor and the powers conferred on him came handy for the new rulers and they used them against the opposition to begin with and subsequently against the "dissidents" within the ruling party.

The biggest casualty of this process was provincial or state autonomy within the framework of a federal centre. The idea of state autonomy in a federal setup could alone maintain and strengthen the unity achieved in the course of freedom struggle because, (a) as the freedom movement developed, the various linguistic communities or nationalities in search of their distinct identity in the national setup started demanding the formation of separate states for themselves, (b) the Muslim leadership demanded that, as part compensation for the Hindu majority at the centre and in a majority of provinces, the Muslim majority provinces should have autonomy; and (c) the non-Muslim section of national leadership including the Congress considered it better to concede the demand made by their Muslim counterparts at the price to keep them in a United Front against the British rulers.

The idea of a federal centre with wide autonomy for the provinces came to be woven into the framework of the future constitution as spelt out in the Congress-League Pact of 1916, Motilal Nehru report of 1928 and so on, right down to the discussions of the 1940s. A major change however took place in 1947, when the country was divided into the Hindu majority Indian Union and the Muslim majority Pakistan. The bourgeoisie which stood at the head of the freedom movement and which became the ruling class was interested in an extensive home market which requires a centralised rather than federal state. It therefore went back on all its earlier commitments to the federal setup, state autonomy, reorganisation of states on linguistic basis.

While the basic nature of the constitution framed in 1950 was declared to be federal in principle, its content was excessive centralisation. Furthermore, in its actual making it became still more centralised. The fact that the same political party was in the saddle at the centre and in all the states for nearly three decades facilitated this process. The states were made to surrender "voluntarily" the rights that they had in the original provisions of the constitution. Many of the amendments made to the constitution during the last 37 years deprived the states of whatever elements of autonomy they originally had.

That is why, the moment other parties started heading the administration at the state level, the question of centre-state relations became the subject of hot debate. Once the non-Congress state governments started agitating for greater powers and resources, the Congress-led states too started joining the demand. The memoranda submitted by the state governments to the successive Finance Commissions will show that there is no difference between the Congress-led and other state governments in protesting against the inroads made into the state resources—a process that has been uninterruptedly going on during this entire period.

The entire question of the relations between the union and the states therefore requires thorough re-examination. In the very framing of the constitution the federal principle and state autonomy were to a large extent violated. We do not agree that there is nothing wrong with the constitution as it was framed, that what is wrong is only its working. At the same time, we hold that in its actual working the constitution came to be distorted; even the limited extent of autonomy that found a place in the constitution has been eroded. We therefore suggest a thorough re-examination of the basic provisions of the constitution. Before proceeding to spell out how this should be done, let us explain our general position with regard to centre-state relations.

Our Party stands for the unity of the country and fights all forces of disintegration; we definitely stand for an effective and efficient Centre capable

of defending the country, organising and consolidating its economic life and adequately armed with powers to discharge its other jobs like foreign policy, communications, foreign trade etc.

Unfortunately, this urge for unity among the people, their desire that India should be protected against external aggression, has been exploited by the ruling party to appropriate dictatorial powers to the Centre, abrogating and eroding the powers of the constituent states. The ruling party's idea of a strong Centre is a dictatorial Centre carrying out its behests. The fact that the notorious 42nd amendment of the Emergency days reduced the position of a subordinate dependent of the Government of India, showed that an attack on their powers was inevitable requirement of authoritarian rule. The question of Centre-State relations therefore not only relates to the question of defending Indian unity, it has become an issue in the struggle between the forces of dictatorship and democracy.

This is not accidental. The constitution that was framed after independence reflected the needs of the capitalist path of development which required India as unified, single, homogenous market. It reflected the needs of the big capitalists allied with landlords, who considered the demand of democracy, state autonomy or equality of languages, as obstacles to their economic domination and political power.

The Programme of our Party states : "It is but natural that in such a situation the contradiction between the Central Government and the States should have grown. Underlying these contradictions often lies the danger contradiction between the big bourgeoisie on the one hand and the entire people including the bourgeoisie of this or that State on the other. This deeper contradiction gets constantly aggravated due to the accentuation of the unevenness of development under capitalism."

The pro-vested interests policies of the Centre, the economic crisis, the impoverishment of the masses resulted in increased attacks on democratic rights and the rights of the states.

This process was accompanied by abject economic dependence of the states on the Centre. The Centre decides the amounts of public borrowing to be done by the states; it monopolises credit made available by the banking sector and makes the states dependent on ad hoc grants sanctioned by it. All this together with the method of determining the size of the State Plan reduced planning in the states to a mockery and makes it an adjunct of the Central Plan, to be curtailed or expanded according to the convenience and needs of big business which dominates the thinking in Central Plans. Backwardness and perpetuation of unevenness result from this. Planning in States is not geared to the needs of the people of the states or to the genuine need of all-India development.

Over the years this concentration of the political and economic power at the Centre has been making in roads into whatever federal elements there were in the constitution. The Emergency with its Constitutional Amendment Acts enabled the sending of the Central Reserve Police to the states without the prior consent of the state governments, with the further provision that these forces when deployed in the states would take their orders only from the Central government. These epitomised the process of extreme centralisation.

The Centre was armed by the constitution with sufficient powers to intervene and deal with any problem arising in any part of the country. Added to this are the powers which the Centre assumed for itself during the thirty-year-long central rule of one party, with most of the states being ruled by the same party. These enormous powers were often used against opposition parties duly elected in state elections. By misusing the Governor's powe.:, minority ministries of the ruling party were installed and the verdict of the electorate was nullified.

Similarly by withholding Presidential assent to bills passed by state legislatures, the Centre has succeeded in sabotaging progressive legislation passed in the interests of the people. The process of agrarian and educational reform started by the 1957-59 government of Kerala were blocked by the Centre. Recently the agrarian legislation passed by the Left Front Government of West Bengal was sent but has not received Presidential assent, though months have passed since the legislature voted it. The measure to grant recognition to trade union on the basis of secret ballot passed by an earlier Left Front Ministry was killed using the same device of withholding assent. The Andhra Bill to abolish the Upper Chamber in the State has also been now blocked.

The defence of the unity of India, the preservation of democracy, the coordination of planned economic development and other basic tasks cannot require full and real coordination of the activities of the Central and State Governments. That is why our Party proposed autonomy for the states. Without this, Indian unity will not be durable; the feeling of being one people and one country will be weakened. Against the attack of divisive forces what is required is a strong sense and urge for unity; state autonomy will go a long way in fulfilling this need. The state legislatures and Governments must have sufficient freedom and powers to fulfil the desires and mandates of the people electing them. Denial of this freedom to the elected legislatures and governments of states, as if the mandate received by the ruling party at the centre is all that matters, reduces the constituent federal units to the status of dependencies, and lops off one arm of Indian democracy.

Our Party does not believe that a correct solution of the question will *ipso-facto* solve the problems of the Indian people. Their solution relates to changing the basic structure of society. But arming the states with autonomous powers, relaxing the dictatorial grip of the Centre and the ruling party will help the people to fight the grip of the vested interests on the states and Central Government.

Today the party which rules at the Centre is not in charge of the administration in several states. This gives added urgency to the question of a proper redistribution of powers between the Centre and the States, so that the mandate received from the people by the party which wins the election at the state level gets adequate importance, along with the mandate received by the ruling party at the Centre.

PART II

LEGISLATIVE RELATIONS

It will be seen from the above that we do not agree with the view "that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States which ensures in normal times a substantial measure of legislative autonomy to the states", as is asserted in the questionnaire. On the other hand, the distribution of legislative powers, like other provisions written into the constitution, is a repetition of what had been provided for in the earlier, British-made 1935 Act. It will be recalled that the scheme of that Act was so repugnant to the democratic conscience of the freedom movement that the Congress Party rejected outright its federal part; even the provincial autonomy part was so defective that the Congress which secured majority in seven provinces demanded, before agreeing to form the ministries, an assurance from the Governors that this special power would not be used.

Coming to the actual distribution of powers between the centre and the states, the Union and Concurrent lists are so all-pervasive that state autonomy is in fact negated To add to this is the provision that parliament can legislate on certain subjects within the exclusive competence of the states "in the national interest" and "public interest". Furthermore, the Governor's power to *reserve* to the President important legislations adopted by the state and the right of the Central Government acting in the name of the President to withhold assent to the bills passed by the legislatures make a mockery of the legislative competence of the states.

We therefore suggest that to protect states' autonomy, an amendment to Article 248 should be made to the effect that the legislature of a state should have exclusive power to make any law with respect to any matter not enumerated in the Union or Concurrent Lists, as against the present provision which reserves this right to Parliament. In other words, the residual powers of the federation should lie with the states and not with the Centre. The states have to act in such a way while exercising their full rights in their own spheres that they do not transgress the sphere allotted to Central Government; the latter too, on its part should not interfere in the sphere of states, both legislative and executive. No state should use its powers to the detriment of other states. Article 249 giving power to the Centre to legislate on a subject in the states list under the plea of national interests should be deleted.

While enlarging the scope of the states' sphere, we must also try to preserve and strengthen the Union authority in subjects that could be carried out only by the Central authority and not by any single state, such as Defence, Foreign Affairs including Foreign Trade, Currency and Communication and Economic Coordination. In areas such as Planning, fixing of prices, wages etc., the Centre may not only coordinate but also issue general direction. In the matter of Planning and economic coordination however, the Centre will have to conform to the general guidelines laid down by the National Development Council, in which the states will have representation along with the Centre. At the moment, neither the Council nor the Planning Commission is specifically referred to in the constitution. This lacuna may be closed by introducing a separate Article which should also state clearly that the National Development Council will function democratically and that the Planning Commission will be a body appointed by and accountable to the Council. Loans and grants for developmental purposes are now the prerogative of the Planning Commission. It is thus important that the states have some say in the manner of operation of the Commission.

Heavy industries, electric power, oil and coal or irrigation schemes which concern more than one state have to be kept in the Union list, so that there can be a common policy. In matters concerning industrial licensing, etc., major modifications in regard to allocation of powers between the Centre and the states are called for. The list in the Seventh Schedule should be reformulated so that the States may be given exclusive powers in respect of certain categories of industries.

The right of the Central Reserve Police or other police forces the Union Government may raise to Operate in the States should be withdrawn. The subject of Law and Order and the police should be fully in the States' sphere and the Centre should not interfere with its own specially created forces.

PART III

ROLE OF THE GOVERNOR

This is another provision taken over from the previous British made constitution and written into the 1950 constitution. The Governor under that constitution was the appointee of the British Government and was responsible to it through the Governor General. The only change made in the new constitution of free India is that the Governor is an appointee of the Central Government which means the agent of the ruling party at the Centre. That office has in fact been used by the ruling party at the Centre to deny the people of states to have Governments of their choice and impose on them unwanted Government, etc. The office has also been used to provide for the leader of some faction in the ruling party who has become inconvenient to its "high command". It is therefore ridiculous for anybody to attribute the quality of "impartiality" to the Governor. The post should be abolished and, if this is not possible for any reason, the post should be filled by somebody who enjoys the confidence of the state legislature; no Governor

to continue when there is a change in the elected legislature. The present provision leads to conflict between the elected executive, namely, the Council of Ministers and the formal head of state who is responsible not to the elected legislature but to the executive at the Centre.

PART IV

ADMINISTRATIVE RELATIONS

Apart from the office of the Governor, there are several other provisions which enable the Centre indirectly or directly to interfere in the administration of states. The most important of them are the powers vested in the Central Government to dismiss the state governments, dissolve state legislatures etc. These have been used in a notorously partisan way.

All-India services like the IAS, the IPS etc., whose officers re-posted to the States, but remain under the supervision and disciplinary control of the Central Government, must be abolished. There should be only Union Services and State Services and recruitment to them should be made respectively by the Union Government and the state government concerned. Personnel of the Union Services should be under the disciplinary control of the Union Governmtnt and those of the state services under the disciplinary control of the respective state governments. The Central Government should have no jurisdiction over the personnel of the state services.

PART V

FINANCE RELATIONS

No other part of the constitution has been subjected to such universal criticism from state governments including those headed by the party ruling the Centre, as its financial provisions. The Memoranda submitted by the state governments to successive Finance Commissions would show how wide is the gap between the Centre and the states on the question of financial powers and resources. A complete overhauling of the entire field of financial relations is thus in order. While almost every department of administration involving heavy expenses (except defence and foreign affairs) falls within the purview of the state governments, almost all the revenue-earning items are with the Centre.

The articles regarding the Finance Commission and distribution of revenues should be amended to provide for 75% of the total revenues raised by the Centre from all sources for allocation to different states by the Finance Commission. This is necessary to end the mendicant status of the states. In what proportion and on what principle this 75% of the total realisation should be divided between the States should be decided by the Finance Commission. It should not be the job of the Finance Commission to decide the proportion of revenues to be distributed between the Centre and the States. Its task should be only to keep the proportion that each State should get from the total financial realisation by the Centre 75% of which is to be allotted to the states, Article 280, Clause 3, sub-clause (a) which provides for "the distribution between the Union and the states of the net proceeds of the taxes which are to be or may be divided between the Union and the States" should be omitted and the entire clause be redrafted so as to make it clear that it is the duty of the Commission to make recommendations to the President as to the allocation between the states of their respective shares of the proceeds. The states must also be accorded more powers for imposing taxes on their own, and to determine the limit of public borrowing in their respective cases. To achieve these objectives the Seventh Schedule. Union, States and Concurrent list should be suitably amended.

PART VI

ECONOMICS & SOCIAL PLANNING

We have explained above that the planning and coordination of economic development should be the responsibility of the Centre which however should be carried out in a democratic way through the national development council in which the states should have equal representation along with the Centre and whose executive organ the Planning Commission should be. The process of planning however is unfortunately being used by the Central Government and the party that controls it as it likes. Added to this are such policies of planning pursued by the ruling party as have proved their bankruptcy, national economy is as a consequence in shambles.

The real solution for the crisis emerging out of this is a total reversal of planning policies. This does not perhaps fall into the purview of the legal-constitutional changes which are under consideration by this Commission. We however would urge that this Commission should not accept either the drive towards centralisation of the work of all economic activity in the states in the name of central planning (which is demanded by the ruling party) or the abandonment of the centralised planning as is suggested by some other parties. The solution is centralised planning with the active involvement of the states in the formulation and the implementation of policies, or state autonomy under centralised but democratic guidance.

MISCELLANEOUS

We would in the end touch upon three aspects of Union-State relations which are relevant in this context. They are the language of administration, the electoral system and the special status of Kashmir within the Indian Union.

Our Party is of the view that, in the course of the growing economic, social and intellectual intercourse the people of different states of India will develop in practice the language of inter-communication most sutiable to their needs. This natural process requires that no single language is sought to be imposed on the other linguistic groups. While our party is all for encouragement to the learning of Hindi by non-Hindi speaking peoples, we are of the view that the equality of all Indian language all Acts, Government orders and resolu-

tions of the Centre should be made available in all Indian languages. The use of English in the field administration, legislation, judiciary and as the medium of instruction in education should be discarded, replacing it with the people's language of the state concerned. Right of the people to receive instruction in their mother-tongue in educational institutions as well as its use as the medium of education in the state upto the highest standard should be recognised. The Urdu language and its script should be protected. The Eighth Schedule should be amended to include languages like Nepali.

The present electoral system enables a party with minority of votes to secure a majority of seats in Parliament of Legislatures. The disastrous consequences of this were seen during the Emergency when the Congress Government elected on a minority vote introduced measures which made inroads into the civil liberties and democratic rights of the people, reduced the Parliament and State Legislatures to rubber stamps of a single party—all in the name of asserting the "Supremacy of Parliament". Whatever remained of state autonomy also came under the axe.

It is therefore necessary to introduce the system of proportional representation and provide for right to recall.

The present special status of Kashmir within the Indian Union should be retained.

COMMUNIST PARTY OF INDIA (MARXIST)

State Unit — Karnataka

MEMORANDUM

The Central Committee of CPI(M) has already submitted its views to the questionnaire of the Commission. In the light of our experience in Karnataka, State Committee of CPI(M) wish to express its views on some of the topics of the questionnaire.

Our Party stands for the Unity of the country and fights all forces of distintegration. We definitely stand for an effective and efficient Centre capable of defending the country organising and consolidating its economic life and adequately armed with powers to discharge its other jobs, like Foreign Policy, Communication, Foreign Trade, etc.

Unfortunately this urge for unity among the people, their desire that India should be protected against external aggression has been exploited by the Ruling Party to appropriate dictatorial powers to the Centre, abrogating and eroding the powers of the constituent States. The Ruling Pary's idea of a strong Centre is a dictatorial Centre carrying out its benefits. The fact that the notorious 42nd Amendment of the Emergency days reduced the States to the position of a subordinate dependent of the Government of India, showed that an attack on their powers was inevitable requirement of authoritarian rule. The question of Centre State relations therefore not only relates to the question of defendnig Indian unity, it has become an issue in the struggle between the forces of dictatorship and democracy.

This is not accidental. The constitution that we framed after independence reflected the needs of the capitalist path of development which required India as unified, single, homogenous market. It reflected the needs of the big capitalists allied with landlords, who considered the demand of democracy, state autonomy or equality of languages, as obstacles to their economic domination and political power.

The Programme of our Party states : "It is but natural that in such a situation the contradiction between the Central Government and States should have grown. Underlying these contradictions often lies the danger contradiction between the big bourgeoisie on the one hand and the entire people including the bourgeoisie of this or that State on the other. The deeper contradiction get constantly aggravated to the accentuation of the unevenness of development under capitalism".

The provested interests policies of the Centre, the economic crisis, the improvement of the masses resulted in increased attacks on democratic rights and the rights of the States.

This process was accompanied by object economic dependence of the States on the Centre. The Centre decides the amounts of public borrowing to be done by the States ; it monopolises credit made available by the banking sector and makes the states dependent on *ad hoc* grants sanctioned by it. All this together with the method of determining the size of the State Plan reduced planning in the States to a mockery and makes it an adjunct of the Central Plan, to be curtailed or expanded according to the convenience and needs of big business which dominate the thinking in Central Plans. Backwardness and perpetuation of unevenness result from this. Planning in States is not geared to the needs of the people of the states or to the genuine need of All India Development.

Over the years this concentration of the political and economic power at the Centre has been making inroads into whatever federal elements there were in the constitution. The Emergency with its Constitutional Amendment Acts enabled the sending of the Central Reserve Police to the states without the prior consent of the state governments, with the further provision that these forces when deployed in the states would take their orders only from the Central Government. These epitomised the process of extreme centralisation.

Legislative Relations

We do not agree with the view "that there is nothing basically wrong in the scheme of distribution of legislative powers between the Union and the States which ensures in normal times a substantial measure of legislative autonomy to the States", as is asserted in the questionnaire. On the other hand, the attribution of legislative powers, like other provisions written into the Constitution is a repetition of what had been provided for in

the earlier, British made 1935 Act. It will be recalled that the scheme of that Act was so repugnant to the democratic conscience of the freedom movement that the Congress Party rejected outright its federal part ; even the provincial autonomy part was so defective that the Congress which secured majority in seven provinces demanded, before agreeing to form the ministries, an assurance from the Governors that this special power would not be used.

Coming to the actual distribution of powers between the Centre and the States, the Union and Concurrent Lists are so all-pervasive that state autonomy is in fact negated. To add to this is the provision that Parliament can legislate on certain subjects within the exclusive competence of the States "in the national interest" and "public interest". Furthermore, the Governor's power to reserve to the President important legislations adopted by the state and the right of the Central Government acting in the name of the President to withhold assent to the bills passed by the legislatures makes a mockery of the legislative competence of the States.

We therefore suggest that to protect states' autonomy, an amendment to Article 248 should be made to the effect that the legislature of a State should have exclusive power to make any law with respect to any matter not enumerated in the Union or Concurrent Lists, as against the present provision which reserves this right to Parliament. In other words, the residual powers of the federation should lie with the states and not with the Centre. The states have to act in such a way while exercising their full rights in their own spheres that they do not transgress the sphere allotted to Central Government; the latter too, on its part should not interfere in the sphere of States, both legislative and executive. No State should use its powers to the detriment of other States. Article 249 giving power to the Centre to legislate on a subject in the States List under the plea of national interests should be deleted.

While enlarging the scope of the states' sphere, we must also try to preserve and strengthen the Union authority in subjects that could be carried out only by the Central authority and not by any single state, such as Defence, Foreign Affairs including Foreign Trade, Currency and Communication and Economic Coordination. In areas such as Planning, fixing of prices, wages, etc., the Centre may not only coordinate but also issue general direction.

Role of The Governor

This is another provision taken over from the previous British made constitution and written into the 1950 constitution. The Governor under that constitution was the appointee of the British Government and was responsible to it through the Governor General. The only change made in the new constitution of free India is that the Governor is an appointee of the Central Government which means the agent of the ruling party at the Centre. That office has in fact been used by the ruling party at the Centre to deny the people of States to have Governments for their choice and impose on them unwanted Government, etc. The office has also been used to provide for the leader of some faction in the ruling party who has become inconvenient to its "high command". It is therefore ridiculous for anybody to attribute the quality of "impartiality" to the Governor. The post should be abolished and, if this is not possible for any reason, the post should be filled by somebody who enjoys the confidence of the State legislature; no Governor to continue when there is a change in the elected legislature. The present provision leads to conflict between the elected executive, namely, the Council of Ministers and the formal head of State who is responsible not to the elected legislature but to the executive at the Centre.

The recent experience of dismissal of Telugu Desham Government in Andhra Pradesh, National Conference (F) Government of Jammu & Kashmir are striking examples of Governors misuse of powers at the behest of the Central Government.

With regard to Article 200 and 201, no interference by the centre or the Governor should be allowed on any ground. Hence these articles should be done away with.

The misuse of the Provisions in the Constitution can also be seen in the deliberate delaying for political considerations the President's Assent to Karnataka Zila Parishad, Mandal Panchayat, etc. Bill, 1984 and Karnataka Education Bill 1984 submitted to the Governor.

Many cases of conflicts between the Elected executive of the State and the Governor has come to light in Andhra Pradesh and in West Bengal in the recent days.

Administrative Relations

Apart from the misuse of the office of Governor there are several provisions which enable the Centre to indirectly or directly interfere in the administration of States.

Under Article 263 an Inter-State Council can be established. It must be made mandatory for such an inter-state council consisting of the Prime-Minister and the Chief Minister of all the States. The Council will deal with all disputes between the States and the Union with any other matter of national importance.

Articles 365 which empowers the President to dismiss the State Government should be so amended as to prevent its misuse.

Articles 356 and 357 which enable the President to dissolve a State Government or its assembly has been invoked several times since 1950 to deny the rights of the People in different States to have the Governments of their liking. The recent instances have been quoted already. This Article should be deleted forthwith. In the case of a Constitutional break-down in a State, provision must be made for the democratic steps of holding election and installing a new Government as in the case of the Centre.

Article 312 which provides for All India Services like IAS, IPS. The personnel from these All India Services are posted to States but remain under supervision and disciplinary control of the Central Government. This must be abolished.

As the nation knows the radio and television are being increasingly misused by the ruling party at the Centre. In a democratic society, the people who have the right to know the doings and misdoings of those whom they have elected. They have also the right to know and understand details of various opinions regarding government policies. A statutory Central Communications Council should be set up. Its membership should include ministers of Central and State Governments, leaders of political parties and experts. This Council should oversee the functioning of the radio, television and other government managed media. Similar Councils should also be established at the State level.

Financial Relations

No other part of the Constitution has been subjected to such universal criticism from State Governments including those headed by the party ruling at the Centre, as its financial provisions. The Memoranda submitted by the State Governments to successive Finance Commissions would show how wide is the gulf between the Centre and the States on the question of financial powers and resources. A complete overhauling of the entire field of financial relations is thus in order. While almost every department of administration involving heavy expenses (except defence and foreign affairs) falls within the purview of the State Governments, almost all the revenue earning items are with the Centre.

Constitution has entrusted the States with major responsibility of providing education, food, water, health and roads to the people. It has to provide all the infrastructural facilities for agriculturists and industrialists for creating conditions for the growth and development of industry and agriculture.

States have also to go to the succor of the people during drought, famine, floods and other natural calamities the occurrence of which have been frequent in our State. They have become a drain on the economy of the States upsetting normal course of development.

States are compelled to go on increasing the pay and dearness allowance of its staff in proportion to the inflationary affect on prices and value of the rupee over which the States have no control whatsoever. The periodic increases in D.A. by the Central Government compels the State Government to increase D.A. of its employees in correspondence with the rates of Central Government.

Karnataka Special Features

Karnataka has one of the lowest areas under Irrigation (16.5%) in the country. Hence it is chronically prone to droughts. This year more than 16 districts of the 19 districts that constitute our State, experienced severe drought. One or the other parts of the State will also be hit by floods causing severe losses. The question of providing drinking water to the people and fodder to the cattle is a recurring problem of great magnitude. In the present system States approach the Centre for grants as soon as occurrence of natural calamities. Even the meagre money given to States are to the large extent treated as advances against the plan amount. Even in cases of World Bank projects for development only 70% of the money is released to the States due to which progress of the projects will be impeded.

Karnataka was formed in 1956 out of portions of various provinces subjected to naked colonial exploitation and of various princely States. This has led to wide inter-regional disparities in levels of living and levels of various basic services like health, education, communications etc., which has persisted uptil now.

The Eighth Finance Commission should keep in view these special features of Karnataka in the devolution of funds to this State.

The Approach

The ways and means position of the States are worsening year by year. Expenditure on non-plan sector is increasing. Consequently deficits are mounting and repeated resorts to overdrafts are made. Natural calamities as already pointed out have further curtailed planned expenditure.

Hence the Finance Commission should take overall view of the Development of the States. It should give up the so called 'Gap Filling' approach and take a comprehensive approach. We consider it the duty of the Finance Commission to help the States run the administration smoothly and efficiently.

The Government of India has elastic source of income. It can resort to heavy borrowings internally and externally. It has all the financial institutions to fall back upon to meet exigencies. It can resort to huge amount of deficit financing.

Central Government is making inroads into the States' share of taxes through various unfair devices. It has hit upon new ways of encroaching into resources of the States. The Financial Commission should devise ways and means to share the financial resources equitably between Union Government and the States.

The articles regarding the Finance Commission and distribution of revenues should be amended to provide for 75% of the total revenues raised by the Centre from all sources for allocation to different States by the Finance Commission. This is necessary to end the medicant status of the States. In what proportion and on what principle this 75% of the total realisation should be divided between the States should be decided by the Finance Commission. It should not be the job of the Finance Commission to decide on the proportion of revenues to be distributed between the Centre and the State should get from the total financial realisation by the Centre 75% of which

is to be allotted to the States. Article 280, Clause 3, Sub-clause (a) which provides for the "distribution between the Union and the States of the net proceeds of the taxes which are to be or may be divided between the Union and the States" should be omitted and the entire clause be redrafted so as to make it clear that it is the duty of the Commission to make recommendations to the President as to the allocations between the States of their respective share of the proceeds. The State must also be accorded more powers for imposing taxes on their own, and to determine the limit of public borrowing in their respective cases. To achieve these objectives the Seventh Schedule Union, States and Concurrent List should be suitably amended.

Heavy industries, electric power, oil and coal or irrigation schemes which concern more than one States have to be kept in the Union List, so that there can be a common policy. In matters concerning industrial licensing etc., major modifications in regard to allocation of powers between the Centre and the States are called for. The list in the Seventh Schedule should be reformulated so that the States may be given exclusive powers in respect of certain categories of industries.

Economic and Social Planning

We have explained above that the planning and coordination of economic development should be carried out in a democratic way through the national development council in which the States should have equal representation along with the Centre and whose executive organ the Planning Commission should be. The process of planning however is unfortunately being used by the party that controls it as it likes. Added to this are such policies of planning pursued by the ruling party as have proved their bankruptcy, national economy is as a consequence in shambles.

The right of the Central Reserve Police or other police forces the Union Government may raise to operate in the States should be withdrawn. The subject of Law and Order and the police should be fully in the States' sphere and the Centre should not interfere with its own specially created forces.

The real solution for the crisis emerging out of this is a total reversal of planning policies. This does not perhaps fall into the purview of the legal constitutional changes which are under consideration by this Commission. We however would urge that this Commission should not accept either the drive towards centralisation of the work of all economic activity in the States in the name of central planning (which is demanded by the ruling party) or the abandonment of the centralised planning as is suggested by some other parties. The solution is centralised planning with the active involvement of the States in the formulation and the implementation of policies, or state autonomy under centralised but democratic guidance.

When National Development Council is made statutory and Planning Commission operates under the control of Planning Commission, the composition of Planning Commission be dealt by the NDC. Incorporation of National priorities and procedures of scrutiny will also be dealt by the NDC in the same manner.

Unfortunately now both the NDC and Planning Commission have functioned in a manner entirely vitiating their original role. The view of the various State Governments should be heard before finalisation of the 7th Plan, and incorporated into the Plan.

Centrally sponsored schemes do tend to distort the State Plan priorities as they forced the State Governments to opt for them whether they respond to the needs of the State or not. The suggestion we have made that 75% of total realisation should be allotted to the State Governments will enable the State Governments to formulate the Plan Schemes according to the State Plan priorities.

Miscellaneous

Industries :

We agree that as a result of the indiscriminate extension of the first schedule to cover a very high proportion of industries in terms of value of their output, the basic constitutional scheme has been patently subverted and industries have been virtually transformed into Union Subject.

Therefore major modifications in the allotment of powers between Centre and States are called for. The lists in the Seventh Schedule should be reformulated so that States may be given exclusive powers in respect of certain categories of industries.

Locational decisions on Central Investments in the Public Sector are matters of crucial interest to the States. The criticism that States are not taken into confidence before deciding on such locations is valid. Centre favouring the States with Governments of same party and its stepmotherly attitude towards State Governments of other parties has been exposed time and again.

Our State has been discriminated against in the case of Vijayanagar Steel Plant and Mangalore Oil Refineries Complex, in Railways, Extension of Routes, Conversion into Broad-gauge, etc.

Trade and Commerce :

The restrictions that are imposed on buying food articles from the surplus States even in case of severe drought conditions or floods and discrimination experienced in this regard by certain States has been voiced. West Bengal for instance, during droughts has requested the Central Govt. to allow it to purchase the foodgrains necessary from the surplus States in open market. But that was turned down. The refusal to permit the States to buy the food grains in such cases amount to nullifications of the voice of the people of these States expressed through the elector's manifesto of the concerned party.

Agriculture :

The Centre affects the programmes of the State Government in the case of agriculture, through numerous centrally sponsored schemes, many of which do not huge relevancy to a particular State. Research and Development and Educational Policies are regulated through ICAR and the World Bank Projects.

Centre has made its exclusive sphere to fix the fair prices to agricultural produce without any regard to the opinions expressed several times, in National Development Council by past Chief Ministers of the State D. Devaraj Urs, Sri Gundu Rao, and also the present Chief Minister. The increase in prices of fertilisers, agricultural machineries, etc., laying out the Credit policy through RBI without any regard for demands of mass upsurges of peasants in various States and Forest policy through a highly centralised Tree act, with total disregard of the interest of native tribal population and forming community in and around the forest are for example, of high centralisation and need for decentralisation.

Food and Civil Supplies

The discrimination in allocation of food grains and other essential commodities or delay in supply are evident in case of Karnataka very recently when drought engulfed 16 of the 19 districts of the States and spread over a long period. The plan of the State Govt. for increased supply were not complied with due to low per capita. Due to low per capita income that it is necessary that the informal rationing has to be extended, which suffers from lack of adequate foodgrains.

Education

Education which was in the State List of 7th Schedule has been transferred to Concurrent List. This has lead to the increase of central interference every now and then.

Education in one of the place where social relevance and adaptation to the needs of the different States are very essential.

Hence, it should be transferred back to the State List immediately.

THE COMMUNIST PARTY OF INDIA (MARXIST)

State Unit — Kerala

MEMORANDUM

Introduction

1. The Central Committee of the Communist Party of India (Marxist) has already sent its reply to the questionnaire of the Sarkaria Commission. We wish to reiterate the points raised therein with special reference to the problems of the State of Kerala.

2. The issues concerning the Centre-State relations should not be treated merely as legal-juridical problems but must be approached from historical-political angle. Before Independence, the region which today forms the State of Kerala constituted three distinct administrative regions : the princely States of Travancore and Cochin and the Malabar District of Madras Province. The British were the paramount power controlling the fate of the region through a centralised administrative system headed by the Collector in Malabar and the Residents in Travancore and Cochin with all powers concentrated in Delhi, which in turn was controlled from London. Never before in the long history of this country did it have such a centralised administration. It was in the freedom movement, which had to fight this centralised administration, that the unity of the entire people — not only among the Malayalis but also between them and the people of other nationalities in India — began to develop cutting across caste, communal and administrative barriers. On the attainment of Independence, in the background of fierce popular struggles like the Punnapra-Vayalar uprising in Travancore, the feudal States were merged with the Indian Union. But it refused to reconstitute the States on a linguistic basis. Travancore and Cochin were merged together to form Part B State while Malabar continued to be a part of the Madras Province. Fierce popular struggles had to be waged before the demand for the formation of the linguistic States was conceded. Thus the State of Kerala came to be formed in November 1956.

3. However, the aspirations and the expectations of the people of Kerala at the time of its formation still remain to be fulfilled. Its relative backwardness still continues. In fact, its relative position vis-a-vis the top income States has deteriorated. The agricultural sector which is the mainstay of the Kerala economy has been literally stagnant for a decade now. The industrial sector is weighed down by the orisis-ridden traditional industries with no immediate solution in sight. The share of the secondary sector in the State domestic product in 1950-51 which was more than the All-India average has declined to below that level by 1977-78. The deepening all-round economic crisis has been steadily undermining the historical legacies of widespread public health care system, generalised school education and such other social infrastructural facilities. The causes of this State of affairs are no doubt, partly, rooted in the history of the region and in its internal structural maladies. However, few will dispute that this crisis has to be situated in the unevenness of the economic development of capitalism in India, under the policies pursued by the Central Government. The discrimination of the Centre towards the State, its neglect and unhelpful attitude to the special problems of the region, its export-import policy, industrial policies, etc., have all contribution to the accentuation of the backwardness of the State. The people of the State are increasingly becoming conscious of the fact that the present structure of the Constitution that concentrates all political and economic powers in the Central Government, making the constituent States dependent on the whims and fancies of the Central Government, is increasingly becoming a barrier to their full social

and economic development. The keen response of the people of the State to the issues related to Centre-State relations is an expression of this growing discontent.

4. The above developments were not accidental. They were inevitable given the basic framework of our Constitution and the social forces that shaped it. The bourgecisis which led the freedom struggle and took over the reins of power in 1947 was motivated by the need for an extensive home market which requires a centralised rather than a federal State. This is the background of its betrayal of all the commitments made during the Congress-League Pact of 1916, Motilal Nehru Report of 1928, the debate on 1935 Act and so on, for a federal set-up with linguistic States and genuine State autonomy. The emphasis of the Constitution adopted in 1950, whether one prefers to call it federal or not in principle, no doubt, was excessive centralisation. Thus the present — day tensions between the Centre and State emanates not from any misunderstanding of the true spirit of the Constitution Units wrong interpretation but from its basic framework itself. The Centre which even according to the original Constitution was empowered with extensive powers has made further inroads into the power of the States during the last 34 years. This process was facilitated by the fact that the same party ruled both at the Centre as well as nearly all the States for a long pariod. The various amendments to the Constitution and the 'voluntary' surrender of various rights, forced upon the States, have all made a mockery of the concept of State autonomy, the so much cherished ideal of the national movement.

5. This is the reason why the moment our Party took over the administration of the State Government, after the first election following the formation of the State in 1957, the question of Centre-State relations came to the forefront as an important political issue. But for a brief political experiment in PEPSU in 1952, which incidentally was toppled through high-handed central intervention, this was the first serious challenge to the monopoly of Congress power in any State. The true 'federal' character of our Constitution was fully revealed in 1959 when the Central Government dismissed the ministry even though we enjoyed majority in the Assembly. Then, again in 1965, twenty nine members of the States legislature elected in them mid-term poll belonging to our Party, which had emerged as the biggest party in the Assembly, were detained under Defence of India rules and this fact was used by the Governor to report to the President that no party was in a position to form the Government. This led to the dissolution of the assembly even before the elected members took their oath of office. These and other bitter experiences, not only in the economic spheres but also in the political life have forced us to resolutely champion the cause of State autonomy and the restructuring of the Centre-State relationships so that the national aspirations of the people of the State are realised.

6. At the same time, it should be made clear that we have always opposed all separatist tendencies which might disrupt the unity of the Indian people. We understand that the strengthening of the fraternal bonds of class and national solidarity among the people of different nationalities and linguistic States is necessary for the successful completion of the democratic tasks before the people of India. Our party programme categorically states: "The People's Democratic India will be a voluntary Union of the people of various nationalities in India. The Communist Party of India (Marxist) is opposed to the drive of the ruling classes for concentration, denying autonomy and is also opposed to all disruptionist and secessionist movements. The Communist Party of India (Marxist) looks for the preservation and promotion of the unity of Indian Union on the basis of real equality and autonomy for different nationalities that inhabit this country and develop a democratic structure". It is the glorious record of Communists in Kerala to have resolutely opposed and defeated machinations of the feudal autocracy for an 'independent' Travancore and the secessionist political tendencies both ideologically and politically after the Independence.

7. As noted above, a primary condition for the preservation of the unity of a multi-national State like India is the guarantee of autonomy for the constituent units both in words and deeds. It was on the basis of this understanding that the Kerala Governments headed by our Party in 1957-59, 1968-69 and 1980-81 made their distinctive contributions to the debate in the National Development Council on the Five Year Plans. Our alternative policies advocated by the State Governments were premised on a serious restructuring of the Centre-State relations. The formation of non-Congress Ministries in other States in the country strengthened the demand for the autonomy of the States. Soon, the Congress-led State Governments also more often discreetly started to demand greater powers and resources. For example, even the Congress-led united front government that rules Kerala today, as can be seen from the memorandum prepared by it to be submitted to the Commission, has been forced to join, even if half-heartedly, the demand for greater powers and resources to the States. However, they are not in favour of any fundamental overhauling of the present set-up; their loyalty, evidently, is more to the party ruling the Centre than to the true interests of the State. On the other hand our party wishes to state that such a measure is necessary to end the slow disintegration of the Indian Union by the various separatist movements, to successfully fight the trends to undermine the democratic traditious and establish authoritarian dictatorship and to go forward to create conditions for the free and full development of the nationalities in India.

Legislative Powers

8. The scheme of distribution of powers between the Union and the States is a continuation of the tradition of British colonial rule as enshrined in the Act of 1935. In fact, the present distribution is a step backward even from the British Act. Many items from the State List and the Concurrent List of 1935 Act have been removed into the present Concurrent and Union Lists respectively. The pervasive nature of Central and Concurrent Lists,

the supremacy of central legislation in the Concurrent List subjects, the right of centre to legislate on the subjects in the State List in certain circumstances and the right to withhold assent to the bills passed by the State assemblies through the agency of the Governor have robbed the States of any serious legislative autonomy. Our Party in Kerala has enough bitter experiences as to how the above mentioned can be used to thwart genuine aspirations of the people of the State, during our tenure of offices, especially in the cases of the various agrarian legislations, educational reform acts and social welfare bills such as trade union laws. History is repeating today with respect to agrarian and trade union laws being enacted by the West Bengal Government, the Education Bill of the Karnataka Government and so on. Even today there are three bills passed by Kerala Assembly from 1978 onwards awaiting Presidential assent. The conclusion reached by the Indian Law Institute from its study covering the fate of 170 bills during 1956-65 period is erroneous. According to them, presidential assent have been denied only in a few cases. But more important is the threat of such an action through which during the legislative process itself the Centre is able to coerce the State legislatures to abide by its wishes. Further, there needs to be a more disaggregated analysis taking into consideration the nature and content of the bills.

9. In the interest of a balanced federal Centre-State relation in the legislative sphere we make the following suggestions :

(a) Amend the Article 248 to vest the residual powers with the States;

(b) Amend the Article 249 to remove the power of the Centre to legislation subjects within the exclusive competence of the States;

(c) Amend the 7th Schedule to enlarge the scope of the States' spheres preserving such subjects as defence, foreign relations, including trade, currency, communication, economic co-ordination, heavy industries, etc. which cannot be managed by a single State alone for the Central authority. We wish to make a special reference to the subject of Law and Order. This should be exclusively a State subject. This is of special importance given the present day tendency of the Centre to legislate repressive and authoritarian measures such as ESMA and impose them on the States and the right claimed by the Centre to deploy Central para Military forces in States even without the consent of the latter.

Role of the Governor and Administrative Relations

10. Even as envisaged in the Constitution, the provision for Governor, his powers and the nature of his relationship with the Centre gives rise to conflict between the elected executive of the State and the formal head of the State. We have already mentioned the grave misuse of Governor's discretionary powers in 1959 and 1965. Another glaring instance was in 1969 when a minority Ministry was foisted upon the people of Kerala by the Governor. The appointment of the Vice-Chancellor of the Kerala University in 1980, when the Governor chose to ignore the advice of the Council of Ministers, is a recent case in Kerala that comes to mind. The conflict becomes very apparent when opposition parties rule the States or the factional fighting within the Congress Party ruling the State becomes acute. These fears have been more than confirmed by the history of past 34 years during which the Governor has degenerated not merely into an agent of the Central Government but also of the political party at the Centre conspiring against the State Government of which he is the formal head or interfering in the inner party struggles within the Congress in support of faction favourable to the central leadership of that party. Most disgusting episode in this drama has just been enacted in Sikkim. We feel that it is better to abolish the post of Governor itself rather than try to reform it. If this not possible for any reason, the post should be filled by some one enjoying the confidence of the State legislature.

11. There are various other provisions in the Constitution, apart from the Office of the Governor through which Centre can meddle with the administration of the States. Among them, the Article 356 empowering the Centre to dismiss the State Government and dissolve the State Legislature is the most notorious. It has been used nearly 70 times since the adoption of the Constitution. This provision which impinges on the administrative autonomy of the States should be deleted. The present all-India Services should be abolished and there should be separate Union and State Services, recruited and controlled by the Union and the States respectively. The monopoly of such mass media as a broad-casting, cinema and television by the Centre has degenerated them into instruments of propaganda for the ruling party at the Centre. They have been used in most partisan way against the State Governments headed by the opposition parties. These facilities must be shared between the Centre and States on a fair and reasonable basis.

Financial Relations

12. A review of the working of the mechanism for financial devolution and of the details of the resources transferred by the Union to the States in the last 34 years shows the following :

(a) The States have been facing serious financial crisis. This situation has not been due to any laxity on the part of the States to exploit their own sources of revenue. The proportion of States' revenue receipts to the combined receipts on revenue accounts of the Centre and States improved from 32.9 per cent during the 1961-66 period to 36.5 per cent during the 1979-84 period.

(b) The share of the States in the total revenue receipts of the Centre during the 6th Plan period is 35.9 per cent. However, the share of the States in the Central capital receipts is only 27.1 per cent. The share of the States in the total receipts of the Centre (both Capital and Revenue) is only 32.6

per cent during the 6th Plan period — nearly 4 per cent less than the share during the 5th Plan.

(c) It has created serious strain on the financial balances of the States. The indebtedness of the States to the Centre has grown, laying a heavy burden of debt rescheduling on their budgets. At the same time, various Central restrictions on the market borrowing have reduced the importance of direct market loans in the State budgets. It was 14.4 per cent of the capital receipts of the States in the First Plan. By the 6th Plan, it has steadily declined to 8.1 per cent. In the background of the inadequate transfer of resources from the Centre, the above situation has been resulting in widening state budgetary deficits (even though they have been much smaller in relative scale when compared to the Central deficits) and overdraft problems.

(d) The mechanical application of the overdraft limits have pushed some of the States, at times, to the verge of bankruptcy. It was done, it should be remembered, by a Central Government who have been quite liberal in meeting its deficits by taking recourse to creation of new money. The scale of deficit financing under-taken by the Central Government has been an important source of inflationary spiral in the country which again threatens to upset the fine balance of the State budgets by escalating the expenditures.

(e) Finally, the scheme of the Central transfers that exists today has not promoted either efficiency and economy in expenditure or narrowed down the disparities in public expenditure between the States. The resources transferred by the Centre has not promoted more equitable distribution of development benefits. Inter-regional disparities have continued to widen in the post-Independence India. In short, the excessive fiscal control of the Centre has been an important instrument to subvert the autonomy of the States during the last 34 years.

13. The description of the salient trends in the Centre-State financial relations is applicable to Kerala even with a greater force. In the case of Kerala it has affected the development of the State even more sharply due to the special circumstances of its situation. It should be remembered that Kerala is an export-oriented region that had given up lucrative and elastic customs and excise revenges at the time of merger with the Indian Union — a fact that has not received due consideration from the Finance Commissions. At the same time, it had inherited a heavy burden of expenditure on basic social infrastructural facilities like universal primary education, widespread public health care system and so on. This fact has camouflaged the economic backwardness of the region as revealed by the low proportion of secondary sector in the SDP (around 18 per cent at present), lack of modern industries, low productivity of the industrial sector, acute unemployment problem and so on. It should be remembered that the multiplier effect of investment on such an economy dominated by stagnant export-oriented traditional industries will be very small given the leakages across the border. This fact has also been not given due consideration while estimating the financial requirements of the region.

14. In the light of the above observations we make the following suggestions :

(a) The States should be accorded more avenues for raising resources directly. There is a strong case for greater scope for independent taxation without any detrimental effect on economic co-ordination or inter-State Commerce. The present tendency to make inroads into the Sales-tax revenues, for example, should be ended.

(b) The States should be allowed to determine their own limits for market borrowings. The tendency of public savings institutions to discriminate against the State should be reversed. For example, the share of State Government securities held by LIC in its total holdings has been declining from 35.7 per cent in 1969 to 18.5 per cent in 1982.

(c) The Constitution should be suitably amended to provide 75 per cent of the total revenues raised by the Centre to be allocated to the States regardless of the source. At present the ratio is around 35 per cent.

(d) Finance Commission should draw up from time to time, the criteria for the equitable distribution of the so determined resources among the States.

Economic and Social Planning

15. Our planning process has been in threes of a deepening crisis. The reasons must be sought in the basic economic policies pursued by the Central Government. However, the ruling party has been using it as an opportunity for excessive centralisation. The observations of ARC Study quoted in the questionnaire are fully born out by facts. The method of determining the size and components of the State plans as well as the tendency for the Centre to plan out even the details of the schemes which fall legitimately within the State jurisdiction has reduced the State-level planning into a meaningless exercise.

16. We suggest that the National Development Council should be set up as a statutory body under provisions of the Constitution with representation to the States and the Centre. The Planning Commission should be appointed and accountable to the Council and not to the Central Cabinet as at present. The NDC will constitute a forum that will ensure the active participation of the States in the formulation and implementation of the plans without impinging upon the need for national perspective and co-ordination for a centralised planning.

17. One of the objectives of the national planning must be to reduce regional imbalances and this must be an inbuilt criteria for regional plan allocations. The present criteria for determining the backward regions are far from satisfactory. With special reference to Kerala, it is important to distinguish between general social backwardness and economic or industrial backwardness for reasons already noted. Unfortunately, this distinction has not been borne in mind in the past to the detriment of the interests of the State :

(a) There has been severe discrimination against Kerala in the allocations for Central public sector investment. The Central Plan outlays in Kerala has been 31 per cent below all States average during the period 1950-80.

(b) Equally disturbing is the trend of the loans from national financial institutions like IDBI and ARDC. In the latter case, Kerala has received only half the all States' average for period 1956-81. There is a case for giving special consideration for States like Kerala whose backwardness is partly necessitated by its present export orientation and earns large amounts of foreign exchange through exports and remittances.

(c) Further, the compensation for the adverse effect on the economy of the region due to central economic policies like the decision to import copra or rubber or industrial policies of the Centre that is undermining the traditional industrial structure has also got to be considered while considering equitable plan allocations. Our argument is that it is not enough to look at the financial transfers to various regions but it is also necessary to consider regional impact of the totality of economic policies pursued by the Centre.

Miscellaneous

18. Due to the peculiar cropping pattern of the State which is heavily weighted in favour of non-food crops, Kerala constitutes a region with the lowest per capita production of cereals and chronically deficit in food requirement. Through a massive network of public distribution systems, the State Government has tried to insulate the people from the vagaries of food availability. The present arranegments of Centre-State relations for the procurement, pricing, storage, movement and distribution of foodgrains have been most unsatisfactory, often creating disruptions in the public distribution system and serious social unrest in the State. Our experience shows that foodgrains allocations has been used against State Government in most partisan manner while we were in power. Similarly, there is need for reviewing the arrangements for administering the essential commodities Act and other regulatory Central Act affecting States' areas of responsibilities. For example, the Central Acts regulating the coconut husk prices and movement has become an issue of serious contention between the State and Central Government.

19. While our party is all for encouragement to the learning of Hindi in the State, we are of the view that for equality of all Indian languages, all Acts, Government Orders and resolutions of the Centre should be made available in all Indian Languages. The use of English in the field of administration, legislation, judiciary and as medium of instruction in education should be discarded replacing it with the mother tongue. Attempts to impose Hindi as the language of inter-communication on other linguistic groups will only create discontent and disrupt the natural evolution of the link language.

20. The present tendency towards centralisation in the educational sector should be reversed. A national policy on education should be arrived at, not through the imposition of the will of the Centre, but through a process of consultation and dialogue between the States as well as between the States and the Centre. The present function of the University Grants Commission is far from satisfactory. In the allocation of funds, mofussil universities like Kerala or Calicut have been several discriminated against while a handful of Central universities and colleges in certain regions corner bulk of the funds.

21. Our Party is committed to safeguard the cultural heritage and the traditions of the religious minorities and their right to preserve them. However, the right to impart religious education must be distinguished from the general public education. Our experience in Kerala shows that the vested interests, in the name of minority rights, are able to obstruct the efforts to eliminate corruption and nepotism in the appointment of teachers and the admission of students, check the mismanagement of the educational institutions and such other steps to ensure improved standard of education.

Need for a Wider Discussion

22. In this brief interim reply to your questionnaire we have not gone into a detailed discussion of all the questions you have raised. The issues raised by the Commission are vital to the preservation of national unity and democratic set-up. We firmly believe that there is great need for widest possible debate on these issues in which academicians in the various disciplines, professionals like lawyers and judges, political leaders and the general public actively participate. In this context we wish to draw the attention of the Commission to certain steps initiated by the Government of Kerala intended to curb and limit such a debate. A virulent attack has been launched on Shri Subramaniam Potti, the Chief Justice of Gujarat High Court, by no less persons than the Chief Minister and the Home Minister as well as Congress leaders of Kerala for the statements he made while participating in a recent seminar on 'Centre-State Relations' sponsored by A. K. G. Centre for Research and Studies. Chief Minister went to the extent of stating that the Chief Justice must resign his post and then only express his views on Centre-State relations. We fear that these and other vailed threats are a part of a concerted move by the Government to stiffle the dissenting views. This type of intolerant and undemocratic interventions of Governmental

authorities and leaders of the ruling party must be ended. We appeal to the Commission to ensure an atmosphere for a free frank discussion of the important issues that it has raised.

COMMUNIST PARTY OF INDIA (MARXIST)

State Unit—Madhya Pradesh

MEMORANDUM

The Communist Party of India (Marxist), State Committee, Madhya Pradesh at the outset disagrees with the suggestion of the M.P. Govt. that there is no need to make fundamental change in the provisions in the Constitution relating to centre-state relation. The very fact that your honourable Commission is undertaking trouble to go throughout the country on this issue contradicts understanding of Chief Minister of Madhya Pradesh. It is obvious that your honour would not like to travel countrywide to know such simple things as enumerated in the M.P. Government memorandum as if everything is going on well under Central ruling party at Delhi.

Our party wants to treat this issue of Centre-State relations not as a heresay to be hunted down or to be regarded as a separatist fad and disruptionist slogan. Even the ex-President of India Republic Shri Sanjeeva Reddy expressed the opinion that centre-state relations deserved a fresh look. Life's realities have posed it as a problem of Indian democracy, of its advance which cann't be ignored without doing harm to the democratic process. The fact that the notorious 42nd amendment Act reduced the state to the position of a subordinate dependent of the Government of India, showed that the attack on there powers was an inevitable requirement of dictatorial rule. Thus the Centre-State relations have become an issue in the struggle between the forces of dictatorship and democracy. All states including Madhya Pradesh feel that even financial grip of the centre paralyses them.

However all those who support a change in the Centre-state relations don't necessarily represent the democratic urge behind it. This important issue of Indian democracy is often reduced to the narrow proportion of provincial and regional claims and attempts are made to rouse chauvinistic feelings. That has nothing in common with the democratic demand for state autonomy, expansion of democratic rights and end to concentration of power at the centre.

The existing Centre-State relations are not based on greater democratic or economic freedoms to any state but on the suppression of freedoms for all states. The central point is the subordination of all states to the centre and not favour shown to this or that state.

The nation today is in the grief of a crisis and the future of our polity is imperilled. The cherished democratic values of our freedom struggle are under assault, and the authoritarianism has resulted in disturbing signs of alination in some parts of the country. The golden thread of unity created by the freedom struggle still runs throughout the length and breadth of the country. It is to be ensured that this thread is strengthened in the times to come. A document of great relevance to the democratic advance of our people and it has undergo changed keeping in step with experiences and demands of people.

The question of Centre-State relations has acquired a great importance in the context of growing alination between centre and constituent states. This alination arising from constant attacks and erosion of powers of states is growing in the background of assaults of divisive forces to disintegrate Indian unity.

To stop this process of alination between the Centre and the constituent units of the Indian union is therefore urgently necessary in the interest of Indian unity. Our party stands for the unity of the Country and fights all forces of indisintegration. We definitely stand for an effective and efficient centre capable of defending the country, organising and consolidating its economic life and adequately armed with powers to discharge its other jobs like foreign policy, communication, foreign trade etc.

Unfortunately, this urge for unity among the people their desire that India should be protected against external aggression has been exploited by the ruling party to appropriate dictatorial powers to the centre. Abrogating and eroding the powers of constituent states.

The provested interests policies of the centre, the economic crisis, the impoverishment of the masses resulted in increased attacks on democratic rights and rights of the states. This process was accompanied by abject economic dependence of states on centre. The centre decide the amount of public borrowing to be done by the states, it monopolises the credit made available by the banking sector and makes the states dependent on an ad-hoc grants sanctioned by it. The method of determining the size of state plan reduces planning in the states to a mockery and makes it adjunct to central plan.

The centre was armed by the constitution with sufficient powers to intervene and deal with any problem arising in any part of the country. And it assumed for itself powers during thirty years long rule of one party when most of the states were ruled by the same party. There enormous powers were often used against opposition parties duly elected in state elections. By misusing the Governors power, minority ministries of the ruling party were installed and the verdict of the electorate was nullified.

Similarly by withholding Presidential assent to bills passed by state legislatures, the centre has succeed in sabotaging progressive legislature passed in the interest of the people. The agrarian legislatures passed by the Left Front Government of West Bengal has yet to receive the Presidential assent though months have passed since the legislature voted it.

The measure to grant recognition to trade unions by secret ballot passed by earlier left front Ministry was killed using the same advice of withholding the assent. Similar measure passed by Left Democratic Government in Kerala and Tamilnadu legislatures met same fate.

Our party proposed real equality and autonomy for states. The state governments and legislatures must have sufficient freedom and powers to fulfil the desires and mandate of the people electing them. Denial of the constituent federal units to this status of dependencies and off one arm of Indian democracy.

Today, the party which rules at the centre is not the ruling party in several states. This gives added urgency to the question of a proper redistribution of powers between the centre and the states. In fact the states are reduced to the position of clients so far as the resource mobilisation and allocation are concerned. They have also controlled key administrative services for fashioning a bureaucracy to be utilised at their behest.

A question may be asked to those who argue that more powers to the states will endanger the unity of the country. Who do these people think that all patriotism is concentrated at the centre so that whatever power can be given to will be used in national interests, while the powers to the states will be used to betray national interests. While this thinking alinates the people from the centre which is supposed to represent the will of the united nation. Unity of the whole country is possible only on the basis of a status of equality and freedom to the constituent linguistic units and not on the basis of domination by the centre and subordination of the states to its needs.

Taking into consideration the necessity of maintaining an effective centre, combind with urgent need to expand the powers of the states to protect Indian unity and democracy, we make the following proposals :

1. To protect states autonomy an amendment to article 248 should be made so that the residual powers of the federation should be with the units and not with the centre.

Article 249 giving powers to Parliament to legislate on a subject in the state list under plea of national interest should be deleted.

2. Heavy industries and power or irrigation scheme which concern more than one state have to be kept in the Union list. The list in the Seventh Schedule should be reformulated so that states may be given exclusive powers in respect of certain categories of industries.

The right of the Central Reserve Police or other police forces the Union Government may raise to operate in the states should be withdrawn. The subject of law and order and the police should be fully in the state's sphere and they should not interfere with its own specially created forces.

3. Articles 356 and 357 which enable the President to dissolve a State Government or its Assembly or both should be deleted. In the case of a constitutional breakdown in a state provision must be made for the democratic step or holding elections and installing a new Government as in the case of centre. Similarly Article 360 which empowers the President to interfere in a state administration on the ground of a threat to financial stability or credit of India should be deleted.

4. Articles 200 and 201 which empower the Governor to reserve Bills passed by the Assembly for President's assent should be done away with. The States Legislatures must be made supreme in the states sphere and no interference by the Centre in this sphere should be allowed on any ground.

5. All India services like the IAS, the IPS, etc. whose officers are posted to the states but remain under the supervision and disciplinary control of the Central Government, must be abolished. Personnel of the Union services should be under the disciplinary control of the Union Government and those of the state services under the disciplinary control of the respective State Governments. The Central Government should have not jurisdiction over the personnel of the State services.

6. A correct approach to the languages of the people is necessary in the interest of Indian unity and promoting a sense of equality.

The use of English in the field of administration, legislation judiciary and as the medium of instruction in education should be discarded.

7. The present electoral system enables a party with a minority votes to secure a majority of seats in Parliament or the Legislature. It is therefore necessary to introduce the system of proportional representation and provide for the right of recall.

8. The present special status of Jammu and Kashmir within the Indian Union should be retained.

Economic And Financial Issues

The political administrative and legislative issues apart the economic and financial relations obtaining between the Centre and States deserve the most careful reappraisal. We therefore suggest the following changes in the existing fiscal arrangement :

1. The proceeds of the corporation tax be made sharable with the States.

2. The surcharge on income tax be abolished; alternatively its proceeds be shared with the States.

3. The scheme of additional duties of excise be abandoned.

4. A review be made of the principles guiding decisions as regards 'declared' goods and the rate of sales taxation with respect to such goods.

5. Legislation be introduced in Parliament so that the provisions of Amendment 46 to the Constitution could be implemented properly.

6. Even after these proposed changes have been carried out, there would be need for a Finance Commission to decide upon additional transfers to the states and for deciding the *inter se* allocation between them. Notwithstanding the provisions of Article 74 of the Constitution, the President should consult the State Governments before deciding upon the composition and terms of reference of the Finance Commission.

7. We feel equally strongly that the working of the National Development Council and the Planning Commission should be seriously reappraised. The Planning Commission, which has no constitutional sanction nor any statutory one was set up by a resolution of the Union Government; its composition is decided upon by the Centre and its expenses are also defrayed by it. It has become a convention that Union Cabinet Minister is the working head of the Commission.

8. The National Development Council too has no constitutional or legal sanction. It has nonetheless been described as the supreme policy making body concerning problems of social and economic development.

9. We suggest that the Planning Commission be converted into full time secretariat of the National Development Council and that it be jointly financed by the Centre and the State Governments. Its composition too should be decided in consultation with the State Governments. Arrangements should be made to detach it from the Union Government, so much so that even the retirement benefits of persons working in it should be made from out of a fund contributed jointly by the Centre and the State. It should be empowered to discuss and analyse on its own vital issues affecting social and economic development and make its recommendation to the Council.

10. In deciding upon the principles of Central Plan assistance to the States the Planning Commission should be enjoined to take into account the current imbalances in the pattern of economic development in the country the relative incidence of poverty in the different States, the state of unemployment, the proportion of harijan and tribal populations in the States, the levels of irrigation power generation and industrialisation, and similar other factors.

11. We would also suggest that the present arrangement, whereby as much as 70% of the Central Plan assistance recommended by the Planning Commission is treated as loan to be repaid, should be abolished. All Central assistance for the Plan should be converted into grants; the outstanding loans on this account should be written off.

12. Reflective of the total dominance that the Union Government has come to assume in fiscal matters, a substantial proportion of the aggregate transfers to the States at present taking place is not in terms of the recommendations of the Finance and Planning Commissions, but on the basis of discription exercised by the Centre. Such discretionary transfers are anatheme to sound principles of federal finance and must be spedily brought to an end.

13. A mechanism must be established whereby the States Governments are associated in the formulation of the nation's monetary and investment policies.

14. The State Government must be allowed rotational representation on the Boards of Directors of the Reserve Bank of India. It may be considered whether they could not be represented by rotation on the Central Board of Directors of the Bank too.

15. The Union Government can finance any excess of its expenditure over its income. These securities bear a rate of interest of only 6.5%. In contrast the States are subjected to specific limits in the overdrafts they occasionally draw with Reserve Bank of India and for which they are charged interest at the rate of 13%. This anomaly deserves to be removed, and the States allowed an equitable share in created money.

16. It may also be useful to have a permanent Expenditure Commission which could advise both the Centre and the States in case their expenditures tended to be profligate.

17. The Centre has been raising additional resources by raising administered prices of commodities like petrolium products, coal, iron and steel, and so on instead of adjusting the excise duties on them. As a consequence, the States. have been deprived of thousands of crores of rupees of revenue. We suggest that the Centre be asked to share 40% of the extra resources raised through any such increase in administered prices.

18. The States are currently left with a lowly share in total market borrowings, which can be undertaken only with the approval of the Union Government. Here at least 50% of the total borrowing in any year should be allocated to the State Governments.

19. State Governments have serious reservations about the provisions and working of the Industrial (Development and Regulation) Act. Certain guidelines could be laid down by the National Development Council and the Planning Commission, reserving some areas of licensing for the Centre and the rest to the States.

20. We also urge that the Union Government be pursuaded to assume the responsibility for ensuring the supply of 15 to 20 major foodgrains, industrial raw materials and essential commodities all over the country at uniform price.

21. The States should be taken into confidence in deciding the Central investment in public sector.

22. Administration of the civil population in cantonment area should be given to the respective municipalities.

23. Specific powers should be conferred to the state Governments for levy of cess on minerals for the development of mine area.

24. Investing some powers in the states to remove hardships caused by the operation of the Forest Protection Act.

25. A national policy for salaries, wages and dearness allowance of both Central and state government employees should be made.

26. Location of Central Government undertakings and offices should be based on achieving regional balance and economic considerations rather than on the concessions offered by the State governments.

27. Fixing of support price for agricultural commodities keeping in view local conditions like productivity and market prices.

We hope that the suggestion submitted by us will make the centre lose only those powers which it has assumed by violating the federal spirit of the constitution and there will be some guarantee that the states will not be treated like municipalities in future.

COMMUNIST PARTY OF INDIA (MARXIST)

State Unit — Andhra Pradesh

MEMORANDUM

Our party had welcomed the constitution of your Commission to specifically study the present Centre-State relations, as by doing so, the Government of India has endorsed the consistent stand of several non-Congress(I) parties and demands of the several State Governments regarding the necessity to revise and redefine the relevant Articles of the Constitution of India reflecting the true Federal/Union spirit envisaged by the framers of the Constitution under Article 1. The basic approaches to be taken into consideration and the direction of the headed changes in the Constitution, specially these affecting the Centre-State relations were already elaborated by our Party at the national level. Therefore, we will confine ourselves for the present to highlight some of the difficulties of our State (Andhra Pradesh) which directly arose due to the imbalances in the distribution of powers between the State and the Centre.

1. Arbitrary exercise of powers by The Governor

The turmoil caused in the State due to the arbitrary exercise of powers by the then Governor either while dismissing the then State Government headed by Shri N. T. Rama Rao or swearing in of the succeeding Chief Minister, Sri N. Bhaskar Rao, the denial of even twenty four hours of time to establish the majority enjoyed by Shri N. T. Rama Rao on the floor of the Legislature and at the same time giving a month's time to Shri Bhaskar Rao, accepting all sorts of people as Legislators presented by Sri Bhaskar Rao, is too well known to the country and is now a part of history, whatever the powers that were at that time might have said or say now. The exercise of powers by the then Governor, disregarding the wishes of the Government directly responsible to the people, in the matter of appointing Vice Chancellors to some of the Universities is another example of arbitrary functioning of the Governor which is totally alien to the very basic concept of democratic functioning of the Government. The very fact that the above could happen, which were legally interpreted as the powers exercised as per Constitution, clearly establish that the present provisions regarding the institution of the Governor in our Constitution are against the democratic spirit of our Constitution and go very much against the Federal/Union set up envisaged in our Constitution. The instances of abuse of powers by the party controlling the Centre through the office of the Governor in almost all the States is too well known and hence the office of the Governor should be abolished as such. For any reason if it is felt that the institution of Governors cannot be totally abolished, then we suggest that the Governor be appointed from among a panel of three names suggested by the States Legislature. Similarly, it should be expressly made clear that all the bills/enactments made by the Legislature need not be sent to the Governor for approval/signature as long as the subject falls within the jurisdiction of the State. Similarly, the present provision empowering the Governor to reserve any bill passed by the Legislature for Presidential acceptance should be totally removed as long as the subject on which the enactment was made, falls within the jurisdiction of the State.

2. Distribution of powers between the State and the Centre

The power conferred on the States to make legislation on the subjects mentioned in List II of the Seventh Schedule should be absolute. Some of the subjects listed in List III of the Seventh Schedule like Administration of justice, Constitution and organisation of all Courts excep's Supreme Court, Forests, Education, Internal trade and commerce and Electricity should be transferred from List III to List II. This would enlarge the avenues for mobilising resources by the State Government and for developing the State. This is very vital for our State's development.

3. Financial Relations

At present, the powers to raise finances through raising loans from the internal market, from foreign countries and through deficit financing are totally controlled by the Centre and are unlimited. Similarly, the avenues for imposing taxes are more concentrated in the Centre making the State Governments to be always at the receiving and for day to day maintenance and development. Due to the deficit financing and market borrowings, the impact is felt by the State through rise in prices for all the articles forcing the State Government to grant enhancement in the D.As. from time to time and to spend more towards not only for its day to day administration but also towards developmental activities. Against this situation, the State Governments have to take approval and

have to limit the borrowing to the quotas fixed by the Centre so much so that the pace of development and size of the plans are dictated by the Central Government :—

The share of Andhra Pradesh in the net market borrowings (data next page) is gradually decreasing from plan to plan forcing it to curtail its developmental activities including construction of irrigation projects.

Share of Net Market borrowings of A.P. in the total Central borrowings

Period	Total Central borrowings (Rs. in crores)	All States share (%)	Share of A. P. Amount (Rs. in crores)	% in total Central net borrowing
1. Third Plan 1961-62 to 1965-66.	838.86	49.6	43.77	5.217
2. Annual Plan 1966-67 to 1968-69	481.38	47.8	19.73	4.098
3. Fourth Plan 1969-70 to 1973-74	2,130.89	27.2	46.54	2.184
4. Fifth Plan 1974-75 to 1977-78	3,821.21	22.4	72.70	1.902
5. Annual Plan 1978-79 to 1979-80	3,981.31	9.5	26.23	0.658
6. Sixth Plan 1980-81 to 1984-85	14,766.27	10.2	278.77	1.887

Similarly, the share of the States in the total developmental expenditure in the country has decreased over the years after independence. It has decreased from 75.4% during the First Five-Year Plan to 60.5% during the Sixth Five-Year Plan. The total transfers of the Central receipts decreased from 36.4% during First Five-Year Plan to 32.5% during Sixth Five-Year Plan. The decrease was more spectacular in case of Central loans given to the States from the Central Capital Account inclusive of deficit financing. It decreased from 61.5% during the First Five-Year Plan to mere 27.1% during the Sixth Five-Year Plan. This is more painful. That the Central is resorting to substantial transfers to the State through discretionary grants can be seen from the data presented below :

Period	Statutory Transfer Rs. crores (%)	Discretional transfers Rs. crores (%)
1951-56	447 (31.2)	634 (44.3)
1956-61	1918 (32.0)	892 (31.1)
1961-66	1,590 (28 4)	1,495 (26.7)
1966-69	1,782 (33.3)	1,798 (33.6)
1969-74	5,421 (35.9)	6,145 (40.7)
1974-79	11,168 (44.2)	6,357 (25.1)
1979-84	22,757 (43.1)	14,703 (26.9)
Total 1951—84	44,083 (40.7)	31,524 (29.1)

Ref : (i) For the periods 1951-1979 report of Seventh Finance Commission (1978).

Ref : (ii) For 1979-84, Finances of State Governments, R.B. I. Bulletins.

From the above, it could be seen that discretionary grants of the Centre to the States is very substantial and is almost as much as of the Plan transfers. Transfer of such large amounts through discretionary grants is leading to political discrimination of the States and regional imbalances. For example, special assistance for the development of hill regions in U.P. is given by the Centre but no such assistance is given to our State for developing the chronically drought affected areas. Therefore, the discretionary grants should be limited to the extent of meeting unforeseen national calamities and the bulk of the transfers should be converted to statutory grants. Therefore, the financial relations between the State and the Centre should be so redefined that every State, including ours, has a definite share in the market loans raised, in the quantum of deficit financing resorted to, in the incomes received through the administered prices, Central Surcharges and in the total Central revenues commensurate with the responsibilities assigned to the State.

4. Planning and Financing the Plans

Due to the exclusive powers vested in the Centre and exercised through the Planning Commission, the Seventh Five-Year Plan prepared by our State Government was pruned from over Rupees seven thousand crores to just Rupees five thousand one hundred crores. The approved Plan outlay is grossly inadequate to meet the requirements of the people. Though the Planning Commission has no specific provision in the Constitution it is having overwhelming influence on the development of the State. Therefore, there is a necessity to make adequate and specific provision in the Constitution such that the planning process and fixation of priorities starts from the grass root level, finalised by the State and approved at the national level. Such a step will enable the State to develop planning in the right perspective, which is more need-based and which also involves direct people's participation both while planning and implementation. Similarly, the State should be given adequate powers to generate necessary funds for the Plan proposed by it.

5. Agriculture, Price fixation for Agricultural commodities and Food Grain Trade

Though agriculture has been included under the State subjects, the factors governing the economy of agriculturists and agricultural development are totally vested with the Centre at present. This policy has not only curbed the development of agriculture in our State but also has very badly affected the economy of the agriculturists and of our State. Our State has no say in the fixation of prices for agricultural products and also in the food grain trade both within the State and outside. Similarly, our State is not empowered to procure adequate quantity of food grains for public distribution system and other welfare programmes. For example, our State enjoys pre-eminent position in the matter of producing tobacco, castor, cotton, foodgrains etc. The trade of tobacco, castor and cotton is totally controlled by monopolists and the farmers are forced to sell at the prices fixed by

them, notwithstanding the entry of Central Corporations at times of distress. Similarly the procurement price for food grains is fixed based on the bulk production costs rather than the conditions obtaining within the State. Due to this the farmers of our State are put to loss and the State also is losing the base for raising necessary finances for its own planning. Therefore, specific provisions should be made in the Constitution empowering the States to constitute bureaus for computing the cost of production and for fixing the selling price for the agricultural products of the State. The State should be made the sole purchasing agency for the agricultural products and it should be allowed to indulge in wholesale trading between the States within the country, after contributing to the Central Pool, and export the surpluses outside the country with the Centre's concurrence.

6. Implementation of construction of irrigation projects as exclusive subject of the State

Central approval for the construction of irrigation projects proposed by our State like Varadarajaswamy Project, Sriram Sagar IInd Phase, Telugu Ganga, Polavaram etc. is pending for years resulting in very steep escalation in the cost of construction imposing heavy burdens on the State exchequer and on the people. Many times the once remunerative projects are becoming unremunerative due to the reduction in the value of money consequent to the fiscal policies of the Central Government (as inflation and administrative prices). Very often, the delays are caused on the plea that some areas of forests will have to be deforested . In all such cases, if the State Government agrees to compensate the area through afforestation, there should not be any objection for undertaking the construction of the Irrigation Projects. Therefore, construction and development of irrigation projects for utilising the quota of water allotted by the Central Water Commission should be included in the exclusive State subjects to avoid delays in their approval.

7. T.Vs and Radios

Mass communication media like Radio and T.Vs are totally controlled by the Centre and the views of the State regarding its policies and developmental programmes generally do not find adequate representation in the daily programmes. This is specially so when the parties in power at the Centre and in the States are different. The past experience also has shown that these mass media are liable to partisan use specially during elections. The right of the State Government to communicate its views to the people through mass media like Radio and T.V. should be constitutionally recognised. To prevent abuse of these media, these should be entrusted to autonomous corporations charging with the responsibility to give only factual information. Time in these media should be allotted to the States for conveying their views and their developmental programmes.

8. Dispensing with the posting of central services personnel for the State's posts

At present, IAS and IPS Officers of the Central Cadre are being posted to the State's posts and the State has no control over them. The Central Government, on the other hand, has direct control over them and through them on the State's administration. For example, the Government of A.P. has recently suspended some IAS/IPS Officers on corruption charges and abuse of office but the Central Government reinstated them. This has very badly affected the State Government to curb corruption in day to day administration.

Therefore, posting of Central Cadres like IAS/IPS Officers to the State's posts should be abolished. Central Cadre and State's Cadre posts should be filled only by their respective cadre employees and the Centre should not have any control over State Cadre employees or vice-versa. A specific provision should be made in our Constitution keeping the above in view.

9. National Development Council (NDC)

National Development Council, on which both the Centre and the States are represented, should find a specific provision in our Constitution. The Planning Commission, which is charged with the responsibility of formulating priorities, finding resources for development etc., should function under the direct control of the N.D.C. Such a step will make the involvement of the different States in the country's development, both while fixing plan priorities, raising resources etc. for development, more fruitful and effective.

We request, on behalf of our Party, to consider the above while finalising the recommendations on the changes needed in our Constitution so that we can achieve the full objectives of Federal/Union set up envisaged in our Constitution.

INDIAN NATIONAL CONGRESS

(All India Congress Committee(I))

MEMORANDUM

The Government of India has constituted a Commission of Centre-State Relations, generally known as Sarkaria Commission. The following are the terms of reference :—

"1. The Commission will examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate.

2. In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is paramount importance for promoting the welfare of the people".

The intention of this Paper is to submit to the Commission the views of the AICC(I) in this regard.

The Sarkaria Commission in its questionnaire has divided the entire issue of Centre-State Relations into seven parts. These are :—

I. Introductory (Essentially questions on Federalism and connected matters).

II. Legislative Relations.

III. Role of Governor.

IV. Administrative Relations.

V. Financial Relations.

VI. Economic & Social Planning.

VII. Miscellaneous; under this Part, there are six sub-paras :—

(i) Industry

(ii) Trade & Commerce

(iii) Agriculture

(iv) Food & Civil Supplies

(v) Education

(vi) Inter-Governmental Coordination.

For the purpose of this Memorandum, it is proposed to follow the same division to put forth the views of the AICC.

PART I

INTRODUCTION

Any comprehensive review of the working of the Constitution with specific reference to the existing arrangement between the Union and the States in regard to powers, functions and responsibilities in all spheres must, of necessary, begin with a historic perspective and evaluation of the factors, circumstances, strains, pulls and pressures that ultimately led to the present structure enshrined in the Constitution.

From very early times under Ashok and Harsha Vardhan to the Moghuls and till 1857, India had monarchical States and even when the writ of the Central Government ran through the length and breadth of the country, the political structure was monarchical in character. On the advent of the British power, the Crown represented the central political authority and those parts of the country which came under the direct administration of the Crown were demarcated as separate units of administration. The Crown represented by the Viceroy was the fountain source of all power and the province under a Governor was the unit of admission. Briefly stated, the political structure was unitary and the concept of a federal structure was not known.

On the formation of the Indian National Congress under the inspiring leadership of a Britisher Oliver Home, a movement started for demanding greater share in the Governance of the country. The Indian Councils Act, 1861 and 1892 introduced a grain of popular element in so far as it provided that the Governor-General's Executive Council which was all along composed exclusively of officials, should include certain additional non-official members, while transacting legislative business as a Legislative Council. All the Members of the Council were nominated. The Indian Councils Act, 1892 had as its object an attempt "to widen the basis and expand the functions of the Government of India, and to give further opportunities to the non-official and native elements in Indian Society to take part in the work of the Government." The Indian Councils Act, 1909, enacted to give concrete form to the Morley-Minto Report, provided the first concrete step in introducing a representative popular element. It is unnecessary to go into its details here. The Government of India Act, 1912 and 1915 were in the nature of consolidating or amending, without giving much substantive advance or change in the constitutional structure. The administration remained wholly unitary. The Montague-Chelmsford Report (1918), for the first time, envisioned a federal pattern for the governance of this vast subcontinent. As an aftermath of the First World War and the Indian National Congress coming out of the control of the moderates along with the emergence of Mahatma Gandhi on the political scene, the British Government called for a report from the then Secretary of State for India and the Viceroy for taking further steps towards giving increased opportunities to the Indians in the governance of the country. The British Government made a declaration on August 20, 1917 that the policy of His Majesty's Government was that of :

> "Increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to progressive realisation of a responsible government in British India as an integral Part of the British Empire".

This led to the enactment of the Government of India Act, 1919. The importance of the Act of 1919 amongst the landmarks in the pre-Constitution development of the political system in India may be best explained in the words of the Royal Proclamation made by His Majesty George V in 1919 by which the enactment of the Act of 1919 was announced :

> "Another epoch has been reached today in the annals of India. I have given my Royal assent to an Act which will take its place among the great historic measures passed by Parliament of this realm for the better Government of India and for the greater contentment of her people. The Acts of 1773 and 1784 were designed to establish a regular system of administration and justice under the Hon'ble East India Company. The Act of 1858 transferred the administration from the Company to the Crown and laid the foundations of public life which exist in India Today. The act of 1861 sowed the seeds of representative institutions; and the seed was quickened into life by the Act of 1909. The Act which has now become law entrusts elected representatives of the people with a definite share in Government and points the way to full representative government hereafter".

It is necessary to briefly refer to the main features of the system introduced by the 1919 Act. While introducing Dyarchy in the Provinces, without imparing the responsibility of the Governor (and through him of the Governor-General) for the administration of the Provinces, responsible government was sought to be introduced. The subjects of administration were divided into two categories; Central and Provincial. The Central subjects were those which were exclusively kept under the control of the Central Government. The provincial subjects were sub-divided into 'transferred' and 'reserved' subjects. The 'transferred subjects' were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which the proportion of elected members was raised to 70 per cent. The germ of responsible government was thus sown in the limited sphere of 'transferred subjects', to the extent of the subjects of administration designed as provincial as set out in the Devaluation Rules. The Central control over the Provinces not only in administration but also in legislative and financial matters was relaxed. Even the sources of revenue were divided into two categories so that the Provinces could run the administration with the aid of revenues raised by themselves and for this purpose, the provincial budgets were separated from the Government of India and the Provincial Legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.

Here one may be tempted to say that this arrangement marked the beginning of a quasi-federal structure. But that would not be correct because the Provinces get power not by the Constitution Act, 1919 but by way of delegation from the Centre under the Devoluation Rules framed under the 1919 Act. The Central Legislature retained power to legislate for the whole of India, relating to any subject, and it was subject to such paramount power of the Central Legislature that the Provincial Legislature got the power "to make laws for the peace and good government of the territories for the time being constituting that province". The Unitary structure with the Governor-General at the apex was retained by providing that a Provincial Bill, even though assented to by the Governor, would not become law unless assented to also by the Governor-General. It would, therefore, appear that while under the 1919 Act the unitary character of the political structure remained intact, the Montague-Chelmsford Report probably pointed the direction to some distant dream of a federal polity. The Report specifically stated that 'the conditions for a federation did not then exist because the Provinces of India were not self-governing States which could surrender certtain powers to a federal government (1).

The aftermath of the Rawlatt Act and the conviction and incarceration of Mahatma Gandhi under Sec. 124A, a prince amongst the political sections of Indian Penal Code, and the barbarous sentence of six years RI imposed upon him in the wake of which the non-cooperation movement was started, led to a country-wide stir for Home Rule. This forced the British Government to appoint a Statutory Commission as envisaged by Sec. 84A of the GOI Act, 1919, to enquire into and report on the working of the Act and to announce that Dominion Status was the goal of Indian political developments. The notorious all-white Simon Commission, condemned in advance by all politically conscious sections of the society, visited India. To make the bitter pill sweet, it was announced in 1929 that Dominion Status was the goal of Indian political developments. The Commission submitted its report in 1930. It was for the first time that the new political society sought to be set up was expected to include all monarchical Indian Princely States owing allegiance to the British Crown and subject to its suzerainty. The British Government convened a Round Table Conference to consider the report of the Simon Commission. The delegates of the British Government and of British India and the Indian States participated in the deliberations of the Conference. A White-paper drawn-up on the deliberations of the Conference was examined by the Joint Select Committee of the British Parliament and the Government of India Bill was drafted in accordance with the recommendations of the Committee, and passed, with certain amendments, as Government of India Act, 1935.

At this stage it would be advantageous to focus attention on the main features of the GOI Act, 1935. It made a bold departure inasmuch as in place of the unitary structure of the Indian polity, the Act prescribed a Federation, treating the Provinces and the Princely States as units of the Federation. The Joint Parliamentary Committee noticed that:

> "A unitary and centralised government with the Governor General in Council as the key-stone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India."

A federal structure envisaged under the Act necessitated the breaking-up of the unitary State into a number of autonomous Provinces which were to derive their authority directly from the Crown instead of from the Central Government as under the previous system, and then building them up into a federal structure, in which both the Federal and Provincial Governments should get definitely demarcated powers by direct delegation from the Crown. The hurdle in the way of federal structure coming into existence was the expectation that it was optional for the princely States to join the Federation. The expected consent never came forth. Even though the federal part of the polity never came into existence, the part relating to provincial autonomy was put into operation, effective from 1st April, 1937. Some of the dubious features of the scheme need not detain us for further consideration, as they are irrelevant to the present submissions. But one important feature must be noticed and that is the division of powers between the Centre and the Provinces, because the Constitution of India largely adopts the same division.

(1) Para 120, page 78 of the report quoted by H M. Secsvai in Constitutional Law of India, 3rd edition, Vol. 1.

There were three divisions namely: (1) Federal List, (2) The Provincial List and (3) Concurrent List. As far as the allocation of the residuary power of the legislation is concerned, there is the unique provision, nowhere to be found in any other part of the world, in that this power was vested neither in the Central nor in the Provincial Legislature, but the Governor-General was empowered to authorise either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the Legislative List. The developments subsequent to the introduction of the Provincial part of the Federal structure in the 1935 Act have a bearing on certain aspects of the Constitutional framework with which we are concerned.

India was dragged into the Second World War against its will by the decision of the Governor-General as representing the Crown. As a first consequence, the Congress called upon all Congress Ministries in the Provinces wherein they were in power, to resign and also simultaneously called upon the members of the Central Legislative Assembly to refrain from attending the next session of the Assembly. Thereafter, the Congress Working Committee invited the British Government to declare in unequivocal terms what their war ends were in regard to democracy and how those ends were to apply to India and to be given effect to immediately. The Governor-General deferred any further political advance on the specious plea of disagreement between the major communities. This has reference to the demand of the Muslim League for a separate State styled as Pakistan.

After the "victory in Europe day", there was general election in Britain which had an unexpected out-come of the Labour Party forming the Government under Mr. Attlee. A white-paper was published on June 14, 1945 with a view to breaking the political deadlock in India. However, while clarifying the British position, the then Governor-General said that it is not the intention of the Government to introduce any change contrary to the wishes of the major Indian communities. This diabolical approach gave a veto to the Muslim League which was bent upon the vivisection of the country. Soon followed a Cabinet Mission headed by Sir Pethick-Lawrence, the then Secretary of State for India. In the plan put forward by the Cabinet Mission, the advance over the past position was that India was to choose what will be her Constitution, what will be her position in the world and the British Government would make the transition as smooth and as easy as possible. Before the Cabinet Mission, the Muslim League firmly submitted that unless the long term question associated with the setting up of the Constitution-making machinery was settled, it could not discuss the composition of the interim Government. There was a slight ambivalence in the approach of the Indian National Congress in that it swayed in favour of a unitary polity but argued for a federal India while the Muslim League insisted upon the vivisection of the country. The Cabinet Mission plan failed. Prime Minister Attlee made a statement in the House of Commons in which the demand for Pakistan was rejected in no uncertain terms on administrative, economic, military, geographical and statistical grounds. In terms, he said that the Government is unable to advise that "the power which at present resides in British hands should be handed over to two entirely separate sovereign States (of Hindustan and Pakistan)" [2]. One hoped that the demand for the vivisection of the country was thereby disposed of for good.

Leaving aside the transitional developments leading to the independence of the country, accompanied by the painful partition, only two developments in the interregnum worthy of note may be mentioned. To avoid at all costs the partition of this land, a proposal for a loose confederation was mooted, with only four legislative heads reserved for the Centre, namely: (1) Foreign Affairs, (2) Defence, (3) Communications and (4) Currency, the rest of all legislative power including non-enumerated residuary power to be given to the States/Provinces. This was how the Muslim League was sought to be appeased. The Indian National Congress on the other hand wanted a strong centre with a federal structure and the residuary legislative power with the Union. The native States were expected to join the Union on these terms. The choice was between parting company and a loose confederation or a federation with a strong Centre. Ultimately, the country was divided. All accommodation sought to be given to the Muslim League by setting up a loose confederation lost relevance. This was the situation that emerged on August 15, 1947. This historical background had its hang-over on the Constituent Assembly which proceeded to frame a Constitution for India *i.e.* Bharat.

Let us first concentrate on the theoretical aspect as to whether conditions germane to the setting up of a federal polity were in existence when the Constituent Assembly, largely emulating the GOI Act of 1935, proceeded to provide for a federal structure. A federal polity involves a dual system of government. 'Confederation' means 'an association of States who agree to limit the exercise of their sovereignty in order to assist in the achievement of a common objective, but who do not permit any direct contact between the organs of the association and their citizens. Prof. Dicey says: "condition absolutely essential to the founding of a federal system is the existence of a very peculiar State of sentiment amongst the inhabitants of the countries which it is proposed to unite. They must desire Union and must not desire unity [3]. The aim of Federation is 'to reconcile national unity and power with the maintenance of 'State rights,' [4]. The distinction between a Confederation and Federation need not be lost sight of because in the former, only the State Governments operate directly upon the people and the Central Government acts through the State Governments while under Federation, both Central and regional Governments operate directly upon the people.

(2) Parliamentary Debates, House of Commons, Vol. 422, Col. 2113.

(3) See Dicey's Introduction to the study of the Law of the Constitution, tenth edition, 1973, Page 141.

(4) Ibid page 143.

Prof. K. C. Wheare had defined the federal principle to mean 'the method of dividing powers so that the general and regional governments are each within its sphere coordinate and independent' ([5]). After applying this test, he was of the opinion that large number of so called federations are quasi-federations. Shri Anirudh Prasad described this as a traditional approach ([6]). According to him, this traditional or classical approach has obvious limitations in that it ignores compulsions of socio-economic forces operating in the modern era which have not left unmoulded even the traditional federations of Prof. Wheare such as United States, Canada and Australia and Switzerland. The modern approach according to him is to get solutions to the national and regional problems of the federating countries for which the traditional approach of independence in the mutual relationship of the States and the national government would have been too unrealistic to be followed in the present age of inter-dependence. The modern writers assert that 'federal system of Government is one in which there is a division of powers between one general and several regional authorities, each of which in its own sphere, is coordinate with each other' ([7]). Prof. Sawer on the other hand asserts 'that it is necessary to inquired whether a federal situation existed in a country before it adopted a federal constitution. Writing of India, he said: 'The sub-continent of India was another area which by reason of size, population regional (including linguistic) differences and communication problems presented an obvious federal situation, if not the possibility of several distinct Nations" ([8]).

The question that must be posed is whether at the time the Constituent Assembly proceeded to forge a Constitution for India, keeping in view the hopes and aspirations generated during the war of independence, whether a federal situation existed in India at the relevant time? History is replete with concrete instances where in order to meet with the second condition, namely, that the separate States desired union and not unity, a federation was formed by breaking unitary States into several States and then to unite them together under a federation. To revert to our own history and experience, upto and inclusive of the GOI Act, 1919, the Indian political entity was highly centralised and unitary in character. The Simon Commission, probably with a view to applying brakes on Jawaharlal Nehru's outspoken insistence on complete independence and limiting the scope of the matter to Dominion status, recommended the inclusion of a new factor viz. the princely States in the Union. This was calculated to induct all element which would blindly support the British Government. Accordingly, under the Government of India Act 1935 a federal polity as devised. Faculty, provinces which were units of administration of a centralised unitary State, were broken up and redesignated as States to provide for such independent States getting ready to merge in a federation. This was a device and not a position obtaining. Writers on Constitutional Law including Mr. H. M. Seervai has wrongly asserted that the federal situation existed in British India, that all the parties involved desired a federal solution and that therefore, the Constituent Assembly devised a federal structure ([9]). Indeed with the creation of Pakistan and the abolition of the native States, whatever justification had existed for a loose federation disappeared.

It is against this historical backdrop leading to the adoption of the Constitution that the whole gamut of Centre-State relations must be examined. Normally speaking, in a federation, the independent States which desire union but not unity, shed a part of their sovereignty to set up a Central authority, retaining all the residuary powers with themselves. We had to break up the unitary structure to create States which as provinces had enjoyed only delegated powers of administration. It is erroneous to state that they shed any part of sovereignty in order to set up a federation; they just did not have any sovereignty. Truly speaking, the Centre had all the powers concentrated in the unitary form and parted with some powers in favour of provinces being converted into States. Princely States were historical anachronisms. They were feudal ligarchies and as such, had hardly any place in modern India. By an astute political device, they were merged; no tears were shed for their extinction. But their existence at the time of the framing of the Constitution provided a semblance of a political legal situation for a federal structure.

The lessons learnt during the war of independence, the consequence of vivisection of the country, the Hyderabad imbroglio and several other events taught us the hard lesson that our political structure should have a strong Centre. Giving up the traditional system of drawing up two lists of powers, one for the Centre and other for the States, we followed the precedent in GOI Act, 1935 and drew up three lists but the ambivalence about the residuary power was done away with when it was given to the Centre. Rejecting the concept of a loose confederation by giving legislative power to the Centre in respect of four topics only, we have drawn-up a long list of 96 legislative heads reserved in favour of the Centre, and 66 heads in favour of the States and in addition, 47 heads in the Concurrent List. In respect of the legislative entries in the Concurrent List, both the Parliament and the State Legislature can make laws, but even here, supremacy of Parliament is established by providing in Art. 254 of the Constitution that in the event of inconsistency between the laws made by the State Legislature and the Parliament, the latter will prevail and to the extent of repugnancy the former would be void. Even in such exhaustive lists being drawn-up, the residuary power of making laws vests in the Parliament. Therefore, the conclusion is inescapable that the framers of the Constitution provided for a strong Centre with State autonomy as demarcated in and deriving from, the Constitution.

([5]) Federal Government 1967 p. 30.

([6]) See Centre and State under Indian Federalism, by Anirudh Prapad, 1981, Ch. 1, p, 23.

([7]) Federalism, Finance and Social Legislation, Birch, p. 306.

([8]) Sawer, Modern Federalism, 1969 p. 44.

([9]) Constitutional Law of India, Seervai, p. 149, para 5, 8.

There is one more piece of evidence to sustain this conclusion in the Constitution itself. Provisions contained in Part XVIII of the Constitution headed as 'Emergency Provisions' clearly indicated a strong Centre, and such a provision is inconsistent with a traditional federal principle.

Before going into details it will be relevant to start with the Preamble of the Constitution itself, the relevant portion of which is reproduced below :—

"We, the people of India, having solemnly resolved to constitute India into a sovereign socialist, secular democratic Republic and to secure to all citizens fraternity assuring the dignity of the individual and the unity and integrity of the Nation".

The words "socialist secular" were introduced by the Constitution (42nd Amendment) Act, 1976 and words "and integrity" (in the latter part) were also introduced by the same. Going into the pre-amendment situation, the Preamble as passed by the Constituent Assembly contemplated a "sovereign democratic Republic" assuring the "unity of the Nation". Subsequent events obviously made it imperative for the Parliament to make it abundantly clear (though the position was never in doubt or dispute) that the sovereign democratic Republic is also socialist and secular in nature and also to make it clear that the Constitution is concerned not only with the unity of the Nation but also with its integrity.

The Preamble makes it abundantly clear that the Founding Fathers wanted a democratic Republic which is sovereign and also wanted to ensure the unity of the Nation. The men who were members of the Constituent Assembly envisaged India as a sovereign democratic Republic of a United Nation.

The very first Article of the Constitution envisages a Nation which is a Union of States. Even though they contemplated a democratic Republic in the Preamble, they have very advisedly avoided the use of the word 'federation' anywhere in the entire Constitution. This avoidance—obviously deliberate—of the word 'federation' is presumbaly due to the fact that there is no situation here of a number of States surrendering a part of their powers to the Centre in the common interest, as was the case in several federations of the world.

The Indian Constituent Assembly has constituted a Committee for the Union Powers under the Chairmanship of Pt. Jawahar Lal Nehru. In the Report of the Committee dated 5th July, 1947, addressed to the President of the Constituent Assembly, Pt. Jawahar Lal Nehru *inter alia* stated as follows :

"Now that the partition is a settled fact, we are unanimously of the view that it will be injurious to the interest of the country to provide for a weak central authority which will be incapable of keeping peace, or ensuring peace, or coordinating vital matters of common concern or speaking effectively for the whole country in the international spheres. At the same time, we are quite clear in our minds that there are many matters for which authority must lie solely with the units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion—conclusion which was also reached by the Union Constitution Committee—that the soundest framework of our Constitution is a federation with a strong Centre. In the matters of distributing powers between Centre and the Units, within that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in Government of India, Act, 1935, viz., federal, provincial and the concurrent. We have prepared three Lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre. In view, however, of the exhaustive nature of the three lists drawn by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identificable and cannot, therefore, be included now in the Lists."

The above report of the Union Powers Committee was discused by the Constituent Assembly alongwith the reports of many other Committees involved in the framing of the Constitution. The present Constitution is a result of all those discussions and decisions arrived at by the Founding Fathers.

For the first 17 years, after the Constitution came into force, the Centre as well as almost all the States were ruled by governments formed by the Congress Party, then predominantly in power throughout the country. Therefore, any dispute between the Centre and State invariably used to be settled across the table at the Party level and these disputes never came in the form of Centre-State problems. This was mainly possible because of the outstanding personality and knowledged leadership of Pt. Jawahar Lal Nehru. It was after the life time of Pt. Jawahar Lal Nehru that in addition to one State during his life-time, a few more States immediately also elected parties other than the Congres to form the Gvernment. But those governments did not last long.

Subsequently, there was a split in the Congress Party. Those who challenged the policies adumbrated by the Prime Minister, Smt. Indira Gandhi, left the fold and contested the 1971 elections as a separate party, although with the same name. The results of 1971 proved beyond doubt that Smt. Indira Gandhi's leadership had the overwhelming support of the people. Then followed Bangladesh which underscored her greatness as a leader of unrivalled calibre and vision.

Events, however, took a different turn when those rejected at the polls took to the politics of the street and created, in State after State, situations wherein the Government could not be carried on in accordance with the provisions of the Constitution in the normal course and the pledges given to the people could not be redeemed under the requisite conditions of peace and order. An Emergency

was declared to meet the situation. While the intended purpose of the Emergency was achieved, some aberrations of the period resulted in the Government of a new Party being installed at the Centre in 1977. The spectre of instability became a reality when the Janata Party Government feel halfway through its term. Once stability was restored at the Centre and several States in 1980, the defeated forces took to the streets once again, especially in Punjab. The Akali Dal raised untenable and unconstitutional demands, which had the effect of putting a premium on secessionism taking recourse to extremism and employing the methods of terrorism. Subsequent developments leading to 'Operation Blue Star', consequent assassination and martyrdom of Smt. Indira Gandhi, the general elections that brought about the reestablishment of stability at the Centre, are recent events and need no further explanation.

The brief resume given in the foregoing paragraph gives a bare chronology of important events. But it can be no means provide even a bare outline of the trials and tribulations the country went through in that long fifteen year period. Nor does it describe, in any detail or with specificity, any of the numerous situations where our strong and stable Centre alone actually succeeded in preventing disintegration of the country; nothing else could have succeeded. Suffice it to say that these events have proved, again and again, that India's unity and integrity cannot be taken for granted and that therefore, the strength of the Centre cannot and should not be diluted in any manner whatsoever at any time in the foreseeable future.

The "strength" of the Centre, however, is not a static concept. What is considered adequate "strength" at a given time may well fall short of the needs thrown up at another time. "Strength", therefore, should be taken as a function of effectiveness. Any fresh power calculated to ensure the continued effectiveness of the Centre should not be looked upon either as unwarranted assumption of more power by the Centre, as such, or as erosion of the power of the States. The very attitude of looking at the question in terms of Centre vs States is untenable. The right approach would be to look upon the Centre and the States as partners and the division of powers as the modus to get the multifaceted functions of Government performed by the appropriate Constitutional agency.

There are several areas in which the inadequacy of the Centre's existing powers has been demonstrated in recent years. Law and order problems, particularly in the context of communal or sectarian clashes have underscored the limitations of local law-enforcing agencies. This is nobody's fault; in fact despite the limitations, those agencies have done their best. But our overall experience in this respect is enough to bring out existing inadequacies and the need to empower the Central Government to take more effective steps to meet the said situations whose complexity is, if anything, expected to increase, given the determined efforts of disruptionist forces operating within the country under various guises and destablishing forces operating from abroad. The point to be remembered is that by such empowerment of the Centre, the States would lose nothing, while if no such steps are taken, the nation's unity and secular character could be imperilled. Inter-State crime, terrorism, drug and other smuggling operations and economic offences, tensions in bi-lingual and multilingual areas and areas close to our international borders, Citizenship, collation of vital statistics at the national level, control of communicable diseases, national system of education with particular reference to a common core curriculum, educational institutions of high excellence at the national level etc. etc. are some of the numerous items which will require Central intervention in an increasing degree and for which the adequacy of powers as available to the Centre at present would need to be examined.

USA, Canada and Australia are having strong Centres. Judicial pronouncements in these countries have strengthened the Centre to the maximum extent. Separate short notes are attached at Appendices A, B & C about the position in these countries.

We have a very long border to protect on the West, North and the East (including Bangla Desh). Even though our policy is one of non-alignment and peaceful co-existence, the latter has not always been reciprocated from the other side of the border. Past events clearly and unequivocally compel continued vigilance and preparedness for which a strong Centre with adequate powers is indispensable.

Under Article 355, it is the duty of the Nation to protect the States against external aggression internal disturbance. Sufficient powers have to be vested in the Centre to discharge this obligation.

Any review of Centre-State Relations under various heads must, of necessity, keep in view the historic evolution of the present polity, the experiences of the war of independence, the wisdom of the Founding Fathers, the present visible fissiparous tendencies and the numerous serious challenges to our unity and integrity. The review has to be in the light of these very relevant considerations, which would evidently brook no weakening of the Centre.

A list of important Articles and incidental subjects relating to Centre-State relations is placed below at Appendix 'D'.

Judicial Pronouncements

There has always been a debate whether our is really a federal structure *stricto sensu* or it is a unique constitutional document not inhibited by traditional concept of federalism, designed to meet our requirements of governing a sub-contient with diverse cultures and languages all seeking unity in diversity.

Let us look at this aspect from the vantage point of courts. In state of West Bengal vs. Union of India (10), the plaintiff, the State of West Bengal sought a declaration that the Parliament is not competent to make a law authorising

(10) (1964) 1 SCR 375

the Union Government to acquire land and rights in or over land which are vested in a State, and that the Coal Bearing Areas (Acquisition and Development) Act, 1957 and in particular Section 4 and 7 thereof were *ultra vires* the legislative competence of Parliament and for a consequential relief. One of the contentions canvased before the Court was (Bench consisting of Seven Judges) that the constitution having adopted the federal principle of Government, the States share the sovereignty of the nation with the Union, and therefore, power of the Parliament does not extend to enacting legislation for depriving the States of property vested in them as sovereign authority. This contention necessitated the examination of the true character of federal policy. It was observed that the Indian sub-continent comprised a territory too much for a democratic set up with wholly centralised form of Government. Decentralisation of power for effective governance being must, the federal polity was conceived. There was also a problem of Indian States, which were in a sense sovereign. Then came the observation that "the Constitution of India was erected on the foundations of the Government of India Act, 1935; the basic structure was not altered in many important matters, and a large number of provisions were incorporated verbatim from the earlier Constitution". After having noticed that it was essential for the transformation of the nation from the backward to the developed State, greater degree of economic unity would be required to be secured and accordingly subjects having an impact on matters of common interest were transferred to the Union List. It was then asserted that the result of this exercise was a Constitution which was not true to any traditional pattern of federation. There is no warrant for the assumption that the provinces were sovereign, autonomous units which have parted with such power as they considered reasonable or proper for enabling the Central Government to function for the common good. The legal theory on which the Constitution was based was the withdrawal or resumption of all the powers of sovereignity into the people of this country and the distribution of these powers, save those withheld from both the Union and the States by reason of the provisions of Part III — between Union and the States. Our Constitution differs from the traditional form of federation especially (1) in the matter of surrendering or parting their sovereignty by the independent sovereign units for their common interest and vesting it in the Union and retaining the residue of the authority in the constituent units; (2) supremacy of the Constitution which cannot be altered except by the constituent units (see Article 368 and the entrenched clause): (3) distribution of powers between the Union and the regional units each in its sphere guaranteed and independent of the other; yet there is a departure in Part XVIII of the Constitution (Emergency Provisions); and (4) the constituent units and the Centre do not have their own separate and independent judiciary for enforcement of their laws (e.g. Federal and State Judiciary). We have provided one uniform Judiciary for State and Central laws. Subba Rao, Justice, in his minority judgement does accept that the Indian Constitution accepts the federal concept and distributes the sovereign powers between coordinate constitutional entities, namely, the Union and the States. However, he has not pointed out the distinguishing features of our federal polity with the traditional federations as set out in the majority judgement.

In the State of Rajasthan & Others *vs.* Union of India etc. [11] the court (7 Judges Bench) made certain observations about the nature of our federation. M.H. Beg, Chief Justice observed that : 'a conspectus of the provisions of our Constitution will indicate that, whatever appearances of a federal structure our Constitution may have, its operations are certainly, judged both by the content of power which a number of its provisions carry with them and the use that has been made of them, more unitary than federal'. After referring to Dicey's classical postulate for a federal principle, it was observed that 'if the special needs of our country to have political coherence, national integration, and planned economic development of all parts of the country, so as to build a welfare State where Justice, social, economic and political are to prevail and rapid strides are to be taken towards fulfilling the other noble aspirations set out in the Preamble, a strong Centre seems inevitable. It is the Country's need. That at any rate, seems to be the basic assumption behind a number of our constitutional provisions." The statement of Dr. Ambedkar was recalled that our Constitution is to be both unitary as well as federal according to the requirements of times and circumstances. Number of provisions may be referred to with special reference to Article 365 which provides that 'where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of the Constitution it shall be lawful for the President to hold that a situation has arised in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution', which would bring into operation immediately the power set out in Part XVIII of the Constitution to issue a proclamation of emergency. Shorn of embellishment, the polity structurable is unitary clothed in the garments of federalism.

In State of Karnataka *vs.* Union of India [12] (7 Judges Bench) two compositions were laid down which have relevance to the present submissions. Beg, Chief Justice observed that the unitary character of the polity is discernible from the fact that there is no question of dual citizenship. The Union of India, acting through the Central Government, could be said to represent the whole of the people of each individual State and their interests. Untwelia, Justice, who was with the minority observed that the Indian Constitution is not federal in character, but has been characterised as quasi-federal in nature.

In Shamsher Singh *vs.* State of Punjab [13] (7 Judges Bench) Krishna Iyer, Justice, in his concurring opinion observed that 'the law of our Constitution is partly scientific but primarily an Indo-Angalian version of the Westminister model

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(11) (1978) 1 SCR 1.
(12) (1978) 2 SCR 1.
(13) (1975) 1 SCR 814.

with quasi-federal adaptations, historical modifications, geo-political mutations and homespun traditions—basically a blended brew of the British Parliamentary system, and the Government of India Act, 1936, and near-American nomenclature-wise and in some other respects'.

PAR II

LEGISLATIVE RELATIONS

Part II of the questionnaire deals with legislative relations. The Commission has formulated five questions relevant to this subject. The main question is regarding the powers of the Union to encroach upon the legislative field by a declaration that the legislation is in national interest or in public interest. Obviously, the Commission has in mind Article 249 which confers power on the Parliament to make laws with respect to any matter enumerated in the State List subject to the limitation that a resolution to that effect is passed with requisite majority by the Council of States specifying the matter on which legislation is to be enacted as also the territory in which the proposed legislation would operate. It is an incorrect contention of some of the States that Industries (Development & Regulations) Act, 1951 and Mines and Minerals (Regulations and Development) Act, 1957 were enacted in exercise of the power conferred by Art. 249. These two legislations were enacted under Entries 52 and 54 in the Union List which carve out an exception to the Entries 24 and 23 respectively of State List See Ishwari Kheitan Sugar Mills (P) Ltd. v. State of Uttar Pradesh (14), State of Haryana v. Chandan Singh (15), State of West Bengal v. Union of India (16).

Art. 249 envisages a situation where the subject or head of legislation squarely falls in the State List and on the Council of States adopting the requisite resolution, deeming fiction is introduced as an exception to Art. 6(3) inasmuch as Parliament will be able to legislate on a topic reserved in the State List with exclusive power in the State Legislature to make law on that head of legislation. It is not shown during last 35 years that the power conferred by Art. 249 has been exercised to the detriment and disadvantage of any State. No change is called for in this behalf.

The Commission has asked whether any change is necessary in the distribution of powers in the Seventh Schedule or the contents thereof. This has been dealt with under Part I where it has been suggested that the Centre may be armed with more powers for protecting the unity and integrity of the nation and to prevent tendencies to secede including powers to deal with terrorism.

It is not necessary for the Centre to consult the States every time a legislation is undertaken on the subject included in the Concurrent List. If the circumstances permit and the subjects so warrant, the Centre will certainly consult the States concerned and that is the practice even now. But if it is made a constitutional obligation, it may create more problems than it is expected to solve. On the question whether a legislation is in the national interest or public interest on a State subject made by Parliament and whether it should be perpetual or for a particular duration, it can be confidently stated that Sub-Art. 2 of Art. 249 limits its duration to one year with a yearly extension if considered appropriate. There will thus be a continuous and on-going check on the exercise of power every year. This is an inbuilt safeguard against the apprehended misuse of power. The provisions at present contained in Art. 249 are therefore adequate and appropriate. No change is called for.

PART III

ROLE OF THE GOVERNOR

Part III of the Questionnaire deals with the role of Governor. Before going into the question, it is necessary to consider the role of the Governor generally.

The very fact that the Governor has been assigned a number of functions under various provisions of the Constitution makes it abundantly clear that the office of the Governor is indispensable in our set up. Pandit Nehru speaking of the office of the President said that while he is not invested with real power, his position is made one of great authority and dignity. This applies *mutatis mutandis* to the position of the Governor at State level. In Sanjeevi Naidu v. State of Mysore (17) it was observed that: 'all matters excepting those in which the Governor is required to act in his discretion have to be allocated to one or other of the Ministers on the advice of the Chief Minister'. Who would exercise discretionary powers if the office is to be abolished? In Shamsher Singh v. State of Punjab (18) law was declared to the effect that the Governor, though he is a custodian of all executive powers, shall exercise them only upon and in accordance with the advice of the Minister save in the exceptional cases. No argument for the abolition of the office of the Governor can be sound or acceptable because if that office is abolished, there will be a vacuum which will again result in confusion and bad government, creating a lot of problems those including, law and order, in its wake.

Functioning of the Parliamentary type of government necessarily implies and assumes that the Governor acts or exercises his powers on the advice of the Council of Ministers. Even though this is the normal rule, there are certain occasions when the Governor has to exercise his powers in his own discretion—such discretionary powers are either expressed or implied in the provisions of the Constitution. It is necessary for the Governor to do so in order to fulfil his constitutional obligations towards the State and also for the preservation of the unity, integrity and sovereignty of the Nation. The Governor has got the power to select the Chief

(14) (1980) 4 SCC 136
(15) (1976) 3 SCR 688
(16) (1964) 1 SCR 371
(17) (1970) 3 SCR 503
(18) (1975) 1 SCR 814 at 875

Minister under Articles 163 and 164. Under Article 164 he has got the powers to dismiss the Ministry since the Chief Minister and the other Ministers hold office during his pleasure. Article 174(2)(b) empowers the Governor to dissolve the Assembly. Article 167 empowers the Governor to ask information from the Chief Minister relating to certain matters and to ask the Chief Minister to submit certain matters for the consideration of the Council of Ministers. Article 200 empowers the Governor to refuse to give an assent to a bill passed by a legislature and send it back for reconsideration. The same Article empowers the Governor to reserve a bill passed by the State Legislature for assent by the President. Article 213 empowers the governor to seek instructions from the President before promulgating an ordinance dealing with certain matters. Article 356 empowers the Governor to send a report to the President advising Presidential rule.

The above are some of the important functions under various articles of the Constitution which the Governor is duty bound to carry out.

When the Governor exercises his discretionary powers, he is to ensure that he is not exercising the powers arbitrarily. In fact, the powers under Articles 163, 164, 167, 174(2)(b), 200, 213 and 356 make the Governor an indispensable functionary in the administration of the Government of the State and at the same a link between the Centre and the State. In the case of President's Rules under Article 356, he virtually becomes an agent of the President. It is clear from the above that the office of the Governor is indispensable and it is also necessary that the person holding the office must have sufficient maturity, understanding, experience, tact and knowledge of many matters and also the ability to carry a team of Ministers with him keeping the welfare of the people of the State in mind always, with the paramount duty to protect the unity, integrity and sovereignty of the Nation.

It may be mentioned that Articles 256, 257 and 365 may also provide situations where the role of the Governor can assume great dimensions.

In the light of the above, the following answers emerge for the various questions raised under Part III :

3.1 The Governors have so far played their role successfully and satisfactorily in the context of Centre-State relations. Aberrations, if any, are few and far between and can be attributed only to unpredictable human factors.

3.2 The Governor's role should be positive. He must be able to carry his Council of Ministers with him and convince the Chief Minister about the need for a positive attitude towards the Centre keeping in view the progress and prosperity of the State as also the progress and prosperity of the nation as a whole. He should have the paramount consideration of unity, integrity and sovereignty of the Nation.

3.3 (a) A report to the President suggesting action under Article 356(6) must be made by the Governor only if he is unable to find an alternative to the imposition of President's rule. In other words, action under Article 356(1) must be the last resort. Here the tact, maturity and experience of the Governor will play a very important part to avoid the contingency of the President's rule since it is always preferable to have democratic rule by the representatives of the people.

(b) In ordinary circumstances where a party gains absolute majority in the legislature and elects a leader, the choice of the Chief Minister is a matter of course. But the difficulty will present itself if there is no single Party which commands a majority in the State Legislature. In that case, there will be claims by combinations of Parties. It may be that even such combination may not result in a stable majority or a majortiy demonstrable at a particular point of time. There are various situations that can be envisaged. Here again, the experience, maturity and tact of the Governor will have to play an important role in making a selection of the Chief Minister. Under these circumstances, it is impossible to lay down any hard and fast rule nor is it possible to lay down a definite pattern or convention because circumstances will change from time to time and from legislature to legislature.

(c) The Governor must exercise his discretion with utmost caution and after convincing himself that what he does is in the interest of the State and of the people thereof.

3.4 The purpose behind Articles 200 and 201 is to see that there is no conflict inherent or apparent between a State law and a Central law. Further, it is also to be ensured that a State law does not in any way contravene any provision of the Constitution. No doubt, the Governor and the State Government will take care of all these aspects while introducing a bill and while it is under discussion in the State Legislature. However, a further check at a third stage at the Central level if the Governor so decides is a desirable step. Here again, the State Cabinet itself can ask the Governor to refer it to the President or the Governor can do it in his own discretion. By following this procedure, there may undoubtedly be delay but certainly it is neither wilful nor with any ulterior motive. There is no harm if the salutary articles 200 and 201 remain in the Constitution in the present form. In fact, it is necessary to have these provisions.

3.5 The findings of the Indian Law Institute apparently consist of two parts. In the former part they say that the Centre does try to dictate its policies to the State in giving Presidential assent. In the latter part, they say that the assent has actually been withheld only in a few cases which seems to indicate that this process of Presidential assent has not acted as a threat to the autonomy of the States. The two parts, though they seemingly contradict each other, in effect operate in two different spheres. The findings of the Indian Law Institute are based on misapprehensions and a misreading of the situation. Closely read, it would reveal that the instances are not of dictation of policies by the Centre, but suggestions to the State

to conform to the Constitutional principles. This in no way could be termed as dictation of policies. The very fact that the Institute finds that the assent has been actually withheld only in a few cases is itself indicative of the correctness of the argument as put forth supra. It is not alleged that the assent has been withheld on invalid grounds. This by itself negatives the contention of dictating policies by the Centre. It is no doubt true that where constitutional necessity warranted, suggestions were put forth by the Centre to the States in diverse cases.

3.6 The view suggested in the question presents only an aspect. The correct position is that the Governor is an agent of the Centre under certain circumstances and head of the State in other circumstances and a close link between the State and the Centre in varied circumstances. His role is of multifarious nature depending upon the circumstances in which he is either asked or compelled to play a role. The Governor in practice has generally acted impartially, fairly and according to the provisions of the Constitution and in terms of the healthy conventions that have developed in discharging the multifarious responsibilities of the institution. As stated earlier, if there had been any disputable or debatable decisions by Governors at any time in the past, they are few and far between and are attributable only to human error of judgement and never to political or any other ulterior motives.

3.7 The Governor holds office during the pleasure of the President (Article 156). It is not necessary for him to have a guaranteed period of 5 years in office. Normally, if he discharges his functions as required and demanded according to the high standards expected of his office, there will be no reason for the President to exercise his pleasure affecting the normal 5 year term. In short, a 5 year term should not be a legal or constitutional guarantee, but it is certainly a guarantee by the Governor's own dignified and impartial way of conduct according to the expected standards of the high office that he holds. History of independent India reveals that the President's pleasure in abridging the term of a Governor had been used very and even in rarely cases where such power was exercised, there were justifiable, valid and compelling reasons for the President to so act.

3.8 It is not necessary for the Governor to summon the legislature to enable him to check and verify the limited question as to who is in majority. He must be able to do it by virtue of his experience, assessments of the situations, talks with the political leaders and his own judgement based on all the data available. A strait jacket formula as suggested could be wholly inadvisable in certain circumstances, besides giving room to manoeuvrabilities during the interregnum leading in unhealthy practices and situations.

3.9 It is not correct to say that under the circumstances stated, the Governor does not act fairly but in a manner calculated to advance the interest of a particular political party or group. It is not necessary for us to go into the practice prevailing in Germany or any other country. The whole situation must be tackled by the Governor according to the facts and circumstances prevailing and his own assessment of the situation. The very fact that the delicate power has been vested in such a high dignitary is by itself a guarantee for the proper exercise thereof.

3.10 As has been stated earlier, the situation in State may vary from time to time depending upon the political parties and many other circumstances which cannot be anticipated or indicated with a reasonable degree of precision. Under these circumstances, it will not be possible to issue any guidelines to the Governor regarding the discretionary powers and in fact if guidelines are issued, the discretionary powers to be exercised will cease to be so discretionary. Nothing can be done to interfere with the discretion of the Governor to compel him to act in a particular manner under certain given circumstances. His own experience, wisdom, knowledge and the provisions of the Constitution, the welfare of the people, the unity, integrity of the Nation and the sovereignty of the citizens should be the guiding factors. To put it in a nut shell, a discretion is a discretion which cannot be clothed in a strait jacket formula.

An Additional Note

There has been a demand at least by one of the State Governments that the office of the Governor may be abolished. That Government is fully aware of the role of the Governor which has been explained in some detail in the earlier part of this note. It has already been stated how the office of the Governor is indispensable in a parliamentary democracy and to effectively work the provisions of our Constitution.

If for the sake of argument one accepts the proposal, it is submitted that on parity, the office of the President could equally be argued to be abolished. On an examination of the provisions of the Constitution, it will be seen that the President has to play almost the same or similar role or even in a lesser degree in certain respects, with reference to Central Government as the Governor plays with respect to the State. In fact, the Governor has more discretionary powers than the President. Such arguments for abolition of Governors only lead to create chaotic conditions without seeking proper solutions. Nowhere it is suggested how the vacuum is to be filled. If constitutional chaos is the purpose, this would be one way to achieve that objective.

A new situation that had recently arisen adds a fresh dimension and supports the continuance of the institution of Governor. Section 6 of the Prevention of Corruption Act 1947 requires that a public servant cannot be prosecuted under the provision of that Act and several Sections of the Indian Penal Code except upon the sanction of the authority specified in Section 6 of that Act. A Chief Minister of one State was sought to be prosecuted under the provision of that Act upon a private complaint. The complaint was dismissed on the ground that no cognizance of the offence can be taken in the absence of requisite sanction.

The question arose: who was competent to grant sanction? If the power to grant sanction to prosecute the Chief Minister vests in the Governor, he is in-effective in that he has to act according to the advice of the Council of Ministers which, when sought, would make the accused the sanctioning authority. The court resolved the impasse by holding that the Governor in granting sanction must act in his discretion. Abolish the office of the Governor and the resultant chaos stares us in face.

In the light of this, the argument of the particular State Government is not acceptable. Further elaboration on this point does not appear necessary.

PART VI

Part IV of the Questionnaire deals with Administrative Relations. The first part essentially confines to Articles 256, 257, 365 and 356. In the later part, the Commission has gone into certain arrangements between the Union and the States, the establishment of certain Central agancies, All India Services, use of the paramilitary forces of the Union in aid of civil power in any State, mass media, Zonal Councils and finally the Inter-State Council.

A plain reading of Articles 256 and 257 makes it clear that the executive power of the Union is extensive and pervasive. The reason is not far to seek. It is the duty of the Union to ensure compliance of laws made by the Parliament and to State by any stretch of imagination can be permitted to act in contravention of the laws made by Parliament. Sovereignty vests in the people and so far as the subjects contained in List I of Seventh Schedule are concerned, they are to be administered by the Union. Above everything, the Union has got the supreme and unquestioned responsibility to ensure the unity and integrity of the Nation and also to ensure its democratic and secular character. These are fundamental principles on which our Constitution rests. Under these circumstances, there can be no argument to deprive the Union of its right to give directions to any State in exercise of the executive powers of the Union and any such challenge to this power of the Union should indirectly be looked upon as a challenge to the unity and integrity of the country. Further, Article 256 read with Article 365 would show that the State Government may not respond to the directions given by Government of India on pain of imposition of President's rule. Certainly, the Union is not going to give any direction to a State on subjects contained in List II except in accordance with the provisions of the Constitution and there is no grievance that the executive power of the Union is so exercised as to interfere with the power of the State in respect of subjects contained in List II. These arguments also apply to the provisions of Article 257.

What has been stated above is only the principle underlying Articles 256 and 257 and that too in a nutshell and in broad terms. As a corollary to Articles 256 and 257 (and certain other articles), the Constitution provides Article 365 where it has been laid down that failure on the part of the State to comply with any directions given in exercise of the executive power of the Union, shall be construed to mean that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. This takes us to Article 355, which enjoins upon the Union Government to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution or even without the aid of Article 355, the provisions of Article 356 can be invoked and President's rule can be imposed in a State by proclamation because of the non-compliance with the directions issued by Government of India. The Article envisages an intervention when a situation arises in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Article 256 enables the Union to give such directions to the State as may appear to the Government of India to be necessary for that purpose. Article 257 provides for control of the Union over States in the matter of exercise of the executive powers of the Union. Apart from Articles 256 and 257, there are certain other Articles also (Article 350(A) for example) where the President can issue directions to the States. The State Government can ignore these directions on pain of imposition of President's rule within the meaning of Article 356.

As a matter of fact, there is nothing new in this Article since it is virtually a successor to Section 93 of the Government of India Act, 1935. This article has made provision for the President to issue a proclamation by which he would assume to himself all or any of the functions of the Government of the State and all or any powers vested in or exercisable by the Governor or any other body of the Government other than the legislature of the State and do certain acts incidental thereto. But before issue of the proclamation and assuming the authority, the President has to be satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. He may arrive at this satisfaction either on receipt of a report from the Governor or otherwise. This provision provides a novel feature in our Constitution and is inconsistent with the claim that ours is a federal polity *stricto sensu.*

This provision has been put into use about 73 times upto the end of February 1984. But if every case of exercise of power under Article 356 is examined on its own merits, one can justifiably assert that the power was exercised in the larger public and national interest. Some States complain of an arbitrary exercise of this power. This grivence is unmerited because of Constitution (Forty-fourth Amendment) Act, 1978, suspension of State Legislature cannot be continued beyond one year. This must allay any apprehension in this behalf.

One glaring fact which stands out is the action taken by the Janata Party Government in 1977 when they enforced Article 356 in as many as 9 States on the ground that the electorate in those States had exercised their franchise in favour of the Janata Party in the Parliamentary elections. They were proving that the people in those States had lost faith in the Congress Governments then governing those States. The matter was tested in the Supreme Court where six of the States filed suits against the Union of India.

The court held that Article 356 was applicable to the situation then prevailing and dismissed the suits. In short, the Supreme Court upheld the action taken by the Janata Government in imposing the Presidents rule in 9 States on the grounds stated above.

In 1980, when the Congress came into power, the same procedure was repreated, of course without challenge of the action in court. Thus 18 of the cases came into one category, viz the result of the elections to Parliament where the electorate expressed confidence in favour of a particular Party. That leaves us with about 50 cases where President's rule was imposed during the last 35 years. By and large the reasons for the imposition of President's Rule in these cases was the fact that no Party was in a position to form the Government, either due to defections or for some other reason. The main reason however, is defection and a careful analysis of the cases will show that the President did interfare wilfully in any case in order to promote the interest of any particular party. The general complaint by the Opposition that the Centre has been misusing the provision for promoting the interest of the ruling Party is politically motivated and not based on facts. There might have been an error of judgement on the part of the Governor in a case of two and the remedy for prevention of repetition of such a situation is the vigilance of the Governor and this will depend on his farsightedness, wisdom, statesmanship and experience. With the best of care exercised in the choice of Governor, no failsafe guarantee can be given that they will never commit errors of judgement. One thing has to be definitely stated that the Centre has not created the situation any-where to enable the President to take over the administration of the State.

As word about the necessity for retention of Article 356 will not be out of place. As stated in the beginning, this Article is only a successor of Government of India Act, 1935 (Section 93). This issue was debated at length in the Constituent Assembly and ultimately the consensus was that the Centre must have the power to take over the administration of the State in the circumstances laid down in the Constitutional provisions. The reason is that in unstable conditions in the State, the first casualty would be law and order and the Presidential rule avoids such complications and calamities. The Centre cannot be a spectator to Party defections, unstable ministries and wide-spread horse trading. Therefore, if such circumstances prevail, it is not only necessary but it is the duty of the Centre to take over the administration of the State, restore normalcy and instal a democratic Government according to the Constitutional Procedure. This is what has been done in the past and there is no reason to deviate from this principle and procedure. The Anti-defection law largely retrieves the situation.

On clauses 4 and 5 of Article 356, it is submitted that the situation prevalent before the promulgation of the 44th Amendment of the Constitution deserves to be restored in view of the experiences in certain States as a result of which Constitutional amemdment had to be resorted to. The possibility of such situations in the Indian Polity cannot be ruled out and resorting to Constitutional amendments everytime for such purposes would be an unnecessary luxury. Even if for any reason clause 4 is not sought to be disturbed, clause 5 deserves to be restored to the position of pre-44th amendment.

After covering the first portion of this part, we may now come to the second portion. It starts with question No. 4.6.

Census, elections, etc. which are the functions of the Union Government are, at present, by mutually satisfactory arrangements, implemented by the States. There has been no complaint either from the States or from the Centre of any unsatisfactory results of such arrangements. In fact such arrangements are highly laudable; they speak volumes of harmonious Centre-State relations now existing in the country. By such cooperation of the Union and the State Governments, costs are reduced to the barest minimum resulting in a saving to the Exchequer which can be diverted for developmental activities for the upliftment of the poor and down-trodden. Similarly, a question has been asked about Central agencies such as Agricultural Prices Commission, Central Electricity Authority, Monopoly and Trade Practices Commission, Food Corporation of India etc. It may be stated that in most of these agencies, the executive power can normally be traced either to the Union List or to the Concurrent List. These agencies are doing excellent work in the respective fields assigned to them. Not one of these agencies can be said to be an avoidable surplus; on the other hand, each one of them with active cooperation of the State Governments is carrying out functions of national importance and the benefits of such activities are mainly enjoyed by the States. There is the question of All India Services which actually has proved to be blessing to the entire administrative set up of the country as the officers of the All India Services utilise their experience in the States when they come to the Centre and vice versa. If anything, there is need for more All India Services which unfortunatley are being resisted to by the States. Apart from utilisation of experience, the All India Services inculcate a broad national outlook in the officers which is very essential both for efficiency and in the larger interests of the society. The All India Services are generally not guided by narrow regional or parochial consideration but inculcate a broad national outlook, so essential for the unity and integrity of the Nation.

What about the Central Reserve Police and the other Armed Forces of the Union ? The developments in Assam, Punjab and Gujarat during the last 4 years speak volumes for the necessity to strengthen the Central forces in order to act whenever there is a breakdown of law and order. Apart from this, there are other cases of frequent disturbance to law and order where the Centre's help has to come in. All these instances demand the necessity for arming the Union with the powers to utilise the para-military forces to restore law and order in an area within a State where the State forces are not able to do so.

There is a question on newspapers, books, printing presses and broadcasting and other communications. The former is in the Concurrent List and the latter is in the Union List. It is submitted that the present arrangement with respect to newspapers, books and printing presses being in the Concurrent List is a well thought out arrangement. There are numerous

newspapers in regional languages which are confined to regional circulation. Books of local interest are innumerable and printing presses cover a wide range from a modified cottage industry to the most sophisticated modern methods. Under these circumstances, it is advisable to retain them in the Concurrent List so that the States could have control over them at the same time enabling the Centre to intervene in cases where national interests warrants such an intervention. Along with this, dealing with the bigger newspapers having wide circulation in more than one State required the subject to be in the Concurrent List. The same argument applies to books as well.

Broadcasting and other forms of communication including T.V. have necessarily to be in the Union List, because a matter put on the air from the broadcasting Station is received and heard not only in one State but all over India and in the case of a powerful station, all over the world. It is also the duty of the Union to ensure that the relationship with foreign countries is not adversely affected by such broadcasts. For example, one has to be very careful in broadcasting sensitive news or subjects which may affect our relations with neighbours. Giving complete powers to Government of the States to broadcast as they please, could lead to results that could better be imagined. The same argument also applies to T.V. In principle, where communication crosses inter-State boundary, national interest requires that the same should be dealt with by the Union. In view of these considerations, there is no necessity to change the present arrangement.

The Zonal Council were set up in view of the provisions of the Reorganisation of States Act, 1956. Unfortunately, it cannot be said that they have served any useful purpose.

Pertinent at this stage is Article 263 of the Constitution. The Article reads as follows :

"If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between states;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to the subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure."

The establishment of such a Council has been recommended by the Administrative Reforms Commission.

As a matter of fact, it should be possible for the Union and the States to settle differences which may arise between them by having a dialogue at an appropriate level. The Prime Minister as the Head of the Government will always be willing to hear the authorities of the States either himself or through the Central Ministers who could look into and resolve the matter. There cannot be anything which defies solution after mutual discussion for the simple reason that the interests involved are of the people and in the ultimate analysis there need not be a conflict.

There is yet another difficulty in establishing such a council. The States will have a tendency to approach the Council for every partly and sundry matter blowing up the differences out of all proportion. This apart, if the State is aggrieved and the State approaches the Inter-State Council, the Union Government will also have to present its point of view before the Council. If unfortunately, the Council's view happens to be against the Union Government which presents the case in the larger interests, then the Union Government will be embarrassed to accept the recommendations of the Council. This in effect will make the Inter-State Council a body more powerful than the Union Cabinet without the responsibility to Parliament or the pople. Therefore, the general establishment of such a Council is fraught with unsavoury consequences even if the Council is to be presided over by the Prime Minister. In fact, if the Prime Minister presides over the Council, the position will be worse; it will be embarrassing for the Prime Minister to over-rule his own decision as Chairman of the Council in his capacity as Prime Minister if circumstances and national interest warrant such an action. This does not mean that in appropriate cases of dire necessity Article 253 should not be invoked as has been done sometimes in the past.

PART V

FINANCIAL RELATIONS

Part V of the Questionnaire deals with the Financial Relations between the Union and the States. The questions are very elaborate and there are 39 posers under this subject.

The financial relations between the Centre and the States are primarily based on the Constitutional division of taxation powers and expenditure responsibilities between the two and have evolved over the years to meet emerging requirements. To enable the Centre and the States to discharge their respective duties and responsibilities, it is necessary to ensure a fair distribution of the total national resources between the two. It is equally important for the system to promote equity and redressal of regional imbalances in view of the tremendous diversity of the country with its 22 States at different levels of economic development and resources potential. The existing system seeks to achieve a balance between these objectives through various transfer mechanisms.

One very salient feature of our Constitution is that the Entries regarding taxation are dealt with in the Seventh Schedule List I and List II separately. The Constitution provides for a division of taxation powers whereby some taxes are exclusively reserved for the States while the others are reserved for the Centre. This division has a sound economic rationale. Taxes which have a local origin and or the collection is generally traceable to the geographic limits of a

State are in the State List (e.g. land revenue, sales tax, State excise duties, motor vehicles tax, entertainment tax etc.). Taxes which have an inter-State base or whose collection is necessarily to be handled by the Centre, as for example, Wealth Tax, etc. are in the Union List. Entries 82 to 92-A of List I of Seventh Schedule deal with the taxation power of the Union. Similarly, Entries 45 to 63 of List I deal with the taxation powers of the States. Another Entry 92-B has been added to List I by the 46th Amendment but is yet to come into force. This division avoids distortions. The Constitution, however, recognises that this division alone will not result in providing adequate resources to the States to enable them to discharge their functions. It, therefore provides for a system of transfer of resources from the Centre to the States. Even though the Union Government has got the taxation powers under Entries 87, 88, 89, 90, 92 and 92-B of List I, by virtue of Article 269 the Union Government has got to share in the net yield of these taxes with the States according to the prescription of the Finance Commission. A percentage of the net proceeds of income tax is also assigned to the States while the Union Excise Duties are being shared between the two since the commencement of the Constitution. Similarly, the tax under Entry 92-A is levied by the Centre, but the States collect the tax and appropriate it to themselves. Entry 91 and the States collect and appropriate the tax to themselves.

This leaves us with Entries 82, 83, 84, 85 and 86.

By virtue of Articles 270 and 272, the Centre has also got to share in the taxes collected under Entries 82 and 84. They are taxes on income, other than agriculture income and duties of excise on Tobacco and other goods manufactured/produced in India except alcoholic liquors, Indian Opium, Indian Hemp etc. Thus, taxes collected under Entries 82 and 84 i.e. income-tax and excise duties are also sharable by the Union alongwith the States, 82 mandatorily and 84 by law. This leaves us only with the taxes under Entries 83, 85 and 86 which the Centre collects exclusively and appropriates those collect to itself. The taxes are in common parlance Customs Duties, Corporation Taxes and Wealth Taxes.

Corporation tax is actually an income-tax collected from bodies corporate. This has two elements, one is that the tax payable by the bodies by themselves on their income and other is the tax collected by those corporate bodies in respect of the dividents payable by them to the share-holders. By an amendment of the Income-tax Act, in 1959, this tax which was earlier divisible in part has ceased to be so. The earlier sharable part was the dividends portion.

In respect of sharable portion of the taxes, that is the taxes under Entries 82 and 84, the distribution is made in accordance with the recommendations of the Finance Commission which is appointed every 5th year or earlier which is charged with the duty *inter alia* to recommend as to the distribution between the Union and the States of the net proceeds of the taxes etc. The Finance Commission is also charged with the duties to determine the respective shares of States in respect of taxes levied by the Centre where the Centre has no share.

Article 275 provides for grants in aid to States which may be in need of assistance under Article 282 the Union or the State may make any grants for any public purpose irrespective of the fact whether it has got the executive power in respect of the subject which is covered by the public purpose. Voluminous grants in the event of natural calamities bear testimony to the fact that when real need arose Centre rushed to the aid of the State.

To ensure smooth and adequate devolution of funds from the Centre to the States. the Constitution provides for a regular statutory machinery viz. appointment of the Finance Commission every 5th year (and earlier, if necessary). A reference to Finance Commission has been made *supra*. The Commission undertakes a thorough review of the finances of the States, their revenue potential as well as their expenditure commitments, and recommends allocation of shares in taxes and principles governing grants-in-aid. In recent times, issues relating to provision of assistance for natural calamities and debt relief to the States have also been referred to this Commission for suggesting principles governing provision of such assistance and relief wherever necessary.

The existing provisions of the Constitution have proved to be satisfactory over the last 35 years since the Constitution makers had taken the various socio-economic and regional factors into account while incorporating these provisions. They do not seem to require any alteration. Any alteration is likely to create imbalance leading to weakening of the national fabric.

The rate of taxation has reached the maximum and perhaps is at a climax. Therefore, the question of enhancing the revenue by increasing the rates of taxation just may not arise.

The basic issue for consideration at this stage is whether there is scope for larger transfer of resources from the Centre to the States. This would have to be viewed with reference to the obligations of the Centre in the fields of Defence and External Affairs as well as the Plan priorities that have a bearing on the national economy as a whole. It is equally important to assess whether the States can mobilise additional resources within the areas remarked for them by the Constitution. It is generally argued that the Centre should transfer more resources to the States as its budgetary position is stronger than that of the States. This view is based on an inadequate appreciation of the resources constraints facing the Centre which arise partly from the difficulty in raising current revenues beyond a certain level and partly from the progressive devolution from the Centre to the States as a result of the recommendations of the successive Finance Commissions. As a result, there has been a major structural transformation in the Centre's budgetary position since 1979-80. Substantial surpluses on the revenue account which were a feature of the Central budget have given way to deficit on the revenue account. In 1985-86, for the first time, the balance from current revenues itself has become negative. A stage has now come when the capital receipts have to be tapped to meet the expenditure on the current account.

The question that arises here is whether there is scope for effecting economic in expenditure and improving tax and non-tax revenues for making the balance from current revenues positive. The present rates of Central taxes as referred to above are already quite high. As regards expenditure commitments, the national priorities should always be kept in view. Security of India is the highest priority. It requires huge investment in security forces, and for providing latest equipment and weaponary. It needs research. This expenditure is mainly dependent on global conditions as also the security environment in the neighbourhood. Defence preparedness is an essential pre-requisite for the survival of any nation. The investment may appear to be negative or unproductive but it is abundantly indispensable. 1962 Chinese perfidy should not be forgotton. Centre must have enough adequate funds at its disposal, and Centre has not avoided the unpleasant task of taxing to the maximum.

Interest payments represent contractual obligations and will have to be necessarily provided for. The subsidies are critical for ensuring self-sufficiency in food production and the present comfortable food situation is largely due to the provision of subsidies as incentives for improving production.

An analysis of the balance from current revenues indicates that expenditure of Defence, provision of subsidies and interest payment comfortable food situation is largely due to the provision of subsidies as incentives for improving production.

An analysis of the balance from current revenues indicates that expenditure of Defence, provision of subsidies and interest payments account for more than 70% of the non-Plan revenue expenditure.

While the situation on the non-plan front is non-too-bright, the Centre cannot shed its responsibility towards accelerated development of the nation through productive investments in the core sector. The Centre's Plan outlays are concentrated in areas like communication, petroleum, steel, coal etc. that have on overall national importance. It may be noted that nearly 35% of Centre's outlay is on energy sector alone, while industry and minerals, and transport utilise another 35% of the outlay. A reduction in these outlays would become inevitable if more resources are transferred from the Centre to the States. Such a change would have an adverse effect on the economic growth of the country and would, in the long run, erode the resource potential of both the Centre and the States.

It is pertinent at this juncture to examine whether the States cannot, through own efforts, expand the resource base in areas earmarked for them. It is generally argued that the States have inelastic sources of revenue. But actual performance in the last decade reveals that the States' total tax revenues have grown more rapidly than those of the Centre and the States' tax revenues have increased from 31.5% of the total tax revenue in 1974-75 to 34.6% in 1984-85. There is, thus, considerable buoyancy in the taxation base of the States under the existing system.

Coming to the States' taxation powers, it will be seen that they are contained in Entries 45 to 63 of List II of the Seventh Schedule. Numerically, there are 19 Entries. Factually the revenue yielding capacity is comparatively less. Perhaps, their maximum revenue comes out of Sales Tax.

On a close examination of the taxation powers of the Union and the States, it will be found that it is not possible to transfer any of the taxation powers of the Union over to the States. The Founding Fathers of the Constitution have made such an elaborate procedure in respect of powers of taxation, the collection and distribution with a provision for periodic review regarding the shares due to the States so that one would find it difficult to improve upon the system now in vogue. The result is that there is no question of transferring any taxation powers to the States.

Now look at the performance of the States. Under Entry 46 of the State List, the State can levy tax on agricultural income. Because of the efforts as to the enormous expansion of irrigation facility, hybrid seeds, chemical fertilizers, and research in soil fertility, a very large number of agriculturists have come to occupy the upper bracket of elite group in the society. Green revolution to the extent of bludgeoning stocks of Food Corporation of India, search for export market of wheat and rice, and over-rising support prices for agricultural products have combined to bring into existence an affluent class of agriculturists. Yet, save Kerala no States has levied agricultural income-tax. An employee with yearly salary of Rs. 18,000/- is subjected to income-tax but a farmer with an income of a lack of rupees per annum does not pay a farthing as income-tax . It is a truism that State Government in order to keep in tact their vote banks do not levy taxes and shed crocodile tears of shortage of resources.

Another disturbing feature is that the irrigation and power projects executed by the States in successive Plans at huge cost are not providing any return to the States. In fact, returns from the irrigation projects so far have not been adequate even for covering the working expenses. The performance of the State Electricity Boards and Road Transport Corporation has also been far from satisfactory, resulting in considerable losses. Through suitable measures, the States can generate more resources on these accounts.

Keeping the above in view, the complaint of the States regarding an inadequate and inelastic tax base appears to be unfounded. The potential resources base available for the States is quite large and relatively more elastic. If effectively managed, the tax base of the States can yield much larger revenues and this alone would solve the present problems. In a situation of overall resources constraint, maximum effort at mobilisation of resources is required on all fronts and mere transfer of additional resources from the Centre can only be a temporary measures at the cost of wider national interests.

The present problems have arisen not because of the inadequacy of our system but because the system is being operated in situation of constraint on resources. It is necessary that the Centre and the States

exploit the resources available to them fully. Public Enterprises would have to be geared up to generate adequate resources for both. This does not require any changes in the system. In fact, such a change in favour of the States would create more problems than it would solve, since; any diminution in the Centre's financial capacity would adversely affect not only the national security as also its integrity but also the economic growth of the country in general and the upliftment of the backward States and the under-privileged masses in particular. It must also be clearly recognised that a change in the present system of sharing of financial powers would not create more resources. The answer to the problem lies in better financial performance on all sides within the existing system.

In view of the position explained above, the most equitable stand that can be taken in respect of financial matters is to continue the policy of existing system which should remain undi turbed.

PART VI

Part VI of the Questionnaire deals with Economic and Social Planning. Essentially these questions relate to the functions of the National Development Council, the Planning Commission etc.

The Commission invites suggestions for improvements of the existing systems.

It is the Congress culture to view the Nation as a whole for development. Regional development must be so planned as to bring all parts of the country on even keel. Regionalism, parochialism, casteism, communalism and narrow sectarian interests are foreign to Congress culture and Congress ethos. Planning is undertaken to give a push to the backward areas to some on par with industrially developed areas. Subsidies for setting up and running industries in tribal/backward areas, ignoring State boundaries, speak volumes in this behalf, Throughout this has been the target and object. The Planning Commission itself has been set up with the object of achieving an all round development of the country. In actual practice, it is absolutely necessary to have a coordinating body for planned development at various levels in various States. The Planning Commission undertakes this task. The necessity of coordination cannot be over-emphasised and the system has worked successfully. Planning for the country of the size of a sub-continent like India cannot be left to small regions. Such an approach would further accentuate imbalances. The plan of each State has necessarily to be an integral part of the national plan because the aim is not the development of one State alone but the development of the Nation as a whole. For this purpose, the Planning Commission takes into consideration the resources available in various States and suggests the plans for various States to fit in National plan. Plan targets of each State are approved by Planning Commission. At the risk of repetition, it may be said that the State's Plan is only a part of the National Plan. The concept of the National Plan is given by the Planning Commission. The States formulate their plans accordingly. The whole programme is approved by the Planning Commission and then the plan is carried into execution.

In this process, the Union certainly assists the States either by undertaking centrally sponsored schemes in various regions where the States are unable to undertake such schemes : sometimes giving outright grants for planned development and sometimes giving matching grants, etc.

On these vital and relevant considerations, it is submitted that there is no justification for any change in the present pattern adopted for economic and social planning and development.

PART VII

The last part of the Questionnaire covers a number of items under the heading 'Miscellaneous'. The first one is Industry.

Entry 52 of List I enables the Union to legislate on the subject of Industries provided it is declared by the Parliament that the control of such industries by the Union is expedient in public interest. In the absence of such a declaration, Industry in general is covered under Entry 24 of List II. There is a general complaint that in the guise of national interest, the Union encroaches upon the subject of industries which is otherwise State subject. There is a particular complaint regarding the Industries (Development and Regulation) Act, 1951. This Act has come into existence almost at the threshold of the Constitution, it has been amended many a time to add to its schedule more and more items of industries over which the Centre would get control. This expansion of the first schedule to this Act is what is complained about as an encroachment of the Union over the States' rights in the field of industries.

This approach betrays a lack of legal and constitutional understanding. Undoubtedly, once declaration as envisaged by Entry 52 of the Union List is made, the industry becomes a scheduled industry and its control vests in the Centre. But the degree of control depends upon the provisions of the Act under which the declaration is made and is limited to that Act alone. In Ishwari Khaitan Sugar Mills (P) Ltd. v. State of U.P. (17) a Constitution Bench of the Supreme Court of India held that legislative power of the States under Entry 24 of State List is eroded only to the extent, control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. In all other respects even the declared industry is within the legislative competence of the States. The Court held that even in respect of declared industry the power of acquisition can be exercised by the State. Power to make a reference under Section 10 of the Industrial Disputes Act, even in respect of declared industry, continues to vest in the State. (See Rashtriya Mill Mazdoor Sangh, Nagpur v. The Model Mills.) (18)

At first sight, one may be inclined to think that there is substance in this complaint. But if we go deeper into the subject, it will be found that almost all these products covered by the industries in the

(17) (1980) 4 SCC 136

(18) C. A. No. 1619 to 1622 of 1971 decided on 18-9-84 reported in 1985 (1) SCR 751

IDR Act require the use of one raw material or the other which is in short supply or it may be for the use of a material by the consumer which is in short supply as in the case of Kerosene oil for the stoves. If these factors and the duties of the Union towards the entire population are taken into consideration, it will not be easy to agree that the Union is making an avoidable trespass into a subject reserved for the States. Again, the location of the industries in rural areas where it has to provide employment, the utilisation of its products and the necessity for the industries in certain backward States and areas are all taken into consideration by the Union Government. All this is possible only through the Act mentioned earlier and the intention behind this Act is not the trespass into the rights of the States but to implement the duty enjoined upon the Union by Articles 38 and 39 of the Constitution which are Directive Principles of the State Policy of the highest importance.

In the light of the above, all the questions under this item of industries stand answered by supporting the present system.

The next question is with reference to Article 307 which empowers the Parliament by law to appoint an authority such as it considers appropriate for carrying out the purposes of Articles 301 and 304. The purpose in general relates to inter-State trade and commerce. It may be mentioned that no such authority has so far been constituted. If there had been the necessity and existence of such an authority, such a necessity should have been felt many a time during 35 years and such an authority could have been establihsed. The very fact that such a necessity has not been felt so far and no such demand has been made by any State in the past, only shows that this Article is an enabling provision to be used as and when the necessity arises. Nothing has been brought out either in the Questionnaire or elsewhere to justify establishing such an authority and the benefits to be derived therefrom.

The next part in the Questionnaire is on Agriculture. This subject is actually is in the State List under Entiry 14, but indirectly this is also a part of Entry 33 of the Councurrent List in so far as the trade and Commerce of the products of agriculture is concerned. The Entry in the Concurrent List is justified, as the past events have proved that the Centre's intervention sometimes was necessary. If food is in short supply, it may be necessary for the Parliament to intervene on that very subject. Further, it is an essential commodity for uniformity etc. That perhaps is the reason why this Entry was found necessary in the Concurrent List inspite of the presence of Entry 14 in the State List. In any case, agricultural development and food and civil supplies are complementary to each other and in the matter of coordinating the production and supply activities the Centre has necessarily to have a role to play.

Education is a subject covered by Entry 25 in List III of the Seventh Schedule, but subject to Entries 63 to 66 of List I. The reference to List I is only regarding certain institutions of national importance etc. and those have necessarily to be with the Centre. So also the matter of coordination and determination of Standards of higher education have to be with the Centre. There is no necessity to interfere with the present situation.

The last question pertains to Inter-Governmental coordination. The question refers to a Commission in existence in the USA which was created by the Congress in 1959. The question is whether we should also have an institution of a similar nature with a similar purpose. The answer appears to be in the negative since the necessity for such an institution has neither been felt nor has the question been assessed except by the Commission itself.

APPENDIX A

UNITED STATES OF AMERICA

The Central tenet of American Constitutionalism is that all power is derived from the people and must be held in check to preserve their freedom. A number of free sovereign States gathered together to form a Union. Exercising the mix of functions delegated to each branch of Government by the people in the social compact, that was the Constitution, each power centre would remain dependent upon the others for the final efficiency of its social designs. (1) The result was that the central authority, namely, the President enjoyed limited functions. It represented a loose federation. The Constitution as originally framed did not include a Bill-of-Rights. It was Jefferson who urged amendment of the Constitution to include such a Bill. The Civil War made a crucial difference. The first fourteen amendments were not directly designed to strengthen the central authority. People being the repository of residuary rights, this fact was constitutionally recognised in the Ninth Amendment introduced in 1791 which provided that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".

The Central authority derived much of its present strength by judicial innovation. The Courts recognising the paramount national interest so construed the provisions of the Constitution, that the federal authority is made more powerful. It is worth noting that sub-clause (18) of Section 8 of the Constitution which is a sort of a residuary clause was more often invoked to make the federal authority stronger. Sub-clause (18) reads as under :—

"To make all laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof".

The expression "a necessary and proper" came in for construction in McCulloch vs. Maryland.(2) The court took note of the fact that the earlier Articles of Confederation had provided that each State retains "every power not expressly delegated". Keeping in view the Tenth amendment which provided "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people held, that "the sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government.

It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The powers being given, it is the interest of the nation to facilitate its execution." The court held that even though the words 'bank and incorporation' are not found in the enumerated powers of the Federal Government, they *can be comprehended in the necessary and proper powers for carrying the other powers into execution. The federal authority mightly benefited by this opinion.

In Ware Vs. Hylton (3), the court held that under the 6th Article of the Constitution, all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land. Accordingly, the court rejected a statutory scheme enacted by the State of Virginia in 1777 creating an impediment to the payment in full of debts owed by Virginians to British creditors, as it was found to be in conflict with the treaty of Paris and was held void under the supremacy clause of the United States Constitution. This affirmatively established that a treaty entered into by a federal authority known as Treaty of Paris had an overriding effect on the State Legislation. The Supremacy of the federal authority was clearly spelt out.

In Gibbons Vs. Ogden (4), the court after referring to the commerce clause observed that the whole Act on the subject of coasting trade according to those principles with govern the construction of statutes, implies unequivocally an authority to license vessels to carry on the *d trade. Approaching the matters from this angle a statute of the New York State which granted exclusive privilege for operating a steamboat between New York and New Jersey was declared invalid. Wide interpretation of the commerce clause enabled the court to uphold the action of the federal authority.

In Osborn Vs. The Bank of the United States (5), the facts were that the State of Ohio levied at $ 50,000 tax on each branch of the congressionally chartered United States Bank in Ohio, when in MsCulloch V. Maryland (2), a similar tax by Maryland was declared unconstitutional, yet the Ohio official decided to ignore the court decision to enforce the State Law. The United States Bank went to the United States Circuit Court and received an injunction prohibiting Ralph Osborn, the Ohio State Auditor from collecting the amount. Osborn defied the injunction and forcibly seized funds from the bank. The Bank sued Osborn for damages and the State Court ordered to repay the amount seized.

Osborn carried the matter in appeal to the Supreme Court which affirmed the decision of the State Court. Reaffirming the earlier decision it was observed that "Bank is an instrument which is necessary and proper for carrying on the fiscal operations of government. To tax its faculties, its trade and occupation, is to tax the Bank itself. To destroy or preserve the one, is to destroy or preserve the other". Again the balance tilted in favour of strengthening the federal authority.

Coming to the present day, it would be advantageous to refer to City of Philadelphia v. New Jersey. (6) The State of New Jersey enacted legislation that prohibited the bringing of garbage into New Jersey from out of State. The affected cities and the privately owned garbage dumps brought suit against New Jersey in the State Court. The State Court held that the law was unconstitutional as it discriminated against inter-State commerce. The State *Supreme Court reversed the decision. The matter was taken to the United States Supreme Court. Reversing the decision of the State Supreme Court, it was observed that the Supreme Court has consistently found parochial legislation of this kind to be constitutionally invalid. This gives effect to the federal principle.

These illustrative cases tend to indicate that it was the judiciary which by a progressive interpretation of the Constitution made the federal authority for more powerful than what the Constitution framers intended it to be. The vacillation of the legislature was set at naught by the Judiciary keeping in view the requirements of a developing society, international relations and cohesive development of a nation. The trend is by judicial activism to strengthen the federal authority. From the point of view of a traditionalist, a question was always posed; whether federalism is more than a legal fiction and this question generates considerable controversy amongst scholars in law and the social scientists. From a loose conglomeration to a strong central authority, the movement has been over a Century taking into its sweep legal formulation. Progressive re-interpretation of the role, character and nature of central authority, tended to make it stronger more or less by judicial interpretation to the provisions of the Constitution.

(1) American Constitution Law, Laurence H. Tribe, 1978, p.2.

(2) 4 L. Ed. 579 (1819).

(3) Dallas 199 (1796).

(4) 9 Wheaton 1 (1824)

(5) 9 Wheaton 738 (1824)

(6) 437 U. S. 617 (1978)

APPENDIX 'B'

CANADA

The Judicial Committee of the Privy Council was the Final Court of Appeal for Canada in Constitutional cases till 1949. The Privy Council, a highly respected judicial body, but generally considered to be conservative in its approach, did not recognise the fact that the Centre was strong while interpreting the provisions of the British North America Act 1867. Narrow interpretations were given to the principal Federal Powers.

The above position is obvious on the basis of a number of decisions of the Privy Council. One leading case is that of Attorney General of Canada Vs. Attorney General of Ontario and others reported in 1937 A Page 326. The Dominion of Canada in order to comply with an international Agreement passed two labour welfare legislations. By a very narrow interpretation of Sections 91, 92 and 132, the Privy Council held that the Dominion had no power to enact the legislations. The concept of Federal supremacy was cut in the neck by one stroke.

After the abolition of the appeals to the Privy Council in 1949, the Supreme Court of Canada was vested with the jurisdiction as the final authority to decide constitutional issues. The trend has since been reversed. In the year 1977, in Capital Cities Communication Inc. Vs. Canadian Radio Television Commission, reported in 81 DLR Page 609, it has been held that the Federal Power to control Television, Radio etc. includes the exclusive authority of Parliament of Canada to control the content of Broadcasts and Television Programmes.

Again in Konard Johannesson and another Vs. Rural Municipality of West St. Paul reported in 1952 (1) SCR page 292, the Supreme Court held that if a provincial statute is not authorised under any legislative head of Section 92 of British North American Act, then it is *'ultra vires'*. The Supreme Court upheld the rights and supremacy of the Parliament to maintain peace, order and good government. Thus a new dimension has been added to the Central powers.

By the above illustrative authorities, it can thus be concluded that in spite of the narrow interpretation of the Privy Council earlier, the Spreme Court of Canada had been interpreting the Canadian Constitution in such a way as to make the Centre strong.

APPENDIX C

AUSTRALIAN CONSTITUTION

The Constitution of Australia (Australian Constitution Act 1900) makes the division of powers between the federation and the States.

The exclusive powers of the Commonwealth are enumerated in Sections 52, 90, 111, 114 and 115. Section 52 deals with the seat of the Government of the Common wealth; Section 90 deals with the imposition of uniform duties of customs, excise and bounties; Section 111 deals with surrender of territories by the States to the commonwealth; Section 114 with the Defence Forces and Section 115 with the coinage.

The Concurrent powers of the Commonwealth Parliament to be shared with the States are enumerated in Section 51 and embraces as many as 39 items. Being so wide in range, details of such powers need not be gone into here for the sake of brevity.

In Australia each State has a separate Constitution and residual powers are vested in them. Under the Commonwealth Constitution, the bulk of the legislative powers are concurrent and are shared with the State Parliaments.

The framers of the Commonwealth Constitution, recognised the potential of the conflict between the Commonwealth and States and therefore made express provisions to deal with such situations under Section 109 of the Commonwealth Constitution Act. The said Section 109 is a simple statement that "when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of inconsistency, be invalid."

The above said provision had a varying impact on State legislations. In the early years of this century, the Section was given a relatively narrow interpretation by the High Court of Australia which is the highest court. Thereafter, the High Court developed a more liberal interpretation of Section 109, so that many legislations which have escaped this Section earlier came to be struck down on the ground of inconsistency with the Commonwealth legislation. The leading case on the subject is Engineer's case reported in 1920 (28) CLR 129. In this case, the Court declared that "that Constitution was to be interpreted by its words alone." The earlier view was that the Commonwealth itself was a contract between the Commonwealth and the federating States and this mistaken notion was corrected for the first time in the Engineer's case. It was realised in this case that the words of the Constitution were to be regarded as creating a nation and therefore central supremacy as a corollary was permitted and the march of the time demanded the same.

In the case of Victoria Vs. the Commonwealth (1937) 58 CLR 618 at 630, the High Court of Australia further clarified the legislative authority of the Commonwealth Parliament in the following words :—

> "When a State law, if valid, would refer, impair, or detracted from the operation of a law of the Commonwealth Parliament, then to that extent it is invalid. Moreover, if it appears from the terms, the nature or the subject matter of a federal enactment that it was intended as a complete statement of the law governing a particular matter or set of rights and duties, then for a State law to neglect or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so is inconsistent."

In another case Australian Railways Union Vs. the Victorian Railways Commissioners (1930) 44 CLR 319, the High Court declared that the Commonwealth Conciliation and Arbitration Act, binds both the Commonwealth and States and their agencies and therefore the Act will apply to an industry carried on by or under the control of a State or Commonwealth or any public authority constituted under the Commonwealth or a State. Thus the authority of the Commonwealth to bind the States and their agencies was upheld in the above case. Subsequent decisions of *the Court confirmed this legal position.(1).

In another case, the question regarding the legislative power of Commonwealth over radio broadcasting came up for consideration. The High Court upheld the legislative powers of the Commonwealth Parliament on the ground that the subject, "Postal, telegraphic, telephonic and other like serivces," includes the power over radio broadcasting. Similarly, the legislative powers of Commonwealth Parliament were recognised in respect of many other subjects, by giving liberal interpretation of the subjects under the Concurrent List. Two such cases are cited below-(2) & (3).

Under the Constitution, taxation is a concurrent subject and both the Commonwealth Parliament and States levied income tax through separate legislations. In 1942, the federal Parliament passed uniform tax legislation which excluded the States from levy of separate income taxes. The Act gave each State a fixed tax reimbursement grant equal to its average collections in the previous two years. The Act which gave the Commonwealth Parliament a monopoly of income tax was upheld by the High Court in spite of the opposition of four of the six States in the case of South Australia and others Vs. Commonwealth, reported in 1942 (65 CLR 373) first uniform tax case.

The Constitution gave exclusive legislative powers with regard to levy of customs and excise duties to the Commonwealth Parliament. The general power of taxation other than customs and excise in the concurrent list was also interpreted as a Central power to the exclusion of States under certain circumstances. Thus the fiscal power under the Constitution was effectively centralised over the years. Now, under the Constitution, Commonwealth Parliament may use its taxing powers to achieve a wide range of objectives and over the years, the States

(1) Radio Corporation Pty Ltd. Vs. the Commonwealth (1938) 59 CLR 170,

(2) Minister of Justice (WA) Vs. Australian National Airlines Commission (1976) 12 ALR 17, and

(3) Murphyores Inc Pty Ltd. Vs. Commonwealth (1976) 136 CLRI.

were excluded from two significant sources of taxes on income and on commodities. [1] The Commonwealth Parliament has also been conceded the right to spend money on whatever way it chooses.

With the centralisation of fiscal powers, the Federal Government became strong. However, Commonwealth wanted to be fair to the States and objectives in approach. For this purpose the Australian Loan Council and the Commonwealth Grants Commission were established in 1928 and 1933 respectively.

The illustrative cases thus establish that the history of the Australian Federation has been a history of the gradual growth of the powers of the *Commonwealth Parliament in relation to the States. Many factors social, political and economic, have contributed to this movement. The period since the close of second world war was one of the great significance in the Constitutional history of the country. The war measures increased the influence of the Commonwealth Parliament. The judicial interpretations of the provisions of the Constitution than the framers of the Constitutions contemplated or would have approved.

APPENDIX D

IMPORTANT ARTICLES REGARDING UNION-STATE RELATION

1. Article 73—Extent of excutive power of the Union.
2. Article 153—Governors of States.
3. Article 155—Appointment of Governors.
4. Article 156—Terms of office of the Governor.
5. Article 163—Council of Ministers and discretionary powers of the Governor.
6. Article 164—Other provisions as to Ministers.
7. Article 169—Abolition or creation of Legislative Councils in States.
8. Article 174—Summoning the Legislature.
9. Article 200—Assesnt to Bills, reservations of bills for consideration of the President.
10. Article 248—Residuary powers of legislation.
11. Article 249—Power of Parliament to legislate with respect to a matter in the State List in the National interest.
12. Article 252—Power of Parliament to legislate by consent or adoption.
13. Article 256—Obligation of the State and the Union.
14. Article 257—Control of the Union over States in certain cases.
15. Article 263—Inter-State Council.
16. Articles 268—269 & 270 Appointment of Taxing powers and Sharing of Taxes.
17. Article 271—Surcharge on certain duties and taxes for *the purpose of Union.
18. Article 272—Taxes which are levied and collected by the Union and may be shared between the Union and the States.
19. Article 275—Grants from the Union to certain States.
20. Article 280—Finance Commission.
21. Article 282—Expenditure defrayable by the Union or a State out of its revenues.
22. Article 293—Borrowings by the States.
23. Article 302—Powers of Parliament to impose restriction on trade, commerce, and intercourse.
24. Article 304—Restriction on trade, commerce, and *intercourse amongst States.
25. Article 312—All India Services.
26. Article 355—Duty of the Union to protect States against internal aggression and internal disturbance.
27. Article 356—Provisions in case of failure of *Constitutional machinery in States.
28. Article 385—Effect of failure to comply with or to give effect to directions given by the Union.

INCIDENTALS

1. Fifth Schedule (Part of the Constitution).
2. Seventh Schedule (Part of the Constitution).
3. Planning Commission.
4. N.D.C.
5. Industries.
6. Education.
7. Agriculture—Pricing of Agricultural commodities.
8. Food—Procurement, storage and Distribution. Inter-State Movement.
9. Power—Rajadhyaksha Committee Report, Clearance for Electricity Projects, Electricity Duty.
10. Mines & Minerals.
11. Irrigation— Major Irrigation Projects.

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[1] (i) Dennis Hotels Pty Ltd. Vs. Victoria (1960) (104) CLR 529

(ii) Petrol case (38 CLR 437)
Commonwealth and Commonwealth Oil Refineries Ltd. Vs. South Australia

INDIAN NATIONAL CONGRESS

State Unit- -KERALA

MEMORANDUM

Indian Constitution is federal as well as unitary according to the requirements of time and circumstances. While in normal times, it can be made to work as a federal system, our constitution retains to itself the choice to convert itself into a unitary system. Considering the size of the country and the multitudinal differences in culture, language, and levels of economic and social development of the different regions and people inhabiting them, the Constitution makers have given us "the soundest frame-work" in a federation with a strong centre. Last 34 years is a long enough period for us to take stock of the legislative powers of the union and the states in so far as their working is concerned especially in the field of ever-increasing responsibility of the States in development programmes and social welfare measures. Regional disparities and imbalances have not been completely eliminated during the past era of planning. These imbalances are but one manifestation of the oligarchic and spatial distortions of the Indian political economy that had built themselves up from the very inception of planned development. Without minimising the attempts made in the past to redress these regional imbalances, it is clear that a meaningful effort in this direction has to begin with a clear analysis of the present institutional set up that wields economic power both at the Centre and in the States. *There is concentration of economic power at the Centre;* the economic power of the State Governments and that of the Districts vis-a-vis the States in turn, is seen to be for too meagre in relation to their clearly defined responsibilities. The evolution of public finance over the last three decades presents a picture of concentration of financial resources at the top and funneling of these large quantum at the higher layer and corresponding paucity lower layers where in fact, lie the largest areas of development activities.

2. One of the issues needing immediate solution is the basic problem of Centre-State financial relations. Substantial responsibilities relating to the economic and social well-being of the people are entrusted to State Governments whose command over financial resources for discharging the same is too meagre. Right from the beginning, a rigid compartmentalisation was introduced between resource transfers for meeting the so called continuing or committed revenue expenditure and the resources transfers for the so-called plan expenditure intended for the new projects of the State. The latter is kept out of the scope of the Finance Commissions. So are the entire capital transfers, irrespective of whether they are grants or loans, plan or non-plan. While the Finance Commission is enjoined to probe the scope for better fiscal management and economy in the State's administration, maintenance, developmental and other expenditures, the expenditure by the Central Government is never exposed to the same degree of scrutiny by the Commission. As a result, the Finance Commission has had no role in determining the part that should be retained by the Centre out of the aggregate resources mobilised and the part that should be made available to the States. In actual practice, it is the Central executive represented by the Finance Ministry which has been deciding upon the quantum of resources to be placed within the jurisdiction of Finance Commission for distribution among different States. And the detailed exercises of the Finance Commissions have been essentially confined to devising just and equitable measures for distribution of the given quantum of resources among the different States in the form of share in tax revenues and grant-in-aid. The growth in the transfers of financial resources of a non-statutory nature from the Centre to the States since the inception of planning calls for a critical review.

3. It is indeed surprising that no serious notice is taken of the dead-weight of the artificially accumulated indebtedness of the States to the Centre. In fact, failure to find a solution to this problem has rendered Central Plan assistance to the States without desired results. Loans from the Centre to the States have been consistently well over three-fourths of the aggregate non-statutory transfers. The late Prof. Gadgil made an attempt to sort out the 'plan' component of these non-statutory transfers and found that the 'Plan assistance' in the form of grants was only of minor importance, loans accounting for 78 per cent of the 'Plan assistance'. It may be noted that the rate of growth in the indebtedness of the States to the Centre has been essentially due to the manner in which Plan assistance is presently being dispensed. It is necessary to recognise the fact that a substantial portion of the capital expenditure of a State in its early stages of development would be on infrastructure in the form of roads, bridges, irrigation facilities, buildings for education and health services and so on. They are essential but not capable of yielding direct returns in the manner investment on industries and transport is expected to yield returns. However, the Planning Commission made no such distinction in capital expenditure in so far as the States were concerned and practically the entire plan assistance for capital expenditure in so far as the States were concerned and practically the entire plan assistance for capital expenditure has been in the form of loans, grants being of negligible dimensions. Large sums of money made available to the States for undertaking operations such as famine relief and anti-sea erosion (which create no tangible assets) have been treated as loans to be repaid with interest. The Planning Commission and the Central Government must take these hard realities into account so that full and equal justice is done to every State.

4. The drift in Centre-State capital transactions is seen in the net flows from the Centre to the States, which have fast tapered off and alomst turned negative. It is pertinent to draw attention to the fact that whereas practically the entire "Capital assistance" to the States is treated as loan, irrespective of the purpose for which it is utilised, a distinction is drawn between grants and loans in respect of capital expenditure concerning Centre's own undertakings. For instance in the developmental capital outlay of the Central Government, the entire expenditure on Civil Works is financed out of capital grants, whereas "Central assistance" for similar item of capital expenditure on the part of the States is in the form of loans. Once does not see the reasons why when the purposes of capital expenditure are identical for the economic and social development of the people of the country (and, in the ultimate analysis, all the resources are supplied by the people themselves), that part of the capital expenditure undertaken by the Centre is met out of grants, while the part undertaken by the States through "Central assistance" be subjected to repayment with interest.

5. Again, Central Government's financing of large size industrial undertakings are to a substantial extent through equity participation in those undertakings and in deciding upon the terms of repayment and interest charges for the loans given to those undertakings, due note is taken of the gestation period and the capabilities in earning returns. It only stands to reason that projects of a similar nature undertaken under the auspices of the State Governments should merit identical considerations of financing, instead of "assistance" given to the States for such purposes being entirely in the form of repayable loan.

II

Financial Relations

6. The scheme of devolution envisaged by the constitution was one under which most of the transfer of resources from the Union to the State was through the recommendation of the Finance Commission. The transfer of resources under centralised planning was not visualised at that time. Alongwith the planning process there developed more and more centralisation of savings in the country. Thus the percentage of resources transferred to the State through Finance Commission is only 40 per cent while the transfer of resources taking place *defacto* outside the Finance Commission is around 60 per cent. It is clear therefore that the original scheme of devolution envisaged by the constitution-makers has been over-stopped by resorting to additional mechanisms of resource transfer in practice.

7. In the context of planned development, it is necessary to take an overall view of the financial needs of the State so that concentration of all tax powers with the Centre is avoided by making it possible to share all income taxes and all excise duties. There should be a clear provision for a more equitable distribution of resources between the Union and States in respect of resources other than taxes as well. The experience of the past 34 years clearly shows that the Central Government has taken care to see that the receipts from those sources exclusively reserved for the Centre are increased from year to year while the revenue from those sources or items which are shareable with the States are not increased in the same proportion. Sometimes, the Central Government shows a tendency to grant concessions in the case of shareable items causing the quantum of the shareable pool to go down. The net result is that the discretionary powers enjoyed by the centre in this regard is very often not exercised in the State interest.

8. Over the years, there has emerged a fairly large deficits on the central revenue account. There is a tendency to ascribe the increase in revenue deficits to increasing devolution to State Government. This is not factually correct. The proportion of total central resources transferred to the States over the last 34 years beginning with the First Plan (1951-56) and ending with Sixth Plan (1980-85) shows that there is no increase. It has remained around 32·6% over the years. This indicates the need for efficient exploitation of income-tax, Excise and Customs and better control over expenditure. This aspect of India's finances has remained obscure and escaped public scrutiny, because of the lack of institutional arrangements to over-see them.

9. The Commission may kindly note that the concentration of economic power in the centre and its operation over the last 34 years has resulted in the growth of the centre in the field of fiscal and monetary policies without the States ever getting their adequate share by way of direct participation in the policy formulating process. The present institutional framework does not give the States sufficient role. It is, therefore, necessary to create a statutory body like an "Inter-State Council" with adequate representation to State Governments ensured. Whether the present National Development Council could be restructured to meet the requirements is examined elsewhere in this note.

10. The poorer States are not getting a fair deal in the sharing of total resources. The present devolution mechanism has not bridged the gap in resources and in development between the poorer and richer States. The share of the States in the totality of Centre's resources inclusive of taxes, non-tax and capital has shown a progressive decline from plan to plan. If the State's share was 43 per cent in the First Plan period (1951-56), it was only 31 per cent in the Fifth Plan period (1974-75). The quantum of central assistance to the State's plan is now fixed on an *ad hoc* basis on the advice of the Finance Ministry. It is interesting to note that the resources for the Central Plan has increased from one Plan period to another in response to increasing costs of Central investment and inflationary rise in prices, whereas there is no corresponding increase in the central assistance to State Plans. The high rates of inflation and escalation of costs have made a substantial erosion in the resources of the States. In addition to the unfavourable impact on the resource position of the States on account of Centre's predominant position in the fiscal and monetary policy formulation process, the per capita revenue surplus of States resulting from the Finance Commission's award has shown a very wide divergence. The minimum surplus per capita is Rs. 15 in the case of Orissa and maximum Rs. 676 in the case of Haryana. The

resulting ratio between the lowest and the highest per capita surplus is one to forty-five. An examination of the recommendation of all the Finance Commissions would show that the awards have always helped to make the richer States richer. In the existing design of things the States with large non-plan revenue surplus will have a strong and large resources base for the ensuing Five Year Plan. The size of the State Plan is fixed on the basis of the available central assistance determined by the modified Gadgil formula to which is added the States' own resources including the revenue surplus arising out of the Finance Commission's award. The present system of inter-state allocation of resources through the Finance Commission and Planning Commission has in practice resulted in an unhappy state of affairs breading in the process a large number of irritants in the Centre-State Financial relations. The States which have the benefit of larger surpluses from the Finance Commission award are *ipso facto* allowed to have larger State Plans. This is clearly an unacceptable situation. The Finance Commission and the Planning Commission should work in unison and on the same data-base which is not unfortunately the case today. Any well thought out formula for devolution of resources from the Centre to the States should be able to ensure that all States should have the same amount of per capita revenue surplus at the beginning of every plan period. But the total sum to be earmarked for devolution during a plan period both through the award of the Finance Commission and the Planning Commission should have some live relation with the resource gap assessed on the basis of a more scientific data base. The present annual exercise of the Planning Commission to fix plan outlays and Central assistance each has become a mechanical exercise bureaucratic in form and arithmatic in content. Recently, it is seen that as much as 50 per cent of the Central Plan assistance is allocated outside the Gadgil formula. The balance amount is distributed purely on the exercise of central government's discretionary powers. Thus it is clear that the transfer of resources, both statutory and discretionary on the advice of the Finance Commission and Planning Commission have not promoted either efficiency and economy in expenditure or reduced disparities in public expenditure among the States. This is because the devolution has been organised not on the basis of a well co-ordinated examination and study of the specific needs of the committed expenditure or of development.

11. Over the last three decades, there has grown up a degree of concentration of savings in the hands of Central financial institutions like LIC, GIC, UTI, IDBI and IFCI. This has become in effect the strong arm of the Central Government in the working of which the States have not been intimately associated. On the other hand, the dependance of the States on these institutions for investment in agriculture, industry, housing, water supply and urban infrastructure is quite large. In the circumstances, while the total savings available in the community have to be shared between the public and private sectors, it has to be ensured that the share mobilised by the public sector has to be distributed between the Centre and the States and their respective public undertakings.

12. There is a clear trend notice over-time highlighting a decline in the State share of total Public sector resources which is largely due to the sharp decrease in the transfer of capital resources. In this context, it may be noted that most of the States suffer on account of the growing indebtedness and overdraft problems. The States do not possess elastic sources of revenue and the repayment of loans therefore becomes a major burden on them. The States also find that there is a substantial erosion of resources due to grant of instalments of additional dearness allowance and other items of expenditure related to cost escalation. The State's resources are thus squeezed between the increasing demands both on the non-plan and plan leading to over-drafts. Recently, the difficulties are multiplied to a significant extent by the growing tendency on the part of some State Governments to indulge in non-plan schemes which are non-productive, inflationary and welfare oriented. There are a whole variety of such items of expenditure which are growing in number and spread. The real answer to this situation lies in ensuring price stability. As things are, the Central Government alone is concerned with the price situation, while in the management of prices and costs and in the initiation of the inflationary spiral, the part played by State Governments is also becoming a significant factor next only to that of the Central Government. Therefore, there is an additional reason why the developing situation should be continuously studied concurrently both in respect of the design of a development strategy and the instruments of policy formulated for their faithful implementation. Direct participation of the State Governments alongwith the Central Government in a common forum is therefore needed. The NDC with the Planning Commission as its Secretariat can be such a forum. Such a body can also discuss and decide the market borrowing policy and the pattern of distribution of the proceeds between the Centre and the States. One of the functions of this body would be to undertake continuous studies on Centre-State finance which, of course, will include the review of the revenue and the expenditure of the States and the Union Government. Such a scrutiny is bound to create a more desirable climate for avoidance of waste and economics of expenditure. This would also involve modernisation of accounting procedures of Government which would help it to reflect the correct position at any given time. This would immediately call for modernisation through computerization. Timely reports presented to State Governments, Central Government and Estimates Committees would go a long way to enable people's representatives at all levels to go into wider aspects of policies and programmes and thus act as a watch dog on plan schemes and programmes.

III

Planning

The concrurrent list of the Seventh Schedule of the Constitution has recognised "economic and social planning" as an instrument of vital social and economic change which the Central Government may initiate in consultation with the States. Economic Planning has to have a national perspective, national

priorities, inter-sectoral and inter-regional balance. Planning has to be, therefore, a national endeavour ensuring in the process the full commitment of the States in the primary task of designing development strategies and policy instruments. Planning, therefore, has to be total and cannot be partial. It aims at total social and economic transformation which will leave no room for any hurried or superficial treatment.

13. A review of the attempts by the Planning Commission to extend its role and functions at different levels of Planning and implementation starting from the Union Government to the States, the District, Blocks and Panchayats—would clearly show that they were fighting a loosing battle all through. The efforts to streamline the Planning machinery through a plethora of expert committees, Government orders and a system of subsidies and persuasions did not, over these 35 years achieve much to our credit. Planning process is getting more and more bureaucratised, with the result that the necessary means for the perpetuation of the old order is placed in the hands of the traditional centres of power.

14. The Planning machinery at the Centre, the State, District and the Panchayat levels have to be organically linked in a two way process-top-down and bottom up-in identification, formulation, implementation and evaluation of development schemes. The financial resources to set the physical resources in motion could be provided through a channelisation of (i) profits of pulic sector industries, (ii) contribution of the pleasantry in the form of delivery to the State of part of their products at reduced prices, (iii) nationalisation and State Control of all the commanding heights of the economy, (iv) increased taxation and State loans, and (v) deficit financing. It may be noted that in the management of these important levers of the economy, the Planning Commission and the Planning machinery in the State should have a commanding role. In designing policy instruments in the above areas, the National Development Council ably supported by the Planning Commission and the State Planning Boards will have to play a direct and innovative role. The Distribution control and responsibility in State owned industries, incentives in the new industrial order, the role of trade unions, measures for facilitation social mobility are all important areas where relevant policies and machinery for implementation have to be built up by both the centre and States as a Joint Co-operative venture.

15. In actual practice, the Planning process as evolved and implemented by use has resulted in a stereo-types system of project preparation covering the length and breadth of this huge country with its immence diversities. This makes the Planning process loose its responsiveness to specificity of regional and local situations. This also leaves out from intimate study of the vast development potential of different planning regions represented by the States. The only remedy is to democratise the planning system giving greater emphasis on local initiative paving the way for better national integration. The detailed sectoral planning may be left to the States as advised by the Administrative Reforms Commission. The Central Government should be the supreme co-ordinator providing initiative and leadership to the States. As for as subjects in the State list are concerned recently there is a tendency to increase the number of centrally sponsored schemes by Central Ministries in this area on the plea that some schemes of national importance have to be taken up and implemented all over the country which will call for initiative, direction and co-ordination by the Centre. The experience is, on the other hand, that these increasing number of centrally sponsored schemes only tend to distort the State Plan priorities. In cases when it becomes absolutely necessary to take up a few schemes, it should be only on the basis of 100% Central assistance and not on the basis of matching contribution. Both at the Centre and in the States the Planning, monitoring and evaluation organisations have to be build up as fullfledged progressional organisations. While Government body could be used for concurrent evaluation, independent centres of study can be made use of in the evaluation of major Plan Programmes both at the Centre and in the States. This would help to ensure unbiased reports on performance.

16. The State Planning Boards/Committees/Commissions have been created in few States whereas in a majority of States planning is still left to the respective state planning departments of the secretariat. These bodies today are not endowed with much of a status in the heirarchy even though they are contributing a grat deal in collecting data, initiating research studies and formulating development programmes. Every often a Five Year Plan that gets formulated for a specific time-frame differes in several respects from the actual plan that gets implemented during the same period. The reason is that a large number of new shemes and programmes are sanctioned in each year's plan. Budget making a serious erosion either in resources or priorities or sectoral balances. In making such changes in the plan, the Planning Boards do not seem to play any role.

IV

The Machinery for Planning and Implementation

17. From the very inception of Central economic planning in India, it was recognised that there is need for building up institutional arrangements for plan formulation in respect of economic activities which call for community involvement at different levels. Form the selection of projects in a sector and preparation of preliminary reports to the allocation of priorities between them and their implementation through proper phasing. there are a whole series of studies, consultation with interest groups and mobilisation of mass participation that have to be ensured. is usually during these various stages through which a project or a programme has to pass that scare appear and mar the total effects in the end. Defective conception, wrong appraisal and faulty implementation may damage even otherwise viable schemes. Governments whether at the Centre or in the States should recognise the social and administrative costs of directly conceiving and running a number of development programmes—small and big—from the headquarters for a large number of territorially dispersed and disadvantaged sections of

society by delegating responsibilities for formulation of projects, concurrent evaluation and monitoring and implementation to lower eschelons. The Central Government or the State Government concerned will be able to define strategies, introduce desirable changes, where necessary, on the basis of increased avenues for learning from experience. This will help to accomplish the desired economic and social objectives. It frequently happens that several Governmental or non-governmental agencies participate in a project during its various states which makes it necessary to define clearly the relations between them and the type of administrative arrangements necessary to co-ordinate their activities and avoid points of conflict. The greatest harm being done presently to a project is through the avoidable delay and waste caused by duplication of functions at different levels of administration. Bureaucratisation is, very often, in the nature of shifting responsibilities to others, no matter what it costs in terms of time and manhours wasted. The speed and promptitude with which developmental tasks are attended to and carried out will generally depend on the thoroughness with which clarifications are sought at the very inception and the care the executive devotes to the choice of presonnel and their continuity on the job. A hold up in construction activity due to delay in administrative sanction has extended in the case of innumerable projects the period of their investment maturity. The experience of our past Five Year Plans points out clearly the need for introducing maximum decentralisation in planning and administration and financial flexibility. Careful planning by Central and State Governments therefore have to ensure that various delivery systems function in synchronisation and that enlargement and improvement are well co-ordinated. The marked inequalities in ownership of land and other scarce commodities have to be narrowed and the benefits ensured to reach the poorer households, notwithstanding their pitiful asset position.

18. It is high time, therefore, that politics and administration recognise the pertinence of decentralising certain planning and implementation functions so that the Central Government and State Governments in turn will be able to concentrate more on emergent tasks of drawing up development strategies, shaping up of policy instruments, initiating high powered research, co-ordination and more effective supervision which would help sustain improved quality of service. In fact, the parting with powers relating to increasingly routinised aspects of development management, would not involve any loss at all either to the Government at the Centre or the States. The elective or administrative institutions at the respective levels of political power should be left free to focus their sights on the managemet of the challenges of development administration in areas such as inter-sectoral balances, industrial growth, universalisation of literacy, preventive medicine and hygiene and Planning for the strategy for a fuller exploitation of natural resources.

19. It is in this context that the Commission should review the series of attempts made by the Planning Commission to decentralise the Planning process to the States, regions, districts and lower levels. In 1962, the Planning Commission suggested to the States that they should set up State Planning Boards to help them in the preparation of long term perspective and medium term plans, to recommend policies and measures for realisation of major social objectives, to evolve criteria for location of major projects and to assess the costs and benefits of alternative proposals. The expectation was that all State Governments will fall in line with this national efforts, since these expert bodies will be endowed with sufficient status and authority to advise State Cabinets, Secretaries and Heads of Departments on all matters of Planning and implementation within the national policy and plans frame work. But nothing substantial was done in any of the States till 1972. The study team of the Administrative Reforms Commission therefore found it necessary to make a strong case for State level planning bodies with sufficient authority and status. The study team found that wherever Planning Boards or Committees had been constituted their functions were only vaguely defined. Membership of those bodies range from 5 to 65 with very few exports involved. These bodies were serviced by the State Planning Secretariates which did not have any technical expertise to boast of. The study team therefore concluded that none of the Board meetings were constructive or fruitful. Following the recommendations of the ARC, the Planning Commissions again suggested a model State Planning machinery. According to the suggested model the apex body (The State Planning Board) should have the Chief Minister as the Chairman, Finance and Planning Ministers and experts representing certain disciplines as members. They were to be supported by Steering Groups chaired by technical experts preferably from outside the Government who are also members of the apex body. A full-time non-official should be the Deputy Chairman of the apex body, and the Planning Department to be organised into functional units for perspective planning, plan formulation, plan monitoring and evaluation, project formulation and appraisal. As an incentive for the States, the Planning Commission agreed to share two-thirds of the expenditure involved.

20. Most of the States took advantage of the Central subsidy and set up large or small Planning bodies as the case may be. If one were to apply the search for excellence as the test of excellence, none of these boards could boast of having attracted the desired level of expertise or even administrative experience. Most of the Boards work only as appendages of Planning Departments advising them in the formulation of medium term plans. These Boards generally were not involved in annual plan formulations or relevant discussions with the Planning Commission. It may be seen that in the formulation of Annual Plans and subsequent discussions in the Planning Commission which alone had any operational significance, the Planning Boards were religiously kept at a distance. No wonder, these bodies did not grow up in prestige and status within the State or vis-a-vis the Planning Commission.

The need for decentralised planning in the States

21. The extent and form of democratic decentralisation of planning and plan administration have varied from state and there have been ups and downs in the earnestness with which this has been pursued.

Many states started as a first step to renew the old concept of gram-panchayats and gramsabhas so that peoples' involvement in their affairs at the grass-roots can be started. The community development programme and the National Extension Service helped to focus the need for decentralisation further.

22. The Balwantarai Mehta Committee was appointed in 1957 to assess the extent to which the C.D. movement has succeeded in utilising local initiative and in creating institutions to ensure continuity in the process of improving economic and social conditions in rural areas. This committee argued that there should be administrative decentralisation for the effective implementation of development programmes and the decentralised administrative system should be under the control of elected bodies since they felt that development cannot progress without responsibility and power. Development can be real only when the community understands its problem, realises its responsibilities, exercises the necessary powers, through its chosen representatives and maintains a constant and intelligent vigilence on local administration. With this objective they recommended an early establishment of statutory elective local bodies and devolution to them of the necessary resources, power and authority. Unfortunately nothing very much was achieved on the ground even though sporadic attempts were made to set up Panchayati Raj Institutions in most parts of the country. In fact, the Panchayati Raj Institutions were rarely given an opportunity to take up planning or implementational work on a sizeable scale. The Panchayati Raj experiment gradually lost ground due to the weakening of administrative will.

23. During the IV Five Year Plan period the Planning Commission indicated to the States' the need to formulate district plans. Recently the planning Commission has offered financial assistance on a fifty-fifty matching grant basis for setting up the district level planning machinery. Many states have set up planning units at the district level even though they differ in form and content from state to state. The differences are to be attributed partly to the varying interests evinced by the state leadership in decentralised planning and partly to the absence of uniformity in the Panchayati Raj institutions which provide spatial and political base for decentralised planning. But the devolution of power and authority to the district or lower level planning bodies has not taken place so far.

24. The next attempt at decentralisation was in 1978, when Ashok Mehta Committee on Panchyati Raj Institutions was constituted. The government resolution clearly stated that 'the Government considers that the maximum degree of decentralisation both in planning and implementation is necessary'. As a continuing process in the development of necessary. As a continuing process in the development of ideas on planning from below and multi-level planning, the Ashok Mehta Committee found that at the district level the data base is better and expertise in these various departments is sufficiently of a high order. The assessment of total resources, the credit availability and also the formulation of strategy convering the several blocks could be done at the district level. The Dantwala Working Group on Block level Planning referred to this coordination, integration and the need for harmonisation of the block plans with the district plan since 'the preparation of Block and District Plans will be part of the same exercise'. The emergence of the need for executing a very large number of location of specific projects on numerous action point s at a great distance from the state headquarters would emphasise the advantage of planning at the district level. Progress has also been achieved in institutionalisation and standardisation of techniques and procedure for district level planning.

25. Recently, the Economic Advisory Council appointed by the Prime Minister was asked to go into the question of decentralised planning and administration. They have examined the question denove and have recommended on intermediate tier of authority between the state and the districts. The proposal is that this may be introduced at the level of a cluster of four contiguous districts on an average falling within the same agro-climatic regions large enough to provide some of the advantages of scale where they are essential and yet not so large as to lose the advantages that come from compactness and easy accessibility. Decentralisation of development planning and administration within the state could then take the form of devolution of specified functions to the Divisional Development Authorities (DDA) constituted for the purpose and through them to Zilla Parishads and Panchayat Samities.

26. The main objective of decentralised development planning should be in fact to visualise possibilities and potentialities concretely within each region and sub-region in a systematic and practical manner. This would also help to build up the infrastructural facilities required, and assist in every way the changes in technology and organisation that are needed for a broad-based process of economic and social transformation.

27. The foregoing overview of planning processes, policy instruments and institution-building should serve the purpose of highlighting the serious shortcomings endemic to the system of planning in India. There was no serious attempt to relate the process of economic development and planning to resource endowments and needs of the people, living and working at the grass roots level. The result was that we could not tap the full potentialities of specific regions for growth and development in terms of increased agricultural production, development of minor irrigation, small scale industries, manpower development and resource mobilisation. Planning to be effective has to be planning from below as against planning from above.

28. Over the years there has been a visible tendency to make greater in-roads into the powers of the states with the result fissiparous tendencies are allowed to develop endangering the concept of unified India where there will be an assurance of the fullest development of the democratic aspirations and the distinctiveness of the people of the different states. At the same time, the devolution of powers should not be such that it will lead to a weak centre either-Different states and different regions within state

are experiencing problems of growth which are specific to the differences in the levels of development of these states or regions within states. A dead uniformity therefore is not conducive to the evolution of a relevant and workable solution. Co-ordination could be best assured in the sphere of planning and economic affairs through only new and innovative institution building. In our constitutional frame work the need for constant consultation and discussion among states *inter se* and between states and the union has manifested itself almost from the beginning of the working of the constitution. The Five Year Plans are a continuing major exercise in this process. Other closely related problems are power generation, regulation of industries and trade, assured distribution of food and essential articles, central financing institutions, procurement and supply of raw materials and marketing arrangements etc. All these matters which are of common concern to the states should be brought within the purview of an inter-state council as envisaged by Art. 263 of the constitution. This Article has been pressed into service only for setting up Central Councils of Health, local self Government, National Integration Council, Chief Ministers Conference etc. There are proposals to create All India Institutions like the National Loan Corporation, Nation Credit Council and National Economic Council. Though a lot of coordination is necessary in the matters affecting the interests of the States and the Centre, there is no need to create a number of independent bodies. Instead it should be possible to make the existing National Development Council a statutory body under Article 263 of the Constitution. It must be endowed with wide powers in matters relating to Centre-State relations covering the entire spectrum. The States could be effectively represented on the N.D.C. The National Planning Commission must be made to function as the Secretariat of the National Development Council. The Planning Commission should be so structured so as to enable it to take up problems for study and research on reference from respective State Governments. The NDC should meet at fixed intervals say at least once in every quarter. The meetings should be made more purposive so that the Chief Ministers of the States are able to study all plan documents and other important problems in detail and take decisions on them. The N.D.C. and the Planning Commission could thus be transformed into a strong instrument of change and development not only of the Central Government but also equally of the State Governments paving for better national integration. This will democratise the planning system and decentralise it, while at the same time giving the Central Government necessary regulatory and corrective authority. The process of resource allocation will thus be made to sub-serve new economic priorities which are implicit in a dynamic and growing economy.

29. The State Governments on their part may be advised for the same set of reasons to decentralise the Planning process to regional level, district, block and panchayat levels by an Act of Legislature so that the process will be insulated from the instability and fragmentation likely to prevail in the present political situation. The State Planning Boards should be built up as a Centre of expertise and administrative experience. Such a body can naturally function as the Planning Secretariat to Government which alone can ensure the required status and authority to the Board.

30. The Sarkaria Commission will do well to recognise the dialectical and integrative processes involved in development planning. The institutions built up at different levels in both the Centre and the States should represent legitimate authority so that they are enabled to apply sanctions at all strategic points of our social and economic life. A special machinery legitimatised and protected by the Constitution along can provide the required level of leader ship and credibility.

INDIAN NATIONAL CONGRESS (I)

State unit-Madhya Pradesh

MEMORANDUM

मध्यप्रदेश कांग्रेस कमेटी (इं) का यह निश्चित मत है कि केन्द्र राज्य सम्बन्धों के लिए जो प्रावधान संविधान में है उनमें कोई आधारभूत परिवर्तन की आवश्यकता नहीं है। संविधान में इन सम्बन्धों में समय समय पर आने वाली परिस्थितियों को झेलने के लिए पर्याप्त लचीलापन है।

2. कांग्रेस कमेटी का यह मत है कि संविधान में इस बात की व्यवस्था है कि केन्द्र और राज्य राष्ट्र के प्रति अपने उत्तरदायित्वों का निर्वाह और एक दूसरे के प्रति अपने कर्तव्यों का निर्वहन भली भांति कर सकते है। इसी तरह कानून बनाने की जो शक्तियां संविधान के सातवें शिड्यूल के अन्तर्गत केन्द्र और राज्यों में बांटी गई है, उनमें भी परिवर्तन का कोई आवश्यकता यह कमेटी महसूस नहीं करती। परन्तु इस बात की आवश्यकता है कि ऐसे कानून जो केन्द्र के पास सहमति के लिए भेजे जाते हैं तो केन्द्र उनका परीक्षण कानून की संवैधानिक वैधता को ध्यान में रखते हुए करे, ताकि आगे चलकर न्यायालय द्वारा वह कानून निरस्त नहीं किया जा सके।

राज्यपाल की स्थिति

3. राज्यपालों के जो अधिकार केन्द्र और राज्यों के सम्बन्ध में संविधान में निहित है, वे पर्याप्त है और उनमें परिवर्तन की कोई गुंजाईश नहीं है। कुछ अपवादों को छोड़कर राज्यपालों की अभी तक की जो भूमिका रही है वह संविधान के आशाओं के अनुरूप रहा है, और इनके क्रियाकलापों में राष्ट्रीय एकता और सुरक्षा की भावना दृष्टिगोचर होती है।

4. जहां तक केन्द्र और राज्यों के प्रशासकीय सम्बन्धों का सवाल है कांग्रेस कमेटी का यह निश्चित मत है कि देश की एक सुदृढ़ केन्द्र की आवश्यकता है जिसके निदेश पूरे राष्ट्र पर लागू हों और इस उद्देश्य की प्राप्ति के लिए संविधान के आर्टिकल 256, 257 और 365 में जो प्रावधान दिये है वे जरूरी है। आर्टिकल 365 का रहना इसलिए और भी आवश्यक है कि यदि इसे हटा दिया जाता है तो आर्टिकल 256 के अन्तर्गत केन्द्र द्वारा दिये गये निर्देशों का राज्यों द्वारा पालन न करने पर केन्द्र के पास ऐसी कोई शक्ति नहीं रह जायेगी, जिसके द्वारा केन्द्र उन निर्देशों का पालन करा सकें।

5. इस तरह संविधान के सातवे शिडूल्य के अन्तर्गत जो विषय राज्यों को दिये गये है और सम्वर्ती सूची के जिन विषयों पर केन्द्रीय अभिकरण द्वारा कार्यवाही की जाती है उनमें भी परिवर्तन की आवश्यकता नहीं है और इस सम्बन्ध में राज्यों की स्वायत्ता के नाम पर जो आवाज उठायी जा रही है, वह उचित नहीं है। परन्तु ऐसो अभिकरणों की भूमिका के सम्बन्ध में समय समय पर राज्य शासन और केन्द्र के बीच में विचार विमर्श होना चाहिये। अखिल भारतीय सेवाओं, के सम्बन्ध में कांग्रेस कमेटी का विचार है कि इसने राष्ट्रीय एकता मजबूत करने की दिशा में महत्वपूर्ण भूमिका निभायी है।

6. जहां तक केन्द्रीय आरक्षित बल को राज्यों में ड्यूटी पर भेजने का सवाल है यह कार्यवाही विना किसी अपवाद के राज्य शासन की सहमति से ही की जानी चाहिये। पग्न्तु इसके साथ ही राष्ट्रीय सुरक्षा एव अखंडता को खतरा पैदा होने को परिस्थितियों के निर्मित होने पर केन्द्रीय शासन को ऐसे आरक्षित बल को राज्यों में भेजने का अधिकार अवश्य हो होना चाहिये।

7. जहां तक रेडियो, टेलीविजन को संविधान की सम्वर्ती सूची में शामिल करने का प्रश्न है, कमेटी का यह मत है कि इसको केन्द्र के हाथ में ही होना चाहिए।

आर्थिक सम्बन्ध

8. केन्द्र और राज्यों के बीच में जो आर्थिक सम्बन्ध है उनमें परिवर्तन की कोई आवश्यकता नहीं है। संविधान में इस बात की पर्याप्त व्यवस्था है कि राजस्व आय का बटवारा केन्द्र और राज्यों के बीच बराबर-बराबर हो और कमजोर राज्यों को केन्द्र से पर्याप्त सहायता प्राप्त हो, परन्तु इस सम्बन्ध में कमेटी नीचे लिखे तोन सिद्धांतों की ओर कमीशन का ध्यान आर्कषित करना चाहती है :—

(अ) राज्यों को इस बात का समुचित अवसर मिलना चाहिये कि वे अपने स्रोतों का दोहन कम से कम समय में पूरे तौर से कर सकें।

(ब) ऐसे राज्य जो अपनी प्राकृतिक सम्पदा का दोहन बराबर नहीं कर सके है, उन्हें ऐसा करने के लिए केन्द्र से पर्याप्त सहायता मिलनी चाहिए।

(क) राज्य में तथा राज्य के भीतर विभिन्न अंचलों में जो असंतुलन है उसे दूर करने के उपाय किये जाने चाहिए।

9. जहां तक राज्यों के वसूल किये गये करों के हिस्से का सवाल है, कमेटी यह चाहती है कि कुछ केन्द्रीय करों जैसे आयकर आदि का और अधिक हिस्सा राज्यों को मिलना चाहिए।

10. जहां तक राज्यों के बीच आय के बटवारे का प्रश्न है इस सम्बन्ध में सातवे वित्त आयोग द्वारा जो फारमूला अपनाया गया है, उसके ही अनुकूल योजना को सहायता राशि भी दी जानी चाहिये। इस फारमूले के अन्तर्गत आय के वितरण में जनसंख्या का 10 प्रतिशत, राज्यों के क्षेत्रफल का 15 प्रतिशत प्रति व्यक्ति आय का 25 प्रतिशत, आय के साधनों का 25 प्रतिशत और राज्य की गरीबी का 25 प्रतिशत के हिसाब को ध्यान में रखकर आय का बटवारा किया जाना चाहिए। इसके लिए एक महत्वपूर्ण सुझाव यह भी है कि आर्थिक नीति तैयार करने के लिए केन्द्र और राज्यों के वित्त मंत्रियों को सम्मिलित होना चाहिए। इस तरह संविधान की धारा 269 के अन्तर्गत जो टेक्स केन्द्र सरकार लगाती है और उनका कुछ भाग राज्यों को देती है, ऐसे टैक्सों को कुछ सीमा तक लगाने के अधिकार राज्यों को भी मिलना चाहिए।

11. कमेटी का यह मत है कि सूखा पडने की स्थिति में केन्द्र सरकार से प्राप्त राशि को खर्च करने की अनिवार्य तिथि 31 मार्च के स्थान पर 30 सितम्बर होना चाहिए, क्योंकि 30 सितम्बर तक हर हालत में सुखा पीडीत जनता को राहत पहुंचानी होती है। इसके अलावा खरीफ की फसल सितम्बर माह के आ जाने के बाद सूखे की स्थिति में कुछ राहत मिल जाती है।

12. आदिवासी उपयोजना में केन्द्र सरकार द्वारा जो सहायता राशि राज्यों को दी जाती है, कमेटी की राय में, वह पर्याप्त है। किन्तु इस सम्बन्ध में योजना आयोग जिन क्षेत्रों के लिए और जिन मदों के लिए यह राशि उपलब्ध कराता है, उस पर राज्यों की सलाह योजना आयोग को निश्चित रूप से लेनी चाहिए। अभी तक जो केन्द्र द्वारा प्रवर्तित योजनाये है उनका खर्च केन्द्रीय सरकार केवल पांच वर्षों तक देती है, व्यवहारिक अनुभव के आधार पर इस सीमा को बढ़ाकर कम से कम 10 वर्ष किया जाना चाहिए।

13. जहां तक उद्योगों को लाइसेन्स देने के अधिकार का प्रश्न है, केन्द्र के पास केवल उन उद्योगों को लाइसेन्स देने के अधिकार होने चाहिए जो राष्ट्रीय सुरक्षा की दृष्टि से आवश्यक उद्योग हों। शेष सभो उद्योगों को लाइसेन्स देने का अधिकार राज्यों के पास ही होना चाहिए। इसी तरह कृषि के मामले में इसे केवल राज्यों का विषय नहीं माना जाना चाहिए, क्योंकि कृषि के सम्बन्ध में जो अनुसंधान आज के युग में केन्द्रीय धरातल पर ही होते है, उनके लिए राज्यों के पास आवश्यक सुविधाएं उपलब्ध नहीं है कृषि उद्योगों के उत्पादन के लिए जो मूल्य अभी सम्पूर्ण देश के लिए निर्धारित किये जाते है, वे हर राज्यों की स्थानीय परिस्थितियों को ध्यान में रखते हुए अलग अलग तौर पर किया जाना चाहिए, क्योंकि पूरे देश के लिए एक समान कोमत तय करना व्यवहारिक नहीं है।

14. फौजी छावनी क्षेत्र में जो नागरिक (सिविल) आबादी रहती है उनकी नगरीय व्यवस्था स्थानीय नगरपालिका परिषद या नगरपालिका निगम द्वारा की जानी चाहिए।

15. उपरोक्त सुझाव में संक्षेप में मध्यप्रदेश कांग्रेस (इं) कमेटी द्वारा इस दृष्टि से मूलतः प्रस्तुत किये जा रहे है कि केन्द्र और राज्यों के बीच सम्बन्ध और अधिक मधूर बनें और केन्द्र भी पर्याप्त रूप से ऐसा शक्तिशाली हो जाएं कि देश की अखंडता और सुरक्षा एवं राष्ट्रीय एकता अक्षुण बनी रहे।

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INDIAN NATIONAL CONGRESS

State Unit—Andhra Pradesh

MEMORANDUM

General

The Constitution lays down in its very first article that India is a union of States. Indian Constitution is, therefore, federal in its nature, concept and functioning although in certain aspects it may exhibit an unitary character; in fields like Defence and Foreign Affairs wherein it would not be possible in infuse the theory of federalism or dual responsibility.

1.2 The underlying principle in framing the Constitution is that there should be a strong Centre. States have also been given almost autonomous powers in certain fields exclusively reserved for them. The Constituent Assembly unanimously resolved that Indian Constitution throws more responsibility on the Executive though there may be less stability. Eminent constitutional experts unequivocally held that the Indian Constitution is basically sound. The very fact that the Indian Constitution stood the test of time for more than 35 years should strengthen this view that basically the Constitution does not need any changes of far reaching consequences.

1.3 In any democracy, the functioning of the Executive depends much upon the strength of the Opposition. Unfortunately, even after 35 years of independence, we could not develop a two party system on all India basis to govern the Country. When a single party rules both at the Centre and States there was no friction nor was there any occasion to put any of the contraversial provisions in the Constitution, to test. It is only when the Regional parties sprang up and began to form Governments at the State level, without any all India character or adequate representation in the Parliament, the bogie of State and Central relationship, either administrative, legislative or financial have been raised.

1.4 A close analysis of the functioning of the regional parties would, more than confirm that this cry was raised merely to cover their deficiencies at the State level and in that they found that throwing the blame on the Centre is a convenient way of escaping from their short-comings and failures. It is incorrect to state that all this was due to lack of adequate provisions in the Constitution or the Constitution has vested the Centre with more powers and that the Centre has become an hindrance to free functioning of the State Government. One should not forget the fact that historically the Country was torn to pieces when it was not integrated or united. It is only during the British regime that the entire Country was brought under a single authority, although for practical reasons the Britishers encouraged Princely States but at the same time they had absolute control over their functioning. History, therefore, taught us that if India is to be integrated and united there should be a strong Centre. There should be no doubt that when once Centre becomes weak, the Country will again be divided leading to balkanisation of States. It is with this historical perspective that late Sri Sardar Vallabhbhai Patel took up the onerous task of integrating all the Princely Indian States and made them part of the Indian Union in a remarkably short time and to enable us to prescribe for ourselves this Constitution which is federal in nature.

1.5 Before thinking of any changes in the Constitution to vest more powers in States to make States more autonomous and more independent of the Centre, we should not forget our past history, the trials and tribulations that the Nation underwent during the past 5 or 6 centuries. Emotionalism or Parachronism approach cannot and should not be encouraged so far as the integrity and unity of the Country is concerned. The option, if any, should be to make Centre still stronger.

1.6 Unity in diversity can only be achieved through various regions, religions, languages, ethnic groups and weaker sections mainly fall in line with the doctrine of the concept of "One India."

It would therefore be necessary to see that all such groups are given equal opportunity in the economic and political fields not as a matter of charity but as a matter of right by all the power weilding institutions, Central and State Government and local authorities etc., so as to usher in an egalitarian society.

Any unrest in any part of our country due to non-fulfilment of the above-mentioned ideals has to be dealt economically and politically and not be deemed as any constitutional crisis. We are already aware of the damage the theory of the 'Sons of Soil is causing directly or indirectly in our body politic today. If a persons life and property are not safe if he does not belong to a particular State, while being an Indian citizen, where will it lead to except to chaos.

1.7 Coming to the functioning of the present Constitution it is difficult to even agree that the States have no autonomous powers under the existing provisions. In fact our experience in this State, and should also be the experience in other States ruled by other non-Congress Government under regional parties, which have no political philosophy or all India character and which are not controlled by an All India Apex Political body, the Governments or Chief Ministers of the States have enoromous powers under the Constitution either to use them benevolently or mis-use them. *Ex-facie* a glaring fact that strikes any reasonable person is whether at all the Centre has got adequate powers to check the States when constitutional provisions are mis-used by the States. The Constitution helped a State Govt. to stall the election of the Chairman of the Legislative Council, which is the highest Legislative body in the State and run that body with a nominated person, till such time the Government in power gets majority to elect the Chairman. The same Constitution enabled another State Government to abolish the Council itself when it found that the Government has no majority in the Council. It also enabled the State Government to pro-rogue the Legislatures while they were in session without even letting the Presiding Officer and much less the Legislature know about it, while the agenda was still to be transacted. The same Constitution is helping the State Government to mis-use the administrative machinery for political or party purposes. In all these spheres,

though the instances may look smaller, yet constitutionally there is no provision to check the Governments in power who are bent upon mis-using the powers or giving up well laid convertions. After all a democracy functions well whether it be under a written constitution or an un-written constitution, on the development of conventions and following conventions as if they have the force of law.

1.8 The primary function of the Legislative Assembly is to enact laws and to lay down policy for the Executive to carry out. A stage has come when the functioning of the State Governments have proved beyond doubt that even this vital function of the Legislative Assembly can easily be circumvented through promulgation of ordinances. Instances have become more, when ordinances have not been enacted into law by the Legislative bodies for years. When the Legislatures were in session also constitutional provisions have been completely ignored and ordinances have not been got ratified by the Legislatures. The most abnoxious system of re-promulgating ordinances was resorted to, rather than seeking the ratification by the Legislative bodies.

1.9 In the light of the above background and in the light of the working of many of the State Govt., we are of the firm view that the Constitution does not require basically any change. Our reply to question 1.5 in Part I is in the affirmative subject to the detailed reasons given against appropriate questions in other parts. We totally agree that the difficulties, issues, tensions and problems which have arisen in the Union State relations are not due to any substantial defect in the Scheme and fundamental fabric of the Constitution.

Legislative Relations

2.1 We strongly feel that Parliament should have basic authority to form a new State or to alter the boundaries, to increase or diminish the areas of any existing States and the existing provisions in the Constitution do not require any change.

2.2 We feel that the existing distribution of powers between State Legislatures and Parliament are adequate and are working satisfactorily. There are adequate provisions in the Constitution for ratification by State Legislature whenever the Centre wants to take up legislation of an all India character, on subjects in the State list of the Seventh Schedule to the Constitution.

2.3 Article 213 of the Constitution empowers the Governor to promulgate ordinances which shall have the same force and effect as an Act of the Legislature. This article also stipulates that every such ordinance shall be laid before the Legislature and shall cease to operate after the expiration of 6 weeks from the re-assembly of the Legislature, i. e. such ordinances shall be enacted as Acts of the Legislature within 6 weeks from the date it was laid down before the Legislature. Under the existing provisions ordinances will be placed before the Legislature only when the Legislature was summoned to transact normal business. Where the Legislature has not ratified ordinances and enacted them into Acts of the Legislature, the Ordinances cease to be in force but the same ordinances can be re-promulgated again after the Legislature is prorougued. It was the experience in the State during the last 2 years when ordinances were placed before the legislature but no effective steps were taken by the Govt. to get them enacted. With the result the ordinances lapsed and again re-promulgated after following the due procedure. It clearly shows that even though the Legislature would not be in favour of promulgating such ordinances, the Executive can circumvent the Legislature by re-promulgating the ordinance, whenever it suits their convenience. Infact, such acts of the Governor in re-promulgating the Ordinances should be treated as calculated erosion into the powers of the Legislature. It is, therefore, suggested that Article 213 should be suitably amended so as to provide.

(a) for laying the ordinances before the Legislature within a stipulated time and;

(b) for prohibiting re-promulagation of such ordinances, in any form which ceased to be operative because they were not approved by the Legislature.

Governors

3.1 Under the existing provisions of the Constitution, Governor is only a titular Head of the State. He has to function according to the advice of the Chief Minister or Council of Ministers headed by the Chief Minister. Though the Constitution empowers the Governor to exercise functions vested in him by the Constitution, under his discretion, in actual practice there was no field where the Governor is vested with power where he can function ignoring the advice of the Council of Ministers of the Chief Minister. The post of the Governor as representative of the President, in our view is essential as an authority to function in moments of constitutional crises.

3.2 The major constitutional function of the Governor is the appointment of the Chief Minister. Here again he has to go by the advice of the majority party, which elects their leaders, who in turn should be sworn in as Chief Minister. The fact that the Governor was vested with the powers of appointment of Chief Ministers has led to the conclusion that the Governor is equally competent to dismiss the Chief Minister. The question of dismissal, of Chief Minister arises only when the Chief Minister fails to command the majority of legislators or where the Governor has reason to believe that the Chief Minister is functioning without any majority in the House or confidence of the House. Our analysis in the functioning of the office of the Governor reveals that the Governor's office has become controversial, when he exercises power of dismissing the Chief Ministers on the ground that the Chief Minister did not enjoy majority support of the legislatures. This has become a major source of friction especially in the non-congress ruled States, because willingly or un-willingly the Governor is associated with the party in power at the Centre and is being regarded as a representative or agent of the Central Government at the State level. A close look shows that this development is only of recent nature. It is a debatable point whether the Governor should have absolute discretion to dismiss the Chief Minister

on the ground that the latter lost support of the majority of the legislatures in the House. On the other hand, a more practical view should be for the Governor to direct the Chief Minister, whenever he had a doubt that the Chief Minister was not enjoying majority support, to test his strength in the House. Under the present scheme of the Constitution, the Governor has not authority to summon the Legislature and direct the Chief Minister to face a trial of strength since prorogation or summoning of legislature should be done by the Governor only on the advice of the Council of Ministers. We would, therefore, suggest that whenever a Governor strongly feels, on the strength of material before him that the Chief Minister is not commanding majority support of House. he should have the right to summon the Legislature and direct the Chief Minister to prove his majority in a trial of strength. We, therefore, agree with the suggestion in question 3.8 in Part III.

3.3 The incorporation of the suggestion in question 3.9 will not be a workable proposition in the democratic set up envisaged by the Constitution. It should be left to the Members of the Legislature to elect the leader or dissolve the House and go in for elections.

3.4 Bills passed by the Assembly are presented to the Governor for his assent with due recommendations of the Chairman of the Legislative Council and the Speaker of the Assembly in respect of States with bicameral legislatures and the recommendation of the Chief Minister. The provision was functioning very satisfactorily and there is no occasion for any friction in this regard.

Administrative Relations

4.1 Our experience till now is that there was no occasion for the Central Government to invoke the provisions under Article 256 and 257 of the Constitution. In a Constitution of Federal nature obligations of the States and Unions play a vital role. Our experience was that in ensuring compliance with the laws made by the Parliament there was no occasion or need to invoke provisions under Article 256 as most of these Acts are self-contained defining the powers of the State Govt. and Central Government. The retention of these provisions in the Constitution are very essential whether we invoke or not to assert the supremacy of the Parliament or the Central Government to check the erring Governments in vital matters affecting the integrity and unity of the country.

4.2 Under the same concept, the powers under Article 356 for imposing the President's rule in extraordinary circumstances are very essential. The recent happenings in the border States like Assam and Punjab would strengthen this view further. It is the only effective provision in the Constitution for the Centre to interfere in situations affecting integrity of the States. The mere fact that these provisions might have been invoked for subserving the party interests when both Central Government and State Government are under the rule by the same party, should not be viewed with alarm but the need for the exercise of this extra-ordinary power should be viewed in the context of maintaining national integrity and unity of the country.

4.3 The provisions regarding All India Services as they are now conceived, is absolutely necessary. Infact, we should admit that All India Services have not fulfilled the expectations of the Constitution makers as the main link between policy makers and the Administration and as the main organisation to carry out the policies of the Government and to foster stability and national out-look conducive to national integration. All India Services should have more independence in their functioning. The existing controls over the All India Services by the State Governments are enough.

4.4 As regards the various Central Agencies and the multiplicity of these organisations, as mentioned in part IV Q. 4.7 it is absolutely a matter of administrative exigencies and for this purpose incorporation of any specific provision in the Constitution or amendment of existing provisions in the Constitution is not desirable. Whether such agencies are eroding in the State's autonomy, depends much upon the perspectives of the State and Central Governments and their out-look. These agencies are in a way intended to give a national approach in implementing schemes of All India nature and also afford the States with financial and infrastructural facilities. Infact, if functions of these organisations are totally transferred to the States, it casts a very huge burden on the States' exchequer with no apparent advantages. Some of these organisations infact only supplement the activities of the State Governments as in the case of F. C. I.

4.5 We would share the view that there is a need for an inter State Council on permanent basis. The existing National Development Council should be made a Constitutional body within the ambit of the Article 263 of the Constitution or the existing provisions in this Article be suitably amended to provide teeth to the National Development Council, instead of setting up a separate Council for this purpose. Our views in this context are elaborated in the subsequent paragraphs.

Financial Relations

5.1 The objectives of maintaining financial strength of the Centre, and proper augmentation of the States' financial resources, need a fine balancing. However, for proper coordination the Centre should have the power and means to ensure that fiscal policies laid down by the Centre are adhered to by the States.

Centre-State Financial relations should encourage efficient and economical use of resources and flow in the economy. We would have to recognise the fact that our Country has wide variations in Economic Conditions. In order to achieve an alround economic growth leading to a movement towards effective economic integration of the country, mutual economic dependence of different areas may have to be maintained. This will be a helpful factor in securing and cementing the national integration and cohesion, as the process of reducing economic disparities as between different States has its financial implications also. The relatively backward States have to be helped, the transfer of resources from the Centre to such States must be augmented.

5.2 The outstanding provisions in the Constitution relates to the provisions dealing with the financial relations between the Centre and the States. We have no doubt in upholding the existing provisions and express the firm view that the enforcement of the existing provisions has worked to the great advantage especially, to backward states as compared to the much advanced and industrialised States. We fully share the view that regional imbalance can be reduced by a strong Centre having elastic source of revenue and with more discretionary powers to use the funds available for the development of the poorer States. Giving more financial powers to the States, only adds to further tilt the balance in favour of the richer States; Except the Corporation tax the other major revenue yielding sources like income-tax, Excise, Customs should only be with the Centre for purposes of uniformity in levy and facility of collection also. The levy of tax on agricultural income is already with the State Governments. Except in respect of customs, tax collected against income or Excise is already sharable with the State Governments. By its very nature customs levies should be with the Centre only and it would not be possible also to share with the States. So the only field that was left where States may not be getting their due share in Corporation tax.

5.3 The present provisions in the Constitution provide for very equitable distribution of taxes among the States. If the existing provisions are in any way altered, modified or amended, by way of transferring to the States to collect the tax on any of the above items, it would only result in inequitable distribution of revenue with the economically forward States becoming more richer and backward States remaining backward for ever. To cite an instance, the total revenue yield against Salex Tax in the State of Andhra Pradesh was at one time, not equal to the Salex Tax collected in the city of Bombay in the Maharashtra State. The same would be the position in respect of income-tax or Excise duties etc. Equitable distribution of national wealth and resources would not be possible, on the other hand, the economically forward States become much stronger creating trouble and infact, threatening the unity of the Country itself, as is evidenced by the agitation going on in the rich border States. It should be concluded that the Finance Commission is very reasonble in apportioning the taxes among the States. Nearly 90% of the income tax is divided among the States while 40% of the excise duties are also shared by the States. In due course, if necessary share of Excise Duties may be further stepped up and it is a matter which can be looked at by the Finance Commission once in 5 years and for this purpose no amendment to the existing provisions in the Constitution would be warranted.

5.4 At one time Corporation tax was also divisible. Perhaps the original position may be restored in this regard. But any devolution of taxes or grants-in-aids should not have any negative effect on the effort of the State Governments in raising internal resources within the State. While the Governments led by the regional parties are very keen on taking up populistic programmes to woo the people and electorate, they are also equally keen in not raising the resources to the optimum extent, again to woo that section of people and electorate who will be affected by levy of taxes. Without substantial effort by the State Governments, it would be futile to argue that the Centre should come forward with more liberal assistance.

5.5 There was an oft-repeated complaint that taking un-due advantage of the existing provisions in the Constitution, the Central Government is levying surcharge and at the same time denying the States their due share in surcharge. The VIIth Finance Commission attempted rationalisation of their procedure also. At the best an amendment to the existing provisions of the Constitution may be thought of to limit the powers of the Central Government to levy the surcharge say for a period of 2 years and beyond that to merge with the main levies so that it would form part of the divisable revenue.

5.6 A time may come wnen provisions under Article 269 have to be regularly relied upon by the Central Government to improve the resources of the States. Here again the richer States will be contributing maximum revenue and care should be taken by formulating principles for distribution among the States so that under-developed States get a reasonable share.

5.7 The VIIth Finance Commission's view regarding the principles governing grants-in-aid are sound. We do not see any need for amendment of the existing provisions of the Constitution in this regard. In our view there is *no* need for setting up the National Loan Corporation, National Credit Council or National Economic Council.

5.8 Some suggestions have been made that Central Sales tax etc. should be further enhanced. In our view it is not warranted. Any such increase would be helping only the developed and richer States at the cost of the less developed and poorer States.

5.9 We should recognise the fact that our Country has wide variations both economic and political. Economic disparties manifest themselves in some fields like lack of basic, social and economic services. There has to be better utilization of the productive resources of the Country as a whole. Economic development cannot be separated from social inhibitions, exercise of authority at the lower levels of our present hierarchy- such as district Panchyatraj Institutions. No doubt, the directive principles of the Constitution have laid down that there should be decentralization of powers in the Country-experience has shown that the Zilla Parishads and Panchayaties are more used as Political pawns in the power chess board rather than as effctive instruments of development at the lower level nor there is devolution of real power to the people of order that the regional, backward, and economic aspirations of the local people are met. The Primary need and in fact the crying need of the hour is to give these bodies a place in the Constitution itself. We advocate provisions in the constitution ordaining the States :—

(a) To constitute village Panchayats,

(b) To constitute a Zonal body for a group of Panchayats, call it a Panchayat Samithi, Panchayat union etc.,

(c) To constitute a district body of Panchayats, call it a Zilla Parishad or so,

(d) To provide for the conduct of elections to the above bodies through the Election Commission of India as in the case of conduct of the elections to Parliament and State legislatures, and

(e) To provide for the constitution of a State Level Finance Commission somewhat on the lines of the existing Article 280 of the Constitution, providing for the distribution of taxes between the State Government and local bodies, to ensure the local bodies their share of taxes, without being fettered by the discretion of the State Government, which is bound to be influenced by political considerations.

5.10 While the States are clamouring for more resources from the Centre for successfully carrying out the socio-economic obligations, most of the States are conveniently for getting that the local authorities who have to carry out many of the schemes, are not adequately financed. In fact, most of the local authorities are starved of funds at the expenses of the populist programmes undertaken by the State Governments. The remedy lies only in making a provisions in Constitution itself to provide devolution of funds to local authorities like Z.P.s, Panchayat Samithis and Mandals by setting up a Finance Commission at the State level as in the case of Finance Commission. Incorporation of a provision on the lines of Article 280 of the Constitution empowering the State Governments for setting up a Finance Commission for devolution of funds between State and local authorities should be considered.

5.11 There is need for finding ways and means for devolution of more revenues to backward states, even if necessary thr ugh subventions from richer States under well laid principles; but care should be taken to see that it does not result in financial indiscipline in the backward States or encourages such States to lag behind in mobilising their financial resources.

5.12 The Centre is pumping large sums of money to secure economic and social justice specially to the weaker sections of the people. Most of these schemes are funded by the Centre and naturally there would be a desire on the part of the Centre to over-see the execution of these schemes and to monitor the utilisation of the funds and also to satisfy that the funds are spent properly by the State Governments without being diverted to other purposes. In order to involve the States in the execution of these schemes, the Centre is insisting on a percentage contribution from the States resources also. Though these schemes are *prima-facie* executed through State agencies only, the sharing of funds by the States and the Centre is in certain aspects leading to dual responsibility, leading to the danger of schemes not being executed at all. Proper execution of these schemes can be sabotaged either by the Centre or States withdrawing their support for some reason or the other. One possible solution to this would be for the Centre to finance the schemes cent percent without imposing any obligation on the States and execute them through their own Administrative channels or in the alternative the Centre should transfer the entire funds to the States and leave the execution of the programmes to the discretion of the State Governments.

5.13 There is no doubt that such interference, acts as irritant and a source of considerable delay as elsewhere mentioned in questionnaire. It all depends upon the proper relationship between the State and the Centre and it cannot be cured by deletion or addition of any more provisions to the Constitution.

Social & Economic Planning

6.1 The National Development Council which is a non-statutory body may perhaps be conferred with constitutional status under Article 263 of the Constitution, if necessary after suitably amending the same and we broadly agree with the suggestions in question 6.2 of Part VI. The National Development Council may also be consulted before the Central budget is finalised, just like the Finance Minister consulting the experts in various fields of Industry, Commerce and Taxation so that the States can also be afforded an opportunity to express their views on the formulation of the Central Budget. National Development Council can be entrusted with the functions envisaged by the National Loan Corporation, National Credit Council and National Economic Council mooted in question 5. 29 of Part V and can effectively function to resolving upon inter-State disputes or subjects of common interest to States. The NDC may by law made by the Parliament be clothed with statutory powers to implement its decisions.

Conclusion

Strong and autonomous States in a Federal set up is a concept advocated by the Western capitalistic States, especially the United States of America, who probably may feel that such set up may make the constituents depend more on them for their survival both economic and otherwise.

A classic example of such federation is that of the Federal Republic of Germany (West Germany) which being an ally of the USA., had to change its constitution to be in tune with this concept, although the people of that country always advocated for a strong centre.

Dr. H.L. Bhatia, in his book 'Centre - State Financial Relations in India' under the auspicious of the Birla Institute of Economic Research writes at Page 40 :

'The Federal Republic of Germany representative were in fav ur of a strong centre. They preferred fiscal uniformity at the national level and an attainment of financial equilization between different states to the interests of individual states. The Americans on the other hand were keen in selling their own philosophy of strong and autonomous states within a federal set up. This resulted in the provision for financial independence of the States and Federal Government'.

The Constitution of the Federal Republic of Germany was ammended under Article 109(1) of the Basic law 'The Federal and the lender shall be autonomous and independent of each other in their fiscal administration'.

India is a Welfare State, emerging Independent out of Centuries of exploitation degradation and poverty, being a colony of the British Imperialists. In

the words of our Late Prime Minister, Smt. Indira Gandhi, 'TO US THE CONCEPT OF SOCIALISM IS THAT CAPITAL IS SUBSERVIENT TO SOCIAL JUSTICE, FOR THE WELFARE OF THE COMMON MAN BY EQUITABLE DISTRIBUTION OF THE NATION'S WEALTH AND ITS ECONOMIC RESOURCES TO BE WITHIN HIS REACH IS OUR GOAL'. These perspectives still remain unfulfilled and hence we cannot allow India fall a pray to the vested interests. The Indian constitution therefore has to be moulded for the good of the entire nation for its unity and integrity. It cannot be changed into a document to meet the caprice of Regional chauvinism. We have already heard from the leaders of the Regional parties that 'Government of India has no territory' and that 'Centre is Myth' etc., exposing their hollowness about their knowledge of the Indian Nation. Vesting more powers in States by amending the constitution will only spell the doom of the Nation.

We conclude with the assertion that 'India lives'—it lives to serve the poorest of the poor living in any or every part of its vast territory with dignity and honour and never shall it yield to any force however high and mighty, that may be—nor, are prepared to be in shackles once again and subject itself to slavery and degradation in any modern form.

INDIAN NATIONAL CONGRESS (SOCIALIST)

MEMORANDUM

Background

1. Any debate or dialogue on re-structuring the Union-State relations within the existing Constitutional framework can only proceed from a correct understanding of the forces which have moulded our modern nation, and the ingredients and the roots of our nationhood. It would include a close examination of the historical, political, legal and Constitutional dimensions of the State entity called the Indian Union.

The Indian sub-continent has been a complex amalgam of a multitude of sub-national groups endowed with their own distinct assertive regional personalities, wide ranging social customs including customary laws, highly developed languages and cultures, seeking identity or a place in the sun and a number of religions and cults, often working themselves to competitive frenzy. Moulding a modern political nation out of these seemingly contradictory elements is the unenviable task that the nation builders have faced since the Indian Union become an independent national entity endowed with a nationhood on 15th August, 1947.

We have to be clear in our minds that there is no parallel to this unique historical experience assigned to the people of Indian Union—a modern nation carved out of the administrative boundaries of a colonial empire in the Indian sub-continent. The compelling logic of our evolution into nationhood is that there cannot be any uniformity but only harmony and unity in diversity acting as cementing bonds of the nation. The question before us, therefore, is whether through the instruments what we have forged for the Union and particularly through the Constitution of India as adopted in 1950, we can achieve these ends and promote the interests of millions who inhabit this great land and are partners in its progress and engaged in its development as a free sovereign independent republic.

While historically speaking there is hardly any parallel to this Herculean endeavour, it is worthwhile comparing ourselves to the great multilingual, multi-cultural or multinational States of the 20th Century. Comparison with China, U.S.S.R. and the United States would be a tempting endeavour. The Indian nation born out of our struggle for independence is in a fundamental sense different from these major populous nation—States of the world, that is China, U.S.A. and U.S.S.R. The question arises why is India basically different from these great national agglomerates ?

In the United States, the dominant influence of a single language and ever visible Anglo-Saxon Protestant influence in the formative years, has created the powerful melting-pot nation of the United Statesof America.

In the Soviet Union, the Russian language and cultural tradition has acquired a remarkable and crucial presence and importance in the post-revolutionary Soviet phase and even today many ethnic minorities name Russian as their mother-tongue. This is a fact recognised by every observer of the Soviet experiment and modern Soviet history, not excluding the present soviet leaders. To quote late Mr. Brezhnev :

> "And this historical community of people, the Soviet people, have inherited Russian Cultural traditions".

Thanks to the wisdom and foresight of the great liberator and leader of the soviet revolution, V.I. Lenin, the nationalities acquired a special identity of their own within the Soviet State.

In the Peoples' Republic of China, the ethnic minorities constitute only less than 8% of the total population. A major theme of the development of the modern Chinese nation has been the ever-increasing Han influence over other ethnic minorities.

But in India, our experience has been unique. We have a multitude of languages, sub-national groups, regional personalities, religions and cults. None of these groups can claim the majority but at the same time, there has been a steady evolution of Indian nationhood over the last several centuries beginning with the great medieval Bhakti Movement. One has only to travel from Manipur to Kutch in Gujarat or from Kashmir to Kerala to understand the distinctive trends in food, attire and habits, and the unique roots of the assertive regional cultures and personalities. Therefore, neither the concept of Indian unity or nationhood, or the institutions and constitutional arrangements we have evolved, can be based on a concept or uniformity. On the contrary, the emphasis has to be on acceptance of our great diversities and on harmony and unity

in diversity. Although the Moghul Empire did not embrace the whole sub-continent, Moghuls helped the growth of regional languages; even though their court language was persian. They helped growth and evolution of Urdu in their northern territoties—a language which had developed since the Delhi Sultanate period and there is historical evidence to suggest that they encouraged the use of Bengali, Marathi and Gujarathi.

With the advent of British imperialism, the priorities and compulsions of the alien imperial masters were different. Development of the British imperial interests demanded carving out of the sub-continent for opening up a vast hinterland for exploitation and promoting colonial trade through the port towns and the development of infrastructure, particularly railways, roads, communications for movement of their forces, to retain their strategic hold in the South Asian sub-continent. From 1773 to 1833, the British Parliament gave increasing authority to the Governor General in India. With the Charter Act, the situation underwent a change. After the revolt of 1857, and with the advent of Viceroy and Viceregal rule, it ought to be remembered that the British industrial capital also entered India. But the great revolt of 1857 compelled the colonial masters to think in the direction of certain decentralisation. Sir Charles Travelyan, who was Governor of Madras and Sir Bartrel Ferere, Governor of Bombay, in the second half of 19th Century, strongly advocated a decentralised set up for governance of this sub-continent and in 1861 the Presidency Governors of Madras and Bombay were assigned increasing powers. And as a logical corollary, in 1877, income from land revenue, excise and stamp duty were allotted to the provinces but these arrangements did not last long. The ever-growing need for policing changed this policy as the records would show, and a new policy of sharing these revenues came into existence.

The first decade of 20th century saw the birth pangs of Indian nationalism, particularly in Bengal, which had entered a phase of renaissance. The emerging national consciousness had given birth to a pan-Indian nationalism. The first political manifestation of this great awakening was the Swadeshi Movement and the massive upheaval against the partition of Bengal in 1905 led by Sri Aurobindo and other nationalist leaders. It is interesting to recall that when the agitation succeeded in the annulment of partition in 1911, a new Bengal province was created which contained only Bengali-speaking districts and for the first time in the history of the sub-continent, a political and administrative territory was carved out with well-delineated linguistic and cultural features. This development, as Dr. Pattabhi Sitaramiah ramarks, greatly influenced the nationalist opinion in manv States.

The British Colonial authorities were not unaware of this trend and while trying to buttress their rule over the sub-continent, they were keenly aware of the need to implant federal elements in their administerative framework of the sub-continent. The Montague-Chelmsford Reforms of 1911 reflected this trend. Lord Hardinge, the then Viceroy, remarked while introducing these reforms :

"The only possible solution for the difficulty would appear to give the provinces gradually a large measure of self-government, until at last India would consist of a number of administrations, automonous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in the case of misgovernment, but ordinarily restricting their functions to matters of imperial concern".

That was a clearly spelt out rejection of the unitary form of government by the colonial masters, and it is not difficult to discern how it evolved into a specific emergency provisions of the Indian Constitution of 1950. The Simon Commission Report of 1927-28 and the Butler Committee Report of 1927---30 and the framework of round-table conference of 1930—32 underline this basic perspective of a federal union in the sub-continent.

The Indian National Congress which had become the vehicle of India's movement for national liberation was also simultaneously coming to grips with this problem. The Motilal Nehru Committee Report on Indian Constitutional reforms thus envisaged a federal system and the Lucknow Pact of 1918 was a landmark in the history of Indian nationalism. The Pact recognised the need to develop provinces and strongly upheld the view that residuary powers should always be with the provinces.

Under the leadership of Mahatma Gandhi, Indian National Congress had adopted an approach which suited the needs of Indian democractic advance. Gandhi's acceptance of the demand for linguistic provinces in 1920 and the subsequent reorganisation of Indian National Congress on the basis of lingusitic units has to be viewed as a historic landmark in the growth of nationalist movement in India. The resurgence of regional languages and cultures provided a new thrust to Indian nationalism and the great figures who emerged on the national cultural firmament like Rabindra Nath Tagore, Subramania Bharati or Vallathol is only reflecttive of this trend. The Indian National Congress as well as other progressive social movements through its spokesmen like Maulana Azad and C.R. Das supported the idea of autonomy for States.

The Government of India Act of 1935 took note of this assertive opinion. But the Mountbaten Plan or partition and the growing threats of balkanisation and fragmentation which flowed from the partition, changed the political atmosphere in India and had its great impact on the Constituent Assembly deliberations. Thus the Indian Constitution of 1950 adopted by the Constituent Assembly followed the Government of India Act of 1935 and a concept of national citizenship with sovereignty of Parliament, and a uniform and impartial judicial system, kept intact, other provisions of the 1935 Act. The Constitution makers had created a united India and a dominant Centre with unique executive powers assigned to the Union in the context of the early challenges of national integrity.

The role of the States in this Constitutional scheme was quite diffierent from the role assigned to them in the new Constitution. As Dr. Ambedkar one

of the architects of the new Constitution, pointed out : "*The Indian Union was not the result of an agreement between the states nor did the states join the federation in their individual capacity; on the contrary an indissoluble federal union was created out of the British-made provinces and the princely states*". But in this process, the States lost their autonomy and became partners with limited rights with limited spheres of legislative authority assigned to it along with limited revenues and methods of disbursement. The Legislative lists in the Constitution are exhaustive; but 97 subjects were placed in the Union List while only 66 including pilgrimage, cattle trespass, burial grounds, theatres and dramas put down in the State List.

However, there were strong objections to the treatment given by the national leadership to the States as is clear from the debates of the Constituent Assembly and the deliberations of the Union Contitution Committee. Govind Vallabh Pant, B. G. Kher and Dr. Srikrishna Sinha were among the stalwarts of the freedom movement who strongly resented the move to curtail state rights but having agreed to a federal structure with a strong Centre and residuary power with the Union, there was hardly any escape route. It is important to remember these early reservations had come from the stalwarts of the national struggle who were also leaders of the States who had risen from their roots. While examining the case for re-distribution of political and financial powers and consequent changes in the Constitution, the question before us, therefore, is whether we are prepared to have a fresh review of the Union dominance over the States as reflected in the present Constitution.

Need For A Review

2. The basic premise of such a review should be that there is a fundamental disequilibrium in the Constitutional system as it has existed for the last 35 years. It may be wrothwhile recalling that some of these articles reflective of the trend of Union dominance were smuggled in at the last moment. The story of Article 365 empowering the President to compel the States to comply with and to give effect to executive directions of the Union is a case in example. It was introduced during the last week of the deliberations of the Constituent Assembly and surprised many members, as the debates would reveal.

It is worthwhile having a close look at some of the provisions of the Constitution through which the instrumentality of Union dominance over the States has been clearly implanted leading to many distortions in the system.

3. Some Constitutional Provisions and Their Implications

Articles 2 & 3 :

Article 2 enables Parliament and Parliament alone to admit into the Union or establish new States on such terms and conditions as it thinks fit and under Article 3 Parliament alone is empowered to alter the boundaries of any State, to increase or diminish the area of any State or change its name or constitute a new territory out of the territories of one or more States. In contrast, in the United States, consent of the State was a pre-requisite to any proposed change of its boundaries. No such rights have been conferred on the States of Indian Union under our Constitution. They have been compelled to remain as partners but with limited rights.

Article 73 defines Parliamentary authority over the Concurrent List and extension of Concurrent List, giving the Union considerable leverage.

Article 154 spells out the executive power of the State being vested in a Governor who is a Union Nominee.

Article 200 which is the most reprehensible article endows the Union nominee functioning as Governor of the States with a power of assent and Article 201 enables the Governor to forward legislation passed by the State Assembly to the President.

Articles 248/249/250/252 make Union and Parliamentary supremacy complete; they give drastic powers to the Union and Parliament—read alongwith Entry 97.

Articles 270/275 which deal with divisible taxes, grants, and other assistance, are again heavily weighted in favour of the Union and has only helped to create an inverted pyramid with absorption of revenues at Union layers and paucity at lower layers of the States, leading to a system of dependence of the States on the Centre.

Article 356 There is no other provision or article in the Constitution which has been so consistently been abused leading also to the misuse of the office of the Governor. It has been used through the instrumentality of the high office of the Governor to keep opposition parties out of office but even to resolve the differences within the ruling party, thus clearly abusing an emergency provision of the Constitution for partisan ends. It would be worthwhile to bring some of these cases to refresh the memory of the Commission :

(1) On Nov. 29, 1975, Shri H. N. Bahuguna resigned as the Chief Minister of U.P. and at the Governor's recommendation, President's Rule was imposed on November 30, only to be lifted on Jan. 12, 1976, when Shri N. D. Tiwari became the Chief Minister. The Union Home Minister justified the action as "being necessary" just to sort out some small problems including election of the leader by the Congress Party. (INDIAN EXPRESS Dec. 1, 1975).

(2) The D.M.K. Party in Tamil Nadu was overthrown in January, 1976 only because of its opposition to the declaration of State of Emergency. It had 184 members in an Assembly whose strength was 234 and whose term was to expire only in March, 1976.

(3) In May 1982, Governor Shri Tapse of Haryana asked Shri Devi Lal on May 22 to bring his supporters to Raj Bhavan at 10 a.m. on May 24. In a House of 90, Congress-I had won only 36 seats, and the Lok Dal 31, supported by B.J.P. and Cong(J)

with respective strength of 6 and 3, and alongwith independents, Mr. Devi Lal had a clear majority. But on Sunday May 23, even before the deadline for Mr. Devi Lal to produce his supporters was over, the Governor Tapase sworn in Shri Bhajan Lal as the Chief Minister.

(STATESMAN—HINDUSTAN TIMES—May 24, 1982)

And on May 24, majority of the M L As—46 in numbers—went to Raj Bhawan to register their protest.

(4) Between 1980 and 1983, Shri Sarat Chandra Sinha, leader of Congress(S) Party in Assam Assembly who had the majority support was repeatedly denied the right to form the Government.

(5) More recent examples of Sikkim, Jammu & Kashmir and Andhra Pradesh needs no reiteration.

Thus, through the instrumentality of the Governor, this provision has been consistently misused, eroding into the letter and spirit of the Constitution.

Article 365 which empowers the President to dismiss the State Government for not implementing the directions of the Centre should be suitably amended to prevent its misuse.

Regional Imbalances and Continuous Drain of the States

4. The present Constitutional scheme which gives major initiative to the dominant Centre or Union in economic sphere has only aggravated the problem of regional imbalances. The problem of distribution of powers, functions and resources between the Union and States needs to be reviewed afresh. It is to be remembered that the Union has an inherent advantage with the basic levers of the economic life of the nation within its ambit, like the currency, credit, monetary policies and other instruments under the control of the Reserve Bank of India. With the nationalisation of banking and insurance and creation of new funding agencies and financial institutions like the Unit Trust, I.D.B.I. and I.C.I.C.I., these powers were gradually enlarged in '60s and '70s. With firm control over foreign assistance, foreign exchange resources and foreign trade, its control over major levers of the Economy has been total and complete. With income and corporate taxation, excise and customs duties, use regulation and distribution of foreign exchange and foreign loans, it scaled heights of peaks of authority over the economic life and activity of the nation unparalleled in similar federal set ups. This has been further buttressed by the existence of the Planning Commission overse ing the national economic planning but with no statutory authority and a Union-oriented Finance Commission. All this resulted in growing regional imbalance and disparities and this state of object helplessness and total dependence among the States.

Transfer of Resources and Growing Indebtedness of the States

5. The Story of the transfer of resources from Union to States ought to be an eye-opener. Soon after the Constitution came into being in the years of 1951—1956, transfer of resources from Union to States constituted 32% while by 1970-71, it had grown to 59%, and 1979-80, to 65% and in 1980—82, to 72%—all of a non-statutory character, resulting in an increasing dependence of States on the Union. There can be no greater disturbing distortion of the original Constitutional framework than this. Consequently, the indebtedness of the States to the Union has been phenomenal, generating tensions of various types within the Union and the State.

The outstanding of the States to the Centre rose from Rs. 239 crores in 1951-52 to 4094 crores in 1965-66 and Rs. 5508 crores in 1968-69, and a phenomenal amount of Rs. 26,571 crores by 31st March, 1983. Thus in 1983-84, the provision of Central loan assistance to States was Rs. 4290 crores out of which repayment of principal and interest alone constituted Rs. 2963 crores.

The system of persistent unauthorised overdrafts is another danger signal, inherent in the existing system.

All these call for a major review of the constitutional provisions as these distortions are threatening the integrity and fabric of the nation itself.

It is very important to overcome the feeling of dependence in the states which has crept into the psyche of the States. In any federal set-up the states or units are always given means and instruments of effective resource mobilisation and revenue raising efforts but unfortunately that is not so in India where the direct tax powers of the States are very limited. Even a large part of the net capital receipts of the States is derived from the Central loans and even their market loans not only need clearance from the Reserve Bank but are wholly dependent on the response of the nationalised banks and the Life Insurance Corporation both under the Union.

The Role of Planning Commission and the Finance Commission

6. Under the system of planning that we have adopted, we have also created a new distinction between Plan expenditure and non-Plan expenditure. While on revenue account there is a fairly clear-cut distinction on capital account, the difference between Plan and non-Plan expenditure is gradually changing, while the plan expenditure is looked into by the Planning Commission, the Finance Commission looks after non-plan expenditure. At the end of each plan, substantial part of revenue expenditure on Plan account turns into committed non-plan expenditure. Grants under Article 275 based on the recommendations of the Finance Commission can at best only enable the States to cover the deficit at the existing levels of economic and social services, while they will have no surplus from existing source to cover additional services

whatever be their need or urgency. Thus, poorer States like U.P. and Bihar have been at a great disadvantage with low level of public services. It is true that successive Finance Commissions have been looking into this problem but unless there is a basic Statute change, it will always be dependent on the whims of those who constitute the Finance Commission. In this context it is interesting to examine the role of Planning Commission and the Finance Commissions. The Planning Commission which is conceived as a national planning body has steadily turned into an appendage of the Union Government and has failed to play its historic role in a subcontinental nation like India. It is essential to give it a Constitutional status to this body and put it under the National Development Council and make it a nodal agency between Centre and States.

The Structure of the Finance Commission should be looked into and it must be statutorily incumbent on the President to consult the States on the composition and terms of reference of the commission and its staff should be recruited from different States and the Commission should not be dependent on the Centre, for its funds or Secretariat.

Attack on the Powers of the States

7. In the economic sphere there are certain other issues which should come up for an immediate review. Since the passage of Companies (Development & Regulation) Act of 1951, list of industries to be regulated by the Centre have been so manipulated that 90% of industries are now with the Centre, even industries like gum, match sticks, cutlery, household electrical appliances, soaps and toilet requisites, hurricane lanterns and bicycles and even agricultural implements—all articles of daily use and essentially catering to the huge rural population and markets—have been taken away by the Centre. This made late Prof. D. R. Gadgil, a pioneering economist and once the Deputy Chairman of the Planning Commission to observe :

"Such strangehold of activities by the Centre and its agencies and officials make any real progress impossible".

Other Unhealthy Trends

8. Manipulations and sabotage of even the existing provisions of the Constitution continue to threaten healthy evolution of Union-State relations. It has become a common practice of the Union now to raise the administered prices of commodities like petroleum products, coal, iron & steel and aluminium. Instead of adjusting the rates of excise duties, wheih should have resulted in a proportionate share going to the states, the entire accruals from these revenue raising exercises have gone to the Central agencies and the States deprived of thousands of crores of rupees on account of these unethical and arbitrary practices. For example, in 1982-83 alone, the Centre covered Rs. 6500 crores (now it is more than 8000 crores) by raising administered prices with no share for the States. If it was an adjustment of excise duties, at least Rs. 2600 crores would have been accrued to the States. This is true of raising of market loans also.

Other Distortions

9. There have been increaring interference even in the legitimate areas meant for States exclusively. The Constitution conceived law and order as a State subject but from a small beginning with the Central Reserve Police Force numerous police forces have sprung up which go beyond even their own respective sphere of permissible activity and these paramilitary forces have been impinging on the area which the Constitution-makers themselves had left entirely to the states and their expenditure has been mounting, even the Public Accounts Committee of Parliament, in their 131st Report (1973-74) has remarked :

"The Committee are very much concerned with large-scale and continuous increase in unproductive expenditure of these agencies, from Rs. 3 crores in 1950-51 to Rs. 48.27 crores in 1966-67, to Rs. 130.91 crores in 1972-73 and Rs. 156.42 crores in 1974-75, an increase of 52 times in 24 years. This is by any standard an alarming increase........ "The Committee feel that expenditure on police organisation has been increasing at such a rapid rate that it calls for an immediate review by an independent high-powered commission".

No such review was undertaken and presently the expenditure on these law enforcement agencies is nearing 800 to 900 crores a year. To cap it all a new department of "Law and Order" and 'States' have been added to the Union Home Ministry in a highly arbitrary and un-constitutional manner recently.

Thus, it would be seen that while States are left with unelastic sources of revenue, the expenditure of the Centre is mounting even on items demarcated exclusively for the States under the existing Constitutional framework and provisions.

Need for A Review

10. Thus, the present situation calls for a review of the major determinants of the institutions, issues and policies which had led to the present situation.

Such a review should cover implications of the Constitutional provisions like—

(a) Appointment and powers of Governors ;

(b) Experience with emergency provisions and with President's Rule in the States and the practice of Presidential assent for Bills passed by State Assemblies.

(c) The role and structure of All-India services and Central Police forces and an exhaustive review of the Union-State relations and the Concurrent List and the residuary powers.

(d) In the economic sphere, such a review should go into the role of the Planning Commission and Finance Commission, fiscal transfers and divisible pool of taxes and plan assistance under Articles 282/275 and the way the lever of administered prices have been used to rise reasources and deprive States of its legitimate resources.

(e) The role of the National Development Council as an important adjunct of policy making has to be further explored.

(f) The role of deficit financing and financial institutions and domestic and external borrowings have to be reviewed and a national borrowing authority based on the Australian Laon Council set up.

(g) The question of foreign exchange budgeting within the overall control of the Reserve Bank and the States' rights to negotiate and obtain foreign loans, have to be at length.

(h) The Administrative Reforms Commission's Report had inadequately dealt with setting up of inter-State Council under Article 263. This needs to be further explored in the context of recent changes in the body politic. These powers may extend even to disputes between the States and an amendment to the constitution is called for.

Radio and Television

11. Another major area of considerable importance is the role of radio and television, presently under total Central control. In the context of the texture of our nationhood and polity, it is imperative that States should have a voice in the evolution of the media policy and in its overall control; even in an autonomous set-up.

To sum up, major changes as we have outlined above, are called for in many articles of the Constitution.

We hope the Commission would address itself to this historic task at this crucial juncture of our national existence.

INDIAN NATIONAL CONGRESS (SOCIALIST) State Unit—Kerala

MEMORANDUM

I. Introductory

1. Indian Constitution is federal in from. It was never intended as unitary. Indian Constitution contemplates a "Union of States" and the Union Govt. is the Govt. at the apex of the Federal Polity, while the States form the base.

The Union Govt. and the State Govts. simultaneously exist and have sway over every inch of Indian territory. Both are independent responsible institutions created under the Constitution. Since India is a large and heterogenous country there is need for substantial decentralisation, territorial as well as functional, of powers and functions in the interest of efficiency and equity. Suitable provision can be had for effective control during times of external emergency, while Inter-State Councils envisaged under Art. 263 will help better co-ordination between the States. The provision enabling the President to assume emergency powers on the assumption of failure of Constitution in the States under Art. 356 is against the federal spirit and has to be deleted. For the successful working of our federal system we require more than anything else a federal spirit which is a firm determination to maintain both diversity and unity by way of continuous process of mutual adaptation. There has to be an ideal compromise between centrifugal and centripetal forces. National Unity has to be preserved, political stability preserved, economic growth and defence capability achieved and social justice brought about. For a proper realisation of these objectives we have to uphold the federal spirit.

II. Legislative Relations

List III of the seventh Schedule actually includes items which ought to have been included in list II. The autonomy of the States has dwindled considerably as the centre has made in-roads into the legislative powers of the States. There has been over the years encroachment in a substantive measure on the legislative autonomy of the States under cover of "national interest" or "public interest". Many items have been shifted from the State list to the concurrent list. The States have been lowered to the level of glorified municipalities. This trend needs to be corrected.

3. It should be made obligatory on the Union Govt. to obtain the concurrence of the State Government in matters of legislation on items included in the concurrent list.

4. Item 97 of list I is to be shifted to list II. It is only reasonable and in conformity with the federal spirit envisaged in a federal constitution that the residuary power rests with the States.

III. Role of the Governor

5. The institution of Governors has been a subject of controversy. The Governors behave more as agents of the Union Government serving partisan ends than functioning independently and impartially as "Head of State".

Articles 200 and 201 which give the Governor power to withhold assent to bills passed by the legislature or to reserve them for the consideration of the President do not agree with the democratic and federal spirit and that power has to be deleted.

IV. Administrative Relations

6. When a no confidence motion has been adopted by the Assembly against the Chief Minister it shall be obligatory on the Governor to give the opposition a chance to present the next Chief Minister, who will seek the confidence of the House on the same day and the Governor shall not dissolve the Assembly before giving the opposition such an opportunity.

7. Central intervention under Art. 355 against internal disturbance is improper. The Union Government may locate and use its Central Reserve Police and other armed forces in aid of civil power in any State only on request by the State Government and not *suo-motu* as suggested by the Administrative Reforms Commission.

8. Broadcasting and television (Entry 31 List I) facilities should be shared on an equitable basis between the Union and the States.

9. Establishment of Inter-State Councils under Art. 263 will help better co-ordination between the States. They have to be on a permanent basis with an independent secretariat.

V. Financial Relations

10. The scheme of devolution of the revenue-gap between the resources and the fiscal needs of the States to discharge their responsibilities by sharing proceeds of Central taxes and duties and by grants-in-aid from the Union has not worked satisfactorily. It has only done havoc to the interests of the States. The grants-in-aid portion has not been adequate. The States' share of the Central taxes has to be raised to 75%.

11. There has to be a pattern for mandatory distribution of schemes and aids meant to provide social and economic justice and equality. Non-plan expenditure incurred by the States on account of welfare programmes have to be aided substantially by the Union.

12. There shall not be any encroachment on the taxation power of the States. Transfer of resources by transferring items from the State list has to be avoided. More items are to be transferred to list II (State list). More central taxes have to be brought to the shareable pool. Financial resources other than tax revenues also are to be brought to the shareable pool.

13. The Finance Commission must be a permanent body dealing with all financial transfers (Plan and non-plan) on an assessment of capital and revenue resources. The Planning Commission's role has to be limited to functioning as an agency for overall investment, planning and decision making in the interest of rational utilisation of scarce capital resources.

14. The yield from schemes like the Special Bearer Bonds Scheme and the revenue accruing from raising administered price items like petroleum, coal etc. should be brought within the divisible pool of resources.

15. The Centre must not charge from the States higher rate of interest than what it pays to the foreign lender. The Centre shall not play the role of an usurer in its relationship with the States.

16. The Union has to ascertain the views of the State Governments and give them due consideration before moving a Bill to levy or very the rate-structure or abolish any of the duties and taxes enumerated in Articles 268 and 269.

17. While dealing with natural calamities the States have to be adequately assisted by the Centre. All calamities such as drought, sea-erosion, cyclone, floods etc. have to be treated as natural calamities requiring immediate central assistance.

VI. Economic and Social Planning

18. Planning Commission should be a statutory advisory body of specialists and it must not usurp powers of the National Development Council. Planning has to be de-centralised. The present practice of having centralised Planning have lowered the role of the States reducing their status to that of local bodies. The States have to formulate their plans according to their requirement as per the norms fixed by the Planning Commission and the National Development Council must act as an agency for national co-ordination.

19. The Planning Commission should not be a department of the Central Government but should be an autonomous body under the National Development Council for overseeing Planning, investment and decision-making at the national level.

20. Federalism and Democracy being the two main streams of Indian political evolution, no attempt should be made to belittle the status and auhority of the constituent units. The overseeing role of the Centre is incompatible with the traditional ideals of federalism. The strength and stability of the States give strength to the apex of the Federal Pyramid viz., the Centre.

JANATA PARTY

MEMORANDUM

I. Introduction

The unity of India is the unity of a land of diversity. The democratic Constitution of our country has therefore to be in essence a federal Constitution. However, in the historical circumstances that prevailed at the time of the birth of independent India, some unitary features were considered essential to preserve the unity of the country. More than three decades have elapsed since the Constitution came into force. The experiences of these years have enabled us to see the strength and the weaknesses of the Constitution. They have revealed the loopholes and the short-comings that can result in the subversion or erosion of some of the basic values and concepts of our Constitution including democracy, federalism and decentralisation. It has therefore become imperative to have a second look at the Constitution to take corrective action through Constitutional amendments and conventions. These amendments should strengthen the federal character of the Constitution with emphasis on devolution of political and financial powers not only from the Centre to the States, but further down to the Panchayats as well. The edifice of a strong Centre can be raised only on the firm foundations of strong States.

II. Legislative Relations

Some of the existing provisions in the Constitution lend themselves to be used either by the executive at the Centre or by Parliament to make inroads into the legislative powers that the Constitution has assigned to the States. Thus, we have seen that some of the powers enjoyed in theory by the States become

inhibited and illusory in actuality. For instance, the provisos to articles 31 A, 31 C and 304 (b) of the Constitution provide ample scope for the encroachment by the executive at the Centre on the legislative powers of the States. These provisions must be carefully examined and necessary amendments made in the Constitution to protect the legislative powers of States.

In matters concerning assent to a bill passed by a State Legislature or in reserving it for President's consideration, provisions should be made in the Constitution to ensure that the Governor acts strictly on the advice of the Council of Ministers. To prevent the blocking of bills for an indefinite period, there is need for a Constitutional amendment to provide for the completion of consideration of the bill by the President within three months.

III. Role of the Governor

The unfortunate experience about the high Office of Governor has been that in several cases, this Office has been misused to subserve the interests of the ruling party at the Centre in total disregard for the Constitution. Keeping this in view the appointments of Governors are often made in a partisan way, as a political patronage and without any well-defined norms and guidelines. These appointments are generally made without consultation with and the consent of concerned Chief Ministers. The absence of calibre, independence and impartiality in the persons appointed in this high Office are often overlooked.

Against this background, certain Constitutional safeguards and conventions relating to the powers and functions of Governors are urgently called for.

The claim for a majority in a State legislature must be tested on the floor of the legislature without delay and not in the cosy chamber of the Governor. If at any stage a doubt arises about the majority support enjoyed by the Chief Minister, he must be directed by the Governor to test the majority on the floor of the State legislature. The same procedure should be adhered to by the President of India in relation to testing the majority on the floor of Lok Sabha as well.

If, after the fall of a government, no party or a coalition of parties is able to demonstrate its majority on the floor of the legislature, the Governor must dissolve the Assembly, and elections must be held at the earliest.

On the advice of a Chief Minister who has lost majority support, the Governor must not prorogue the State legislature or promulgate Ordinances.

IV. Administrative Relations

At present a number of Central agencies such as the Agricultural Prices Commission, Central Water Commission, Central Electricity Authority, Director-General of Technical Development, Monopolies and Restrictive Trade Practices Commission, Employees State Insurance Corporation, National Savings Organisation, Employees Provident Fund Organisation, Bureau of Industrial Costs and Prices, Food Corporation of India, etc., handle activities relating to subjects in the State and concurrent lists of the Seventh Schedule of the Constitution.

Some of these Central Organisations have been making inroads into the autonomy of States. This encroachment must be effectively prevented.

Though there is a clear Constitutional provision for the setting up of an Inter-State Council, this has not been done and many Inter-State disputes and disputes of States with the Centre have remained unsettled for a long period resulting in tensions and bitterness. The Administrative Reforms Commission has also referred to this failure to benefit from this Constitutional provision. The Inter-State Council should therefore be set up without further delay.

It has been claimed that article 355 of the Constitution permits the Union government to deploy in States, Central Reserve Police and other para-military forces even *suo-moto*. This is highly objectionable and the Constitution should be suitably amended to provide for the concurrence of State governments before deploying such para-military forces in the concerned States, since law and order is a State Subject.

As the provisions of the 44th Constitutional amendment were introduced to prevent the misuse of article 356 of the Constitution regarding President's Rule, these should be retained.

The Centre's monopoly of media like television and Radio has been used to deny legitimate access to State governments and to serve the interests of the ruling party at the Centre. This monopoly must be ended by vesting the control of television and radio in autonomous corporations.

V. Financial Relations

If States suffer from inadequacy of financial resources and powers, the autonomy of States faces severe constraints and the federal character of the Constitution is also jeopardised. Against this background the Centre-States relations on financial matters acquire greater significance.

In matters of resources allocation to States, there cannot be a rigid demarcation between "Plan" and "non-plan", "developmental" or "non-developmental", "revenue" or "Capital" accounts. The problem of resource allocation to States must be viewed in a wider and a more comprehensive perspective. For this purpose, the following steps are essential :

(1) Income tax including tax on companies should be shared by the Centre and the States.

(2) The Surcharges levied for general revenue purposes on duties and taxes, including income tax, should be treated as a part of the divisible pool.

(3) Auxiliary and special duties should be merged with the basic excise duty, and at least 60 per cent of the net proceeds should be made available for the divisible pool.

(4) The grants to the States under article 275 of the Constitution should not be drawn from the States' share of the divisible pool.

(5) The Railway Passenger fares tax under article 269 of the Constitution should be reimposed.

(6) A National Expenditure Commission should be instituted to go into the expenditures of the Central and State governments thoroughly and rationalise the basis for assessment of revenue surpluses for the guidance of Finance Commission.

(7) To deal with the acute problems of institutional finance, a National Credit Council consisting of representatives of Central and State governments at ministerial level. the Governor of Reserve Bank of India, the Chairman of NABARD, IDBI, Export-Import Bank and LIC should be established under the aegis of the National Development Council.

(8) When the Centre resorts to the revision of administered prices. except when such revision is intended to meet the losses. the additional income that accrues should be included in the divisible pool.

(9) The Centre must not monopolise market borrowing but the same facility should be available to the States for their projects. The National Debt Commission should be set up. It should decide the general principles to be observed in regard to the relative shares of the Central and State governments in market borrowing, interest differentials etc. It should also work out, in consultation with the Planning Commission and the Reserve Bank of India, the conventions that should be observed by the Central and State governments when borrowing against dated securities from banks and other financial intermediaries.

(10) In times of natural calamities like floods, Cyclones, famines etc., there are inordinate delays in sending Central Study Teams to assess the damage and recommend the quantum of Central assistance. Such delays should be avoided and adequate Central assistance should be available to the concerned States.

(11) The main reason for the overdrafts that are run up by the States is the lack of balance between their developmental responsibilities and the financial resources at their disposal. Steps should therefore be taken to correct this imbalance so that there may be no scope for discrimination between one State and another on political grounds in permitting overdrafts.

VI. Economic and Social Planning

The very concept of devolution of power and decentralisation is rendered meaningless if in the planning process—right from formulation of Plans upto the stage of implementation, there is no effective participation of the States as well as lower local bodies. At present, in effect, planning has remained a highly centralised process at the apex.

It is essential that the National Development Council becomes the forum for discussion not only of national planning but of decentralised planning through various agencies indicated in the previous Section on 'Financial Relations'.

In decentralised planning, it is not necessary for the Planning Commission to scrutinise all the details of the proposals by the State governments. The national priorities to be observed even in State Plans can emerge on the basis of consensus arrived at between the Centre and the States in the National Development Council.

The finalisation of the State Plan outlays should allow the States to make allocations to the districts to facilitate district and block development planning. This is possible if the Planning Commission accords its approval of outlays only for some major sectors of development and leaves the rest to the States to determine the allocations to the districts on the basis of a well defined formula.

To the extent the devolution of power from the Centre not only to the States but right upto the Panchayats as well becomes effective, the decentralised economic and social planning will become a reality.

The concrete changes and steps suggested by the Janata Party in this Memorandum regarding States' legislative powers, role of Governors, administrative apparatus, States' financial resources and powers, and decentralised economic and social planning, if implemented effectively will make the Centre-State relations more harmonious with the federal spirit of our Constitution and in the process democracy will take deeper roots through the devolution and decentralisation of power.

JANATA PARTY

State Unit — Kerala

MEMORANDUM

This memorandum deals briefly with only some important aspects of Centre-State Relations and it is not an exhaustive reply to the Questionnaire issued by the Commission.

General

1.1 Our Constitution envisages India to be a Union of States and naturally states have as much an important role as that of the Centre, if not more, in Indian polity. The Constitution of India as framed by its founding fathers is federal in character. But thirtyfour years of functioning of this Constitution has only helped to erode the rights, powers, and status of states. The states have now been reduced to the position of municipalities under the Central Government. This degradation was effected through a series of constitutional amendments and legislative, administrative and fiscal measures of the Central Government. So, the views expressed by the Rajamannar Committee as pointed out in Q. 1.2 of the Questionnaire of the Commission have to be generally endorsed.

1.2 The hope that healthy conventions would maintain and strengthen the democratic and federal

structure of the Constitution has been belied and hence clear and unambiguous provisions have to be made in the Constitution for greater autonomy, powers and financial resources for the States. Decentralisation of power should not stop at the State level and it should go down to the district and town/panchayat levels. For this, mandatory provisions should be incorporated in the Constitution.

The Election Commission should be entrusted with the task of ensuring periodical fair and free elections to the local bodies *viz.* Panchayats, municipalities and Zilla Parishads also.

Legislative Relations

2. The tendency of the Centre to encroach upon the legislative powers of the States should be curbed. More subjects from the Union and Concurrent lists may be transferred to the State list. Residuary powers of legislation under article 248 and entry 97 of the Union list, particularly in respect of taxation should be transferred to the State list. The powers given to Parliament under Article 249 to legislate on subjects within the exclusive competence of the State should be straight away annulled. The suggestion made in Q. 2.3 of the Commission's Questionnaire regarding prior consultation with the State Government whenever any legislation by the Centre on a concurrent subject is undertaken is good.

Role of the Governor

3. The founding fathers of the Constitution had envisaged a high and independent position for the Governors. But, unfortunately no other office under the Constitution has degraded itself as that of the Governor. In fact, the Governor has become "a glorified servant of the Centre". At the same time, the Governor has not even the security of service that is enjoyed by a last grade employee of the Government. The Karnataka Government's White Paper on the Office of the Governor gives a correct picture of the role and status of Governor. It would be ideal, if the Office of the Governor is done away with. But, in case it is retained, the Governor shall be appointed with the concurrence of the State Government concerned. The Governor shall function only on the advice of the Council of Ministers of the State. The Governor should not have the power to withhold assent to any bill that has been passed by the State Legislature. Nor shall he has the power to reserve any bill for the consideration of the President. A time limit of not exceeding two months should be fixed in the Constitution for the Governor to give his assent to any bill. It should be mandatory on the part of the Governor to invite the leader of the majority party or combination of parties who enjoys the support of the majority of the members of the Legislative Assembly to form the ministry. In case there is no leader who can get the support of majority of the members of the Assembly, the leader of the single largest party should be invited to form the ministry. Any doubt regarding the majority support to the Chief Minister shall be tested only on the floor of the House. Clear-cut constitutional provisions and guidelines should be made in this regard. It is in the choice of Chief Ministers and removal of ministeries that the Governors erred most and so, no discretionary powers shall be left, with them in this regard. The practice of keeping the Assemblies under suspended animation should be abandoned altogether.

Administrative Relations

4.1 If the Union Government can be run without a President's Rule, there is no reason why President's/Governor's rule should be resorted to in the States taking advantage of Article 356. This Article has been used most often to the political advantage of the party in power at the Centre. So either this Article should be scrapped or it may be amended in such a way that it could be enforced to only in the rarest of rare occasions and conditions. The suggestion made in Q. 4.5 of the Commission's Questionnaire of enlarging the scope of Article 356 to that existed under fortysecond constitution Amendment Act can in no way be accepted.

4.2 Regarding Q. 4.6 it may be observed that census operations carried on through State Governments are satisfactory. But in the case of elections some changes at the top level of state election machinery are necessary. For example, the Chief Electoral Officer shall not be a State Government Officer. He shall be an independent officer appointed by and functioning directly under the Election Commission.

4.3 There need not be anymore new All-India Services. The armed forces like C.R.P. and B.S.F. should not be used in states without the civil authorities of the State Governments asking for it. *Suo-moto* action by these forces or the Central Government in this regard can on no account be allowed.

4.4 Broadcasting and Television should be included in the concurrent list and the States should be allowed to establish and run their own broadcasting and television institutions.

4.5 Zonal Councils have become practically defunct. Inter-State Council under Article 263 will serve its desired purpose, if only it is a permanent body, consisting of the Prime Minister and Chief Ministers having an independent secretariat.

Financial Relations

5.1 The observation of the A.R.C. study team that outstanding feature of financial relationship between the Centre and States "is that the former is always the giver and the latter is the Receiver" is quite correct. Further, the Centre also insists on the dictum that the Receiver cannot be the chooser. Devolution of financial resources through the mechanism of the Finance Commission and the Planning Commission has only worked to the disadvantage of the States and to maintain and increase the disparities between the States.

The richer states have grown richer while the poorer states remain poor even after 34 years of the working of the Constitution. Transfer of a few more elastic taxation heads to the State List will help the states to improve their condition. Similarly more central taxes such as Corporation tax, Customs duty etc. and also financial resources other than tax-revenues of the Union should be under the divisible

pool. Surcharges on Union taxes and duties should be abolished. The divisible pool of Central taxes may be raised. The suggestion that 75% of taxes and duties collected by the Centre should be brought under the divisible pool may be favourably considered.

5.2 Liberal Central grants may be given to the states which are economically backward so that special schemes for their economic uplift to the level of the richer states could be implemented. The suggestion in Q. 5.6 can be accepted. When natural calamities such as drought, flood, earthquake etc. occur the Centre should rush adequate financial aid to the States. Very often the Centre moves slowly and in a stingy manner. The failure of the Central Government to appreciate the extent of loss to the cash crops in Kerala on account of the unprecedented drought in 1983 is an example of this sort of attitude.

5.3 The Centre as well as the States are not exploiting adequately their sources of revenue. The public sector undertakings both under the Central and State Governments are not yielding adequate returns on the capital investment. The loop-holes in taxation laws and procedures should be plugged and the collection machinery should be geared up to make maximum collection under the law. Political interference in tax collection also should be avoided. Managerial inefficiency, wasteful expenditure and corruption are some of the reasons for the poor performance of public sector undertakings. Persons of very low qualifications, experience and efficiency are appointed at key positions of public sector undertaking purely on political considerations. And, they not only mismanage the affairs of the undertakings but also indulge in all sorts of waste, luxury and corruption with immunity because of their political connections. This type of functioning has to be put a stop to.

Industries

6.1 In the Industries sector also there has been too much of centralisation. There is no justification in bringing industries like production of gum, matches, soaps, foot wear etc. under the Central Sector (ref : Q. 7.1 of the Questionnaire). In fact goods which can be produced in the small-scale and village industries sectors like the ones mentioned above shall be reserved for these sectors and they may be totally excluded from the large industry sector. Necessary legislation may be enacted to ensure this safeguards to the small & Village industries.

6.2 Development of industrially backward states and regions should be one of the major consideration while Central Government makes investments in industries. Unfortunately this has not been the case in the past. Kerala is a glaring example of an industrially backward state being neglected in the field of Central Sector Industries. Statutory and administrative steps should be resorted to ensure special central investment in industrially backward states and regions.

Conclusion

Now that our Nation has declared its objective to be a sovereign Socialist Secular Democratic Republic many more constitutional changes, enactments and administrative measures are required to achieve this end. These are particularly required for Socio-economic transformation. For example, Right to work has got to be included as one of the fundamental rights and all citizens of India should be ensured of remunerative work. While matters of Central-State Relations are considered, it may be noted that this is only part of the overall changes that are required.

LOKDAL

MEMORANDUM

Introductory

This is an admitted proposition that the Constitution of India is not unitary and that it is federal. In evolving federation, one need not go by the definition of that term in political science. Strictly speaking from that point of view no Government in any country adopting federal principles is truly federal. All depends upon historical development preceding the formation of the Government.

Our Country is geographically a big country and has got the second largest population in the world. In this context, it is not possible to have a unitary form of Government, and federation is a 'must' for administrative purposes.

The principle of federalism has to be adapted in a manner so as to suit the genesis of the people. While we have re-organised states on linguistic and cultural background still the unity of the country has to be maintained. In other words, 'unity in the midst of diversity' is our moto.

At the same time one should not go by phrases. It is true that the Centre should be strong but should it be or can it be at the cost of its constituents ? Centre can be strong even when States are strong. As a matter of fact, like biological process, Centre can be strong only when States are strong. If the States are dependencees of the Centre, they will have no real initiative for development. So, the constitutional relationship between the Centre and the States should be such that while the Centre should remain strong enough not only to meet any foreign aggression, it should also have powers to curb fissiparous and secessionist tendencies in any State or its part. At the same time the States should have freedom and resources enough to develop. Mere different political ideologies in the Governments of States and the Centre should not be regarded as a sign of fissiparous or secessionist tendencies.

The history of the Central Government in the past 36 years of the enforcement of our Constitution has shown that decisive central intervention has taken place more because of differing political ideologies in the Central and State Governments rather than for checking any disruptionist trends in the States. It is that misuse that has to be checked, while maintaining the essential features of Indian Federalism.

The most important requirement of Federal Constitution is that distribution of the legislative power between the Centre and the States. The Centre and the States should be independent of each other

in their respective spheres. Both the Centre and the States derive their powers from the same source, *i.e.*, the Constitution.

The well-known authority on constitutional law, Mr. K. C. Wheare, defines the Federal Principal as "the method of dividing powers so that the general and regional Governments are each within a sphere, co-ordinate and independent".

The subject of Centre-State relations has now acquired vital importance and has become crucial to the preservation of unity and integrity of India within the framework of Constitution. For the last two decades, the States were making demands for greater powers for making 'States autonomy' real meaningful, purposeful and effective.

During the British Regime also, the Government of India Act, 1935 which came into force in 1937, provided certain basic features of Federalism. The Constituent Assembly in framing the Constitution of India, followed, to a large extent, some of the basic features of that Act. Thus, the Indian Constitution was meant to be a federal one. But in the working of the Constitution, some unitary features have emerged dominantly as a result of one party rule at the Centre for long.

The need for review of the Centre-State Relations has become imperative, we have gone through the questionnaire sent to us by the Commission and we are making our suggestions in respect of salient points on Centre-State relations :—

1 Inter State Council

Article 263. It should be amended. The provisions should be made mandatory. The President must appoint such a Council at the beginning of its Session of the Lok Sabha. Its composition should also be defined. It should comprise of all Chief Ministers, Leaders of the Opposition in the State Assemblies, the Prime Minister and leader of the Opposition in the Lok Sabha, the leader of the house and the leader of the opposition in the Rajya Sabha. The Prime Minister should be its Chairman. The Leader of the opposition should be defined as the person who is the leader of the largest opposition party or group.

The council must be consulted on all steps to be taken by Centre against any State. It will evolve its own procedure for effective functioning and decision making. *Inter alia* the Finance Commission and the Planning Commission should be appointed on the advice of the Inter-State Council and they should be answerable to it. They should be made permanent bodies and should not be left on the whims of the Central Government.

2. Legislative Relations

Parliament to make laws in respect of matter specifically included in the State List :

(i) **Article 249** : Article 249 can be invoked with the aid of the resolution passed by the Council of States by two-thirds majority that it is necessary or expedient that the Parliament should make laws. This is in total violation of the baisc principles of Federalism. The Centre can easily invade the jurisdiction of the State, if the political party ruling at the Centre can command two-thirds majority in this council of States. Hence this Article should be deleted.

(ii) **Articles 200, 201 and 213** : Under Article 200, the Governor can reserve the bill passed by the Legislature of the State for the consideration of the President and the Governor shall assent to any bill and is bound to reserve for the consideration of the President if that bill, in his opinion, if it becomes law derogate from the powers of the High Court as to endanger its position which that Court by the Constitution is designed to fill. Except the bills of this nature the Governor should not have the discretion to reserve the bill for the consideration of the President. Article 200 should be suitably amended. Under Article 201, time limit is prescribed for Presidential consideration. Any bill can be put in cold storage. As the President is bound to act under Article 74 on the advice of the Council of Ministers and since he has no options at all the legislative power of the State can be easily interfered with by the use of Presidential veto. In other words, both in theory and practice the legislative process of the State Legislature in certain respects are subordinate to the supremacy and subject to political convictions or prejudices of the Union Executive. Most Governors own their loyalites to the party at the Centre as most of them are party men or obliged to the party in several ways. They are always chosen mainly to watch the political developments or even to manipulate development some time. Hence it is very difficult to accept that the Governors act on the advice of Council of Ministers of the State. These bills mainly dealt with welfare measures which were far more progressive than the legislation initiated by the Central Government. When a State legislature passed a bill it need not be sent for the assent of the President. If there is any violation of Constitution, judiciary can deal with the matter, instead of allowing a political judgment or political prejudices to prevail. Hence Article 201 should be repealed. Proviso to sub-clause (1) of Article 213 should also be deleted for the same reasons. Article 200 should be so amended as to delete the provision of reservation of the bill for consideration of the President.

Emergency :

(iii) If the President is satisfied that grave emergency exists and the security of the country or any part thereof is threatened by war or external aggression or armed rebellion, he may declare emergency by proclamation. While the Central Government should have the power to declare external emergency on the basis of armed rebellion should be totally deleted or if it is considered necessary to retain it, the same should not be declared without consulting the Inter-State Council.

Similarly financial emergency under Article 360 should be promulgated only after the matter is placed before Inter-State Council.

Article 360 has not been invoked so far. Financial instability can be the result of mismanagement of economy the Union Government and in case of emergency the States pay the penalty

This is an anomalous position regarding the financial emergency. Hence placing the proposal for financial emergency before the Inter-State Council is absolutely necessary.

President's Rule

(iv) **Articles 356 and 357 :** If the President on the receipt of the Report from the Governor of the State or otherwise, is satisfied that the situation has arisen in the State, in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, he can invoke Article 356 and 357, dismiss the State Government and even dissolve the legislature (optional) and assume all powers to himself. This only means that it is the Government at the Central that assumes all powers and is the Government that decides, whether to impose President's rule or not. In actual practice, the governors are told by the Home Ministry when they should write the reports and how they should write the report. The governors are helpless in these matters, as they continue to be governors at the pleasure of the President (this only means the pleasure of the Prime Minister). Under Article 356 as it stands even the governor's report is not necessary, it is only the satisfaction of the President that is necessary: in other words, it is the satisfaction of the Prime Minister who heads the Council of Ministers. It is both a tragedy and a farce that the State Governments and State Legislatures owe their existence to the pleasure of the Prime Minister and his Council of Ministers. It is suggested that the Inter-State Council should be consulted before invoking the powers under the aforesaid Articles of the Constitution.

(v) **Article 365 :** Article 365 is no less obnoxious. If any State Government fails to comply with or give effect to any direction given in exercise of executive power (by the Executive), Article 365 would enable the President to invoke it and impose President's Rule. Here again it is only the judgment of the political executive and not the result of determination by the Judiciary. Hypothetically if the directions given by the Central Executive are themselves obnoxious or violate rule of law, is a State Government still bound to carry out the directions ? Except at the time of war, at other times any direction issued, should satisfy the test of public interest and a State Government cannot be compelled to carry out the directions given by the Central Executive, which can even be malafide sometime. This Article itself was incorporated eleven days before the Constitution was finally adopted by the Constitutent Assembly. This is obviously an after thought. This Article should also be deleted.

It may be of interest to know that historically the President's Rule was imposed for the first time (after Constitution came into force) on 21st June 1951. Ever since that day till today the President's Rule was clamped more than 70 times in 21 States, excluding the Union Territories. In the scheme of the Constitution, the Council of States and the President are the custodians of the interests of the States. But since the President has to act on the advice of the Council of Ministers under Article 74, the President is reduced to rubber stamp, and in effect it is the Prime Minister and the Council of Ministers who take decisions.

(3) Financial Relations

(i) The Primary source of public income are :

(1) Taxes, (2) Domestic Borrowings, (3) Economic surpluses generated by the Public sector undertakings, trade and commerce. Certain revenues are collected exclusively by the Central Government. These are transferred to or shared with the States. The Finance Commission set up under Article 280, advise the President in the matter in which these revenues should be shared.

But, however, a substantial part of the financing by the Government of India is done under the enabling provisions of Article 275. The Finance Commission has no say in this matter. The Government of India can play havoc with the State Governments by utilising. discretionary grants. This has political overtones. Therefore, the National Development Council every year should formulate general principles for distribution of grants-in-aid and the deficits in the State budgets must be made good by the Government of India, by distributing these grants in an appropriate manner. And such deficits that arise in the State budgets as a result of developmental programmes which are part of productive wealth and approved by the National Development Council and Planning Commission should be treated as deficit in the Central budget of the Government of India. Such developmental programmes should be given recognition in the Constitution. The Constitution should be suitably amended for this purpose.

(ii) **Central Sales Tax :** There are many defects in Central Sales tax Act, 1956 preventing State legislature from imposing sales tax on commodities, which are declared by the Central law as commodities, of Special importance for inter State trade and commerce. There should be a complete review of all matters relating to the fundamental issue, that is the division of National Financial resources between the Union and the State in order to maintain and protect the federal nature of the Indian policy and the financial strength of States, finances. For example it may be mentioned that customs duty export duties and corporation taxes should be included in the divisible pool. Regarding profits earned by Government of India on sale of commodities such as petroleum, coal etc., relating to which the Government of India has exclusive trading rights and right to fix prices, that are called administered prices, the States should have a share and the Finance Commission can prescribe the principles of sharing.

Finance, Trade and Commerce

(iii) According to Prof. Wheare one of the essential requirements of federalism is that Union and State must each have under its independent control financial resources sufficient to perform its exclusive functions. The financial position must be adequate as well as elastic according to the division of financial resources and tax structure. The resources for raising funds available to the States are practically inelastic and comparatively very inadequate. In the context of development plans efforts to reduce uneven development and disparities, the States are in need of increasing resources. The Union Government apart from the resources available as per provisions of the Constitution has the facility

of foreign aid and recourse to deficit financing. These two avenues are denied to the States. If the States have to depend totally on Central Government for financial resources, the federal structure would end up a unitary State. This is the danger inherent in the situation.

Corporation Tax

(iv) Clause 6 of Article 366—Corporation Tax means any tax on income so far as tax is payable by companies. In pittance substance Corporation tax is a tax on income but this is not included in the divisible pool. Thus Corporation Tax should also be treated on the same footing as income tax. Customs and export duties should also be compulsorily distributed between the Union and States. Tax on capital values of assets of individuals and companies should be within the divisible pool.

Article 272 should be amended to make the division compulsory. As the sharing of basic excise duties between the Union and States, as it stands today is discretionary and not mandatory. The additional duties and excise on goods of special importance (Act 1957) authorise the Parliament to impose certain duties and excise on specified goods namely sugar, tobacco, cotton fabrics, rayon, artificial fabrics and woollen fabrics produced or manufactured in India and these goods were declared to be of special importance in inter-state trade and commerce for the purpose of Central Sales Tax Act, 1956. While it is true that the Government of India has assigned these additional duties to the States, the rider in the Act that the State would preclude from getting any part of the proceeds of the additional duties from the Government of India if any State imposes a tax on the sale of these goods. This rider prevents the States to impose sales tax on a number of commodities or they should lose the benefit of additional duties of excise.

Under statutory devolution of resources not less than 50% of tax revenues of the Central Government should be transferred to the States. The surcharge on excise duties should also be shared.

Grants

(v) There are two types of grants (a) grants-in-aid which are statutory grants under Articles 273 and 275 (b) non statutory or discretionary grants.

Article 282 empowers the Union of States to make any grant for any purpose when it falls outside the area of legislative authority. All grants for Plan schemes to considerable extent are discretionary under Article 282. These discretionary grants have overwhelmingly outstripped the statutory grants recommended by the Finance Commission and they have reduced the position of the States to that of supplicants for Central assistance. Discretionary grants will today range between 71.3% to 88%. These discretionary grants naturally fluctuate depending upon the Centre's financial position. Therefore, the position of the State becomes nebulous and since dependence on the Central becomes more pronounced in a federal structure while different parties may come to power in different States, it would be better that an independent body like the Finance Commission lays down the principle even with regard to the discretionary grants without allowing discretionary grants to be used for political manipulations.

Inter-State Trade and Intra State Trade

(vi) Article 302 empowers the Parliament to impose restrictions on trade and commerce not only relating to inter-State trade but also intra-State trade in public interest. There is no point in empowering Parliament to impose restrictions on intra-State trade. It is an exclusive sphere of the State. Trade and commerce are in Entry No. 26 of the State list out it is subject to Entry No. 33 of the concurrent list. Entry No.33 of the Concurrent list is as follows—

"Trade and commerce, in and the production, supply and distribution of :

(a) The products in any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) Foodstuffs, including edible oilseeds and oils;

(c) Cattle fooder, including oilcakes and other concentrates; and

(d) Raw cotton, whether ginned or unginned, and cotton seed; and

(e) Raw jute".

While there may be force in the contention that production, supply and distribution of certain products of an industry which may be of vital interest connected with a defence or integrated planning, it is not necessary to subject the power of the State legislatures to that of Parliament relating to trade and commerce. Therefore, Entry No.33 of the Concurrent list will have to be suitably modified.

Clause (b) of Article 304 uses the expression 'reasonable, restrictions' relating to the power of the legislature of a State whereas Article 302 use only the expresssion 'restriction. (without being qualified by the word 'reasonable'. In article 302 restriction must be qualified by the word 'reasonable'.

Under Article 302 no bill or amendment for the purpose of imposing reasonable restrictions on the freedom of trade and commerce by the legislature can be introduced without the previous sanction of the President. Such previous sanction may be necessary in relation to inter-state trade but it would not be necessary when the State legislature has to deal with intra-State trade. If the restrictions imposed by the State legislature are not reasonable and not in public interest the High Court or the Supreme Court are empowered to strike down the law. The previous sanction of the President cannot render invalid law valid. Hence the proviso to Article 304 should be omitted.

Article 307 contemplates the appointment of an authority for carrying out the purposes of Articles 301, 302, 303 and 304. It is similar to inter-State

Commission in the U.S.A. It would be desirable to appoint such a commission to deal with such cases in the course of inter-State trade rather than leaving it to the political executive of the Centre.

(4) **Para Military Forces**

Under Article 355, it is the duty of the Union to protect every State against external aggression and internal disturbances. The Administrative Reforms Commission is of the view :

"Under Article 355 of the Centre is entitled to send or station the units of the CRP in States without consulting the State Government or even contrary to their express wishes".

Except in case of external aggression against the state without the express request or the consent of the State Government para military forces of the Central Government should not be sent or stationed in any State. Hence, Article 355 should be amended so as to make it abundantly clear that the Centre shall not interfere in the States without the express request from them. Even when the para military forces of the Centre like CRP are sent or stationed in a State at the express request or the consent of the State Government as along as they are there they must function and operate under the discipline and control imposed by the State Government and the State Government should have the power to deal with the violations of law except the service conditions.

(5) **IAS and IPS**

All India Services like IAS and IPS officers are posted in the States but they remain under the supervision and disciplinary control of the Central Government. It is forcibly contended that when different political parties come to power in States and the Centre, the Central Government attempts to use the IAS and IPS officers and advice them to non-cooperative and some time to subvert State Governments and bring these Governments to disrepute. While there is considerable truth regarding the attempts made by the ruling party at the Centre to use these officers and also that some of them succumb to the pressures and temptations, all officers cannot be treated to belong to the same category, some of them are persons of conviction, high integrity and character. But for some such officers belonging to IAS and IPS there would not have been even a semblance of administration in States like Bihar. Hence a balance must be struck regarding their position in States Administration. It is undoubtedly true they must remain under the supervision and disciplinary control of the State Government primarily but they must have reasonable protection from harassment and insecurity from some unscrupulous political heads of the Government and various ministries. There are good governments and there are not a few bad governments too. Hence while these officers must be primarily under the control of the State Government, the Administrative Tribunals should protect them against victimisation.

(6) **Judiciary**

In a federal structure created by the Constitution providing for distribution of powers between the Central Executive and the Parliament on one hand and State Legislatures and State Executives on the other the Supreme Court has to act not merely as the interpreter and the guardian of the Constitution but also as a tribunal for the determination of disputes between the States and the Union and among the States. Under the Constitution Supreme Court is vested with jurisdiction to deal with these matters under Article 131. With the multiplicity of political parties coming to power the judiciary has a vital role in maintaining the stability of the federal structure. Hence no political party should be suspected of taking advantage in the appointment of Judges.

Under Article 124 every Judge of the Supreme Court is appointed by the President after consultations with such Judges of the Supreme court and High courts in the States as the President may deem necessary and in the case of appointment of Judges other than the Chief Justice, the President is bound to consult the Chief Justice of India. The President under Article 74 is bound to act on the advice of the Council of Ministers. He has no discretion in the matter. Hence the Law Ministry, the Home Ministry and the Prime Minister are generally concerned in the appointment of Judges and ultimately it is the Prime Minister who decides. Thus the Judge's appointments are made by the Executive. With the multiplicity of different political parties coming into power in the States and the Centre the appointment of Judges must be above controversy. Therefore, it is suggested that Article 74 should be amended suitably so that the Council of Ministers will not be concerned with the appointment of Judges and they cannot render any advice under Article 74 and the President need not act on their advice in that sphere.

We are of the view that the unanimous resolution of the All India Convention of Lawyers held at New Delhi in August, 1973 under the Chairmanship of late Shri M. C. Setalvad, be adopted, for the appointments of Supreme Court and High Court Judges and Chief Justice. The said convention was attended by eminent lawyers and jurists. The resolution of the convention was presented to Shri V. V. Giri, the then President of India. It was recommended that there should be a judicial committee of seven seniormost Judges of the Supreme Court, including the Chief Justice of India and similarly judicial committees of seven seniormost Judges in each High Court. These committees will make consultations among them and then ultimately the President of India would act on the advice of the Supreme court. Judicial Committee and the executive will have no say in this matter.

Regarding the transfer of High Court Judges, the same procedure should be followed. While transfer in certain cases cannot be disputed, that matter has to be left to the Judicial Committee of the Supreme Court. It is also suggested that the judges and Chief Justices of the High Courts and the Supreme Court shall not be eligible for further office (including that of Commission of Inquiry) under the government of India or under the government of any State after they have ceased to hold their offices. This appears to be the only way how the judiciary can be made totally independent of the political executive and how different political parties with their socio-economic philosophy coming into power in the States and the political party ruling at the Centre treating some of the State Governments, with utter hostility can have confidence in the federal system thus strengthening

the forces of national unity and national integration. There are attempts now to denigrate and to destroy the sacred institutions created by the Constitution. It is ultimately the quality, integrity and the stature of men who fill these posts and matters. Their appointment should not give scope for suspicion or controversy. Suitable amendment in Article 74 of the Constitution therefore, should be made.

Under Article 143(1) the President can refer certain questions of law to the Supreme Court for their opinion. It has been recommended by Shri Rajmannar's Committee that a provision on the lines of Article 143(1) may be made empowering the Governor to refer the question of law of public importance to the High Court. In a number of States in the American Union, it is constitutionally provided for this purpose. A provision may be made for such reference to the High Court by the State Government.

(7) Election Commission

Under Article 324(2) of the Constitution, the President appoints the Chief Election Commissioner and other Election Commissioners. When any other Election Commissioner is appointed Chief Election Commissioner acts as the Chairman of the Election Commission. As the President is to act on the advice of the Council of Ministers under Article 74, in practice for all purposes it is the political executive that appoints the Chief Election Commissioner and other Election Commissioner, if any.

Sanctity of democratic processes and confidence in democratic institutions depend to a large extent on the independence and *supremacy,* strength of character and democratic conscience of the Chief Election Commissioner and other Election Commissioners, if any, if they act as agents of political executive of the ruling party at the Centre, democratic processes would be subverted and democratic institutions would be destroyed.

In the context of political pluralism if there should be harmony between the Centre and States with different political parties in power, the Election Commission should not only be independent but also its conduct should be beyond suspicion. For achieving this purpose, the Chief Election Commissioner should not be appointed by the political executive.

The judicial committee of the Supreme Court referred to in the preceding paragraph, should select sitting Judge of the Supreme Court, for the post of Chief Election Commissioner and sitting High Court judges for the posts of Election Commissioners. The President should act on the advice of that committee for their appointments. Suitable amendment in Article 74 of the Constitution should be made.

The Election Commission should consist of at least three Commissioners, *i..e,* the Chief Election Commissioner and two Election Commissioners. The Election Commissioners in consultation with the Chief Justice of the respective State High Court should appoint the Regional Election Commissioners or Chief Electoral Officers for every State. The Chief Election Commissioner and the Election Commissioners shall not be eligible for further office either under the government of India or under the government of any State after they have ceased to hold their respective offices.

(8) Appointment of Governors—Articles 154 and 155

The President should appoint a Governor on the advice of the Inter-State Council and not on the advice of the Council of Ministers headed by the Prime Minister. The role of the Governor under our federal structure is very important. He should act as constitutional head of a State and not as an agent of the Central Government. He should have the same protection, as a Supreme Court judge in the matter of removal from his office. It is necessary for fearless and independent working by him.

(9) Formation and dismissal of Ministries in a State —Article 164

This Article has been variably abused. The Centre can topple a Ministry in a State through the mechanisation of Governor.

Examples of Andhra Pradesh and J & K are there for every one to see. It was tremendous public pressure and steadfastness of legislature of Andhra Pradesh that Government had to yield. Hence, this Article should be amended as follows :—

(i) **Appointment of Chief Minister :** Only that person should be appointed as Chief Minister who gets approval from the Assembly. Hence before appointing a Chief Minister, he should summon the Assembly within three days of vacancy.

(ii) **Dismissal :** Only when a Chief Minister is voted out of office that he should be dismissed if he himself does not resign.

If a situation has arisen during a period when Assembly is not in session and it appears to him that the Chief Minister has lost confidence but the Chief Minister disputes it, he should call a meeting of the legislatures within 3 days to enable him to seek vote of confidence.

(10) Radio and Television

There is need to prevent central monopoly for media like television and radio which should be in the hands of a corporation which would work under the Inter-State Council.

11. On the advice of the Prime Minister, who has lost majority support, the President must not prorogue the Parliament or promulgate ordinances or dissolve the House of People. Similarly, on the advice of the Chief Minister, who has lost majority support, the Governor should not prorogue the State Legislature or promulgate ordinance or dissolve the Legislative Assembly.

12. Unfortunately we have not paid due attention to decentralisation of power to the local bodies *i.e.,* Village Panchayats, the Municipal Boards, and town areas, through whom only the local problems of the people can be solved. No body bothers to hold elections of these bodies in time. They do not have finances and have to look to the State Governments for that purpose. It is therefore suggested that elections of all local bodies must be held after every five years. They should have sources of their finances to carry on their activities.

2. STATE PARTIES

ALL INDIA FORWARD BLOC

MEMORANDUM

Views of the Central Committee of the All India Forward Bloc

The questionnaire projects a fragmented approach and not comprehensive one, to the problem of the Centre-State relations as obtaining now. Further, the approach is more of legal and judicial nature than politico-historical. The Constitution of a country, is not only the embodiment of legal and judicial conceptual niceties but reflect the corelation of the politico-economic and social forces at work of a particular time-span. Our Constitution cannot be and is not an exception to that. As such, the unchangibility of it can not be the maxim, rather changibility should considered an essential element in any written Constitution, if it is to be attuned with the changes of the co-relation of the socio-economic forces. We, therefore, are of the opinion that amendments will be necessary in the Constitution to restructure the Centre-State relations.

The terms of reference of the Commission framed by the Government seeks to put limitations on the scope of the study of the subject when it, mentions *inter alia* that it shall have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people.

Our party is second to none to defend the independence, unity and integrity of the country. The suggestions which we will give later on, have been formulated having due regard to those important aspects of our national duty and obligations. There should not be any misgiving about that. We hope this limitations will not inhibit the Commission for recommending suitable amendments in the Constitution.

Historical Evolution of the Constitution

2. The perception of the Constitution of Free India has its genesis in the long drawn peoples' struggles against alien British rule, which during its one and a half century domination, imposed a highly centralised administration, in their own imperial interests. The broad anti-Imperialist struggle for the attainment of national freedom, brought within its fold all the linguistic, cultural, ethnic and religious groups by projecting a living image of India's unity in diversities and defeated the Imperialist mechanisation of 'divide and rule'. The concept of a Constitution based on the principles of federalism, developed during the freedom movement itself. This federal concept found expression in Motilal Nehru Report of 1928 and other resolutions and discussions during the forties. The most clearest perception of the Federal Constitution of Free India, is reflected in the Election Manifesto of the Indian National Congress of 1945, which states, "The Federation of India must be a willing Union of its various parts in order to give the maximum of freedom to the constitutent units. There may be a minimum list of the common and essential federal subjects which will apply to all units, and a further optional list of common subjects which may be accepted by such units as desired to do so."

The political climate which obtained throughout the country after the transfer of power, particularly in the wake of the partition of the country, must have weighed upon the Constituent Assembly not to go beyond on the road to federalism what emerged as the present Constitution of India in 1950. To the great dismay of all sections of democratic opinion the Constitution contains some provisions which are closely similar to those of 1935 Act made by the British Government in many respects. It is replete with the conceptual framework found repugnant to the democratic opinions upheld by the leadership of the freedom movement.

State Autonomy eroded

3. The Constitution that emerged after Independence, although described as Federal, is essentially Unitary in character. It invested the Centre with enormous powers at the expense of the autonomy of the States in the legislative, economic and financial as well as in the administrative spheres, which will be evident from the analysis of the entries in the VIIth Schedule (List 1, 2 and 3) of the Constitution. Again whatever federal contents remained, have been increasingly eroded into during the last thirtythree years, reducing the autonomy of the States into a mockery. The process of erosion of the States' rights climaxed during the Emergency, when the State Governments were robbed of all autonomy. States, in this process have been brought down to a mendicant status. This was possible because of the fact that a single party enjoyed power both at the Centre and all the States, except for a brief period, that too, only in few States.

Now that the country has entered into the era of a multi-party polity, the existing arrangements between the Centre and the States, must undergo requisite changes in order to attune them with existing reality. The new arrangements must necessarily be based on the federal principles in the true sense of the term. Any move in the opposite direction will invite only perils.

The State Governments run by a Party or a group of parties other than the party in power at the Centre are always under threat of Central interventions. Imposition of President's Rule under Article 356 of the Constitution, has been the common practice of the ruling party at the Centre, to re-establish its rule negating the peoples' verdict. There are number of instances of the blatant misuses of this provision. This Article 356 has been invoked about 70 times to impose Presidential rule during the last 35 years. This has also been resorted to in order to solve the inner party squabbles within the Congress at different points of time.

Though the maintenance of law and order is exclusively within the State jurisdiction, the deployment by the Centre of the Central forces like the C.R.P., B.S.F., the Industrial Security Force, even without the consent of the State Government concerned cannot but be construed as deliberate erosion into the States' power and autonomy. This trend has reached such a stage, that the Union Government did not hesitate to declare certain areas of Tripura State as 'disturbed' in total disregard of the opinion of the Government of Tripura. Again the Centre's power to issue direction to the States under Article 256 and 257 of the Constitution are uncalled for curbs on the States' autonomy and power.

The recent refusal of the Government to initiate suitable legislation in the Parliament for the abolition of the Andhra Pradesh Legislative Council in pursuance of the resolution passed by the Andhra Pradesh Legislative Assembly in terms of the article 169 of the Constitution is yet another of the Centre's attempts at eroding the State Autonomy.

Withholding of the President's assent for the bills passed by the State Legislative reduces the power of the democratically elected Legislative bodies of the States. This, sometimes, denies the opportunity and right of the majority party in the Legislatures to carry out the mandate of the electorate.

The unusually inordinate delay in according Presidential assent to the West Bengal Land Reforms Bill, 1982, is a glaring example of killing a progressive legislation of States by the dubious method of delaying the assent or not giving the assent. This is virtually an extra-ordinary right of the Central Cabinet (a political body) to nullify the right of the State Legislatures to give effect to the election promises, if the Central Cabinet politically decides to do so, throwing to the winds all cannons of Parliamentary democracy.

The office of the Governor has been rendered subordinate and subservient to the ruling party at the Centre. The Governors have been reduced to virtually the same position as that of the resident agent in the native states in the days of British Raj.

Instances are there, when the Governors debased their high office by lending services to fulfil the partisan objectives of the ruling party at the Centre.

Financial Relation

The State's resources bearing capacities are very limited. There is no uniform policy of distribution of resources from the Central Divisible pool. The present devolution of resources is not commensurate with the responsibilities to be discharged by the States under the Constitution. The Finance Commission have not been able to solve the problem of distribution of divisible resources between the Centre and States in a satisfactory manner mainly because of the Constitutional limitations in this respect. There is an increasing tendency of the Centre to raise periodically the prices of Steel, Petroleum products and other commodities resulting in the erosion of States' financial resources and transfer of increased resources from the States to the Centre. The present system of determining the prices of farm produces, which does not take into account the actual cost of cultivation, reasonable margin of profit and risk allowances, adds to the burdens of the States because of their increasing expenditures on subsidies and subventions in this regard.

Hamstrung with the limitations arising of the widening gap between their legitimate needs and actual resources, the States have so long been managing their finances by borrowings, overdrafts and ways and means assistances from the Centre. The recent restrictions imposed by the Centre on States on the resort to 'over-drafts' in the name of financial discipline, have adversely affected the Manœuverabilities of the State Governments in tackling the financial affairs. The reaction of the States to these restrictions can be gauged from the comments in the Memorandum submitted by the West Bengal Government to the Eighth Finance Commission, which runs as follows :

"The interesting thing, however, is that the Government of India, themselves also need to resort to overdrafts. But they do not use the word. They simply issue treasury bills and draw money from the Reserve Bank. What is also interesting is that while we are made to pay interest at 13 per cent on our over-drafts, they pay only 4·6 per cent on their treasury bills".

Incidentally, it is to be mentioned here, that the assistances from the World Bank, and other international lending institutions are passed on to the States by the Centre, at higher rate of interest.

The Centre's policy adversely affects the revenues of the States. This is evident by another comment of the said Memorandum which is as follows :

"Popularity is courted by concessions in the spheres in which revenue is to be shared with the States, while compensatory imports are made on other spheres. For example, in the budget for the year 1983-84, there is a concession in the income tax upto a certain levels. The loss on this account is entirely that of the States. But there is also an enhancement of surcharge on income-tax (from 10 to 12·5 per cent). The profit on this account is entirely that of the Government of India."

It is to be noted that the Centre raised additional taxes which yield cumulatively Rs. 1430 Crores per annum, of which only the sum of Rs. 80 crores is transferable to the States. Further, it will not be irrelevant to mention that major sources of revenue such as Customs and Excise duties and Corporation tax are not included in the divisible pool.

Apart from the exclusive jurisdiction of the Centre over almost all the major revenue sources, the banking, insurance and other public financial institutions are under the control of the Centre. The States have no say in the investment pattern of them. Nor do they share the profits earned by them. Similarly the States have no say in the formulation of the fiscal and economic polities, the impact of which is bound to fall upon them.

Planning & Economic Co-ordination

5. Equally, the States have virtually no role in formulating the Five Year Plans, determining the priorities and shaping the implementation strategies. The Planning Commission, although a non-statutory and extra-constitutional body, enjoys wide powers and authority, administrative and otherwise in all matters relating to planning from formulation to execution. The National Development Council has become a deliberative body and its occasional meet at the behest of the Prime Minister is a ritual. Nor the National Development Council is a creature of the Constitution. It is the executive of the Central Government which is its creator and naturally it works at its behest.

Plan performances have not reduced the economic inequality, prevented concentration of economic power in the hands of the few, diminish poverty and un-employment, ensure better standard of life for the people, remove regional imbalance, in other words failed to fulfil the objects of the successive plans. Apart from contributing towards further deepening of the economic crisis, Plan administrations have given rise to frictions between the States and Centre by encroaching upon the rights of the States while seeking to establish the Centre's control over a number of subjects which come under the concurrent and State Lists.

Education and Culture

6. Education has been included in the concurrent list by the 42nd Amendment Act passed during the Emergency. Perhaps in no other federal country of the world, education or any other subject of cultural importance is under Central control in any way. But even after being invested with more power over education, the Centre have not made more money available for the States for educational purposes. States are also not provided with funds even for fulfilling the Constitutional obligation of making education free and compulsory for all children upto the age of 14.

Even the State Universities are being discriminated against by the University Grants Commission. *Of the* total financial assistance of the U. G. C.' 80 per cent is spent for the Central Universities while the the remaining 20 per cent is distributed among 113 State Universities. In a multi-lingual country like India, languages irrespective of the size of the linguistic groups. The imposition of Hindi does not help the process of emotional integration, rather impedes it, although we accept Hindi as official link language.

National Unity and Integration

7. The wrong economic policies pursued by the Government during the last three and half decades have resulted in regional imbalances. This breeds the fissiperous, chauvinistic, parochial and even secessionist tendencies which we witness today in different parts of the Country. The Imperialists do not miss any opportunity to take advantage of the situation in order to fulfil their sinister design of destabilising our country. This has naturally added new dimensions to the question of Centre-State relations.

With the rapid deterioration of the security environments resulting from the U. S. global strategy to perpetuate its domination in this subcontinent, the task of preserving the national unity and integration and strengthening the foundation of freedom and sovergnity has become imperative. A sound, balanced, healthy and co-operative relation between the States and Centre is essential to fulfil the task.

We have, therefore, come to the conclusion that, reshaping and restructuring the Centre-State relation are *sine-quanon*, for the preservation of democracy, for the relentless struggles against authoritarianism, for strengthening the unity and integrity of the country, for safeguarding the freedom and sovergnity of the country, for planned economic developoment in the interest of the people and for the fulfilment of other democratic tasks. And the fundamental basis of such restructuring shall be more power and autonomy for the States, which can alone make the States strong. Our object of making States strong does not mean the weakening of the Centre. Strong States do make the Centre strong. We want strong centre but not arrogant or dictatorial centre.

We are, however, not oblivious of the fact that the present Constitution is an instrument of class rule. That being so, it is incapable of solving the fundamental problems of the people. Nor do we believe that the restructuring of the Centre-State relation on the lines suggested by us, would bring about radical changes in the socio-economic conditions of the vast masses of our people and free them from class exploitation. Nevertheless, the reshaping of the Centre-State relation on the suggested lines would certainly enable the State Government, to provide relief to the people in greater measure than now and also provide the States greater opportunity to serve their people.

With this object, the Central Committee of the All India Forward Bloc submits the following proposals :

I. Political and Administrative Aspects

1. The preamble of the Constitution should be so amended as to include the word 'federal' in the description of the Republic of India.

2. The position of the Governor should not be any way different from that of the President. The Governor shall have no discretionary powers. The manner of appointment of the Governors should be changed. Governors shall be appointed by the President on the basis of a Panel forwarded by the State Government concerned.

3. Articles 356 be deleted. In case of a Constitutional break down in any State, provision should be made for holding election as in the case of the Centre.

4. Article 360 which empowers the President to interfere in the State Administration of the ground of threat to financial stability, should be deleted.

5. Article 200 and 201 should be so amended as to make the State Legislature supreme in the sphere of legislation on matters relating to the State List and all possibilities of interference by the Centre or the Governors are eliminated on any ground except in the case of bills which affects the powers of the High Court.

6. Article 248 and Entry No. 97 in the Union List vests the Union with the residuary powers concerning all matters. Such residuary powers should be with the States.

7. Article 249 which empowers the Centre to legislate on a subject in the State List under the plea of national interest should be deleted.

8. Article 252 which empowers the Union to legislate on the request of two or more States to pass laws on subjects mentioned in the State List should be deleted.

9. Article 263 empowers the President to establish the Inter-State Council. The existing article is recommendatory and not mandatory. It must be made mandatory. The Council should consist of the Prime Minister and all Chief Ministers of the States. The Prime Minister shall be the Chairman of the Council. The Council shall deal with all disputes b tween the States and the Union and between States and with any other matter of national importance. The Council shall have a permanent Secretariat of its own in the Capital.

10. Article 365 which empowers the President to dismiss State Governments, for their failure of implementing any direction given in the exericse of the Executive Power of the Union, under any of the provisions of the Constitution, should be deleted.

11. Article 370 giving special constitutional status to Jammu and Kashmir shall be retained and protected in the letter and spirit.

12. All India Services like I.A.S., I.P.S. etc. whose officers are posted to the States, but remain under the supervision and disciplinary control of the Central Government, should be abolished. There should be only Union Services and State Services and recruitment to them should be made respectively by the Union Government and State Government concerned. Personnel of the Union S rvices should be under the disciplinary control of the Union Government and those of the States Services, under the disciplinary control of the respective State Governments. The Central Government should have no jurisdiction over the personnel of State Services.

13. The Judiciary at all levels be free from political interferences. The Judges of the Supreme Court should constitute themselves into a judicial council and make recommendations regarding the appointment of judges of Supreme Court and appointment and transfer of judges of High Courts. Before making their recommendations, they should consult the State Governments, the Union Government and the Chief Justices and Judges of the High Courts. The advice of the Judicial Council of the Supreme Court shall be binding on the President.

14. The Election Commission should consist of three members to be appointed by the President on the recommendation of the Judicial Council as referred to para 13, in order to ensure its credibility and impartiality.

15. A Statutory Communication Council should be set up to oversee the functioning of the radio, television and other Government-managed media so that this important media may not be used for partisan interests. The State Governments shall have adequate representation in the Council.

16. Law and order is state subject and the prerogative of the State in the matter must be fully respected. Induction of Central Police forces may be allowed on the basis of prior concurrence of the State Government concerned. Disturbed Areas Act should not be extended without the concurrence of the State concerned.

II. Economic and Financial Aspects.

1. While enlarging the scope of the States' sphere, we must also try to preserve and strengthen the Union authority on the subjects that could be carried out by the Union authority and not by any single State, such as Defence, Foreign affairs including foreign trade, currency and communications and economic coordination and planning. The role of the Centre should be one of coordination. In areas such as Planning, fixing of prices, wages etc., the Centre may not only coordinate but also issue general direction.

2. In the matter of planning and economic coordination, however, the Centre will have to conform to the general guidelines laid down by the National Development Council, in which the States will have representation along with the Centre. At the moment, neither the Council nor the Planning Commission is specifically referred to in the Constitution. This lacuna may be removed by introducing a separate Article, which should also state clearly that the composition of the Planning Commission will be determined by the National Development Council. Loans and grants for development purposes are not the prerogative of the Planning Commission. It is thus important that the States have some say in the manner of operation of the Commission. The Commission should help the States develop in their own way, with more powers and resources at their command.

3. Industrial and power or irrigation schemes which concern more than one State have to be kept on the Union List so that there can be a common policy and final decision in regard to these multi-State Projects will be enumerated by the Union Government, while the execution and implementation should be done through the State Government.

4. In matters concerning industrial licensing etc., major modifications in the allocation of powers between the Centre and the States are called for. The lists in the Seventh Schedule should be reformulated so that States may be given exclusive powers in respect of certain categories of industries.

5. The Articles regarding the Finance Commission and the distribution of revenues should be amended to provide for 75 percent of the total revenues raised by the Centre from all sources for allocation to different states by the Finance Commission. This is necessary to end the mendicant status of the states.

In what proportion and on what principles this 75 percent of the total realisation shall be divided between the States shall be dicided by the Finance Commission.

It should not be the job of the Finance Commission to decide on the proportion of revenues to be distributed between the Centre and the States.

Its task should be only to fix the proportion each State should get from the total financial realisation by the Centre, 75 per cent of which is to be allotted to the State.

Article 280 clause 3, sub-clause (a), which provides "the distribution between the Union and the States of the net proceeds of the taxes which are to be or may be divided between the Union and the States," should be omitted and the entire clause be redrafted so as to make it clear that it is the duty of the Commission to make recommendations to the President as to the allocation between the States of their respective shares of the proceeds.

The States must also be accorded more powers for imposing taxes on their own, and to determine the limits of public borrowing in their respective cases.

III. Miscellaneous

1. In order to enforce the principle of equality of the federation units and to protect further erosion of States autonomy, elections to the Rajya Sabha also should be directly held by the people at the same time as Lok Sabha elections. All States must have equal representation in the Rajya Sabha except those with a population of less than three million. Both houses must have equal powers.

2. Article 3 of the Constitution which gives powers to the Parliament to change the area of a State unilaterally, should be suitably amended so as to ensure that the name and area of a State cannot be changed by the Parliament without specific cansent for that by the State Legislature concerned.

In the case of a conflict between two or more States in respect of territory, steps would be taken to settle the conflict in accordance with the provisions already made in the Constitution for settlement of other conflicts (*e.g.* use of water resources of the same river flowing *through* a number of States) between the States.

3. Languages mentioned in the Eighth Schedule should be allowed in the work of the Governments at the Centre and in the States at all levels. Any citizen of India will have the right to use his mother tongue in his dealings with any branch of the Government upto the highest stage. English should continue to be used for all the official purposes of the Union along with Hindi, till as long as people of the non-Hindi people should be encouraged. It is necessary to further amend the Eighth Schedule to include certain other languages such as Nepali.

DRAVIDA MUNNETRA KAZHAGAM

MEMORANDUM

Introduction

Thiru M. Karunanidhi, the President of the D.M.K. Party after becoming the Chief Minister of Tamil Nadu announced in a Press Conference at New Delhi on 17-3-1968 that the D.M.K. Government would soon constitute a Committee of experts to go into the Centre-State Relations in India. Accordingly a Committes was constituted by the Government of Tamil Nadu on 22nd September 1969 consisting of the following persons to examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal set-up, with reference to the provisions of the Constitution of India, and to suggest suitable amendments to the Constitution so as to secure to the States the utmost autonomy:

Dr. P. V. RAJAMANNAR —Chairman
(Former Chief Justice of the High Court of Tamil Nadu)

Dr. A. LAKSHMANASWAMY MUDALIAR—Member
(Former Vice-Chancellor of Madras University)

Thiru P. CHANDRA REDDY —Member
(Former Chief Justice of the High Court of Madras)

The Rajamannar Committee, as it is popularly called, submitted its report in May 1971.

It was the first time that a State Government has obtained a comprehensive and scientific inquiry on the subject and the Rajamannar Committee Report is a bench-mark in the study of the working of Federal Constitution in India.

The D. M. K. Party appointed a Committee of its own to study the recommendations of the Rajamannar Committee and it offered its suggestions and comments. (page-3).

Largley based on this Report, on 16th April 1974 Thiru M. Karunanidhi, the then-Chief Minister moved a resolution on State Autonomy in the Legislative Assembly of Tamil Nadu. (Page-10)

The views of the Government of Tamil Nadu on State Autonomy and the Rajamannar Committee Report are given in Page 16.

The Assembly discussed the Report for five days and on 20-4-1974 the resolution was passed.

(That Resolution on State Autonomy was then sent to the Union Government for follow-up action).

D. M. K.'s Views on the Rajamannar Committee Report

The Sub-Committee was appointed by the D. M.K. by a resolution of its General Council in its meeting held at Coimbatore on 24th April, 1971 to examine the Report of the Centre-State Relations Inquiry Committee appointed by the Government of Tamil Nadu with Dr. P. V. Rajamannar as the Chairman; and to submit a report giving the outlines of the utmost autonomy of the States is a federal set-up without prejudice to the integrity of India as a whole.

If by federal principle we mean, along with K.C. Wheare, that each Government, both the Centre and the States, "should be limited to its own sphere and, within that sphere, should be independent of the other" and "neither general nor regional government is subordinate to the other" then autonomy is its life and soul, as sharply contrasted with mere decentralisation of powers as it is in England and was in Prussia which are examples of decentralised unitary State Governments.

It is common knowledge that the Constituent Assembly met to create a 'minimal federation' and then because of the partition the pendulum swung to the other extreme and the present Constitution —"*a new kind of federalism*"* was evolved in the dark background of Partition-phobia war in Kashmir, insurrection in Telengana and the Razakar troubles in Hyderabad, with the result States' rights and autonomy were the casualties.

As H. V. Pataskar has put it in the Constituent Assembly,

> "......at the time of the second reading, we developed a fear complex....The result was that the autonomy of the States, or their semi-autonomy came to be looked upon as a matter of national danger....It was with the idea of having a federation that we began changing the names of the provinces into States. If the present idea had existed throughout, we never would have made that change. But while the name of "State" is there, the power of the State is so curtailed that it is a misnomer to call it a "State" any longer". **

"The Constitution", as IVOR JENNINGS put it, "derives directly from the Government of India Act, 1935, from which in fact many of its provisions were copied almost textually"; and as DR. DURGA DAS BASU observes, "75 per cent of the Constitution owes its origin to that Act". It is a tragedy that a number of provisions of the very Act which was created by the 'Colonial Masters' to suit their exploitation and which was then totally objected to by the Congress Party had been incorporated verbatim in our present Constitution and that is why some authors call the present Constitution as the "palimpsest of the 1935 Act".

We understand that the term federal can be stretched without much difficulty to cover little more than a simple customs union as well as very tight federations which are virtually run as unitary States.

*GRANVILLE AUSTIN, "The Indian Constitution : Corner-stone of a Nation", p. 193

**C.A.D. Vol. XI, pp. 670-673.

But the peculiarity of our Constitution is that mild criticism calls it as a 'federation with unitary features' or 'quasi-federal'* while pungent comments describe the States as no better than "glorified municipalities" or "dole-getting Corporations"**1. This debate may be considered by some as an exercise in semantics; but in fact in this analysis what matters is not the written Constitution but the practice of Government. A country with a 'federal Constitution' may work it in such a way that its government is not federal. Or a country with a 'nonfederal Constitution' may work it in such a way that it provides an example of federal government. But our experience of the 25 years shows a perceptible trend of centralisation and "the independence of the States is forgotten and a unitary state is being established thoughtlessly"***. Even though the phrase "Co-operative Federalism" is often used by the powers-that-be to identify our type of federalism, instances are not lacking to show that the Centre is "Super-ordinate".

It is held by some that the Report of the Administrative Reforms Commission has produced a satisfactory solution for the frictions in the Centre-State relationships. We refuse to accept this view. Most of the basic questions and problems, however, remain where they were, mainly because of the Administrative Reforms Commission never went into those questions. For this we do not find fault with the wisdom of those eminent personalities who formed the Administrative Reforms Commission. As the name of the Commission itself suggest, it looked only into the administrative side of the Centre-State relationships. As the Study Team confesses, their "enquiry concerned itself with administrative reforms and not with basic constitutional and political reform".**** They did not take the legislative relationships "within the scope of this study". Other important aspects have not been dealt with by them. As the Study Team makes it clear, "We have not in this study taken up questions of substantive policy in individual spheres even though these may involve Centre-State relations in an intimate way. Thus issues concerning language or the procurement and distribution of food have been considered inappropriate for study by us. These undoubtedly have a decisive impact on the life of the people and on the tenor of Centre-State relationships but it is not for a body enquiring into the need for administrative reforms to go into such substantive questions" *****.

We like to quote what the Chairman of the Administrative Reforms Commission, Thiru K. Hanumanthaiya had said in the Constituent Assembly:

> "We were, during the days of freedom struggle, wedded to certain principles and ideologies as taught to us and as propounded to us by Mahatma Gandhi. The first and foremost advice which he gave in his picturesque language was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the

*K. C. WHEARE, "Federal Government".

**1 DR. ANNA; "The Hindusthan Times", 5th Feb. 1963.

***RAJAJI, "The Hindusthan Times", 17th April, 1962.

****Report of the Study Team, Centre-State Relationships, (Administrative Reforms Commission), P. 8.

*****Ibid., pp. 8-9.

bottom and should taper right up to the top. What has been done is just the reverse. The initiative from the Provinces and the States and from the people has been taken away and all power has been concentrated in the Centre. This is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage".

——But the Administrative Reforms Commission has not done anything to change this situation.

Moreover, the Administrative Reforms Commission does not envisage sweeping changes in the Constitution because it is its view that the Constitution is flexible enough to ensure its successful working, irrespective of whichever party may be in power, "provided those who are in Power mean to work in the spirit in which the founding fathers have intended it to be worked". We know that the 'spirit' has not been taken into consideration always and the misuse of article 356 akin to fraud on the Constitution and democracy is one of the numerous examples. As such, it is very dangerous to give more weightage to the elusive spirit of the founding fathers than to their letters. Who can deny, that to give that job of searching and pin-pointing that spirit not to the Judiciary but to those who are in power, will not at times give place to a draconian scheme of autocratic authority? Moreover to say that 'the most lengthy and detailed constitutional document the world has so far produced' leaves some more things at the mercy of those in power is considered by us as euphemism for the inadequacy of the Constitution to meet specific needs. That is why, unlike the Administrative Reforms Commission, we lay emphasis on the reappraisal of the Constitution in the light of our experiment with federalism.

Our emphasis on federalism is not due to love towards any doctrinaire approach. No one would have a federal Constitution if he could possibly avoid it.*. As the Report of the Joint Committee on Indian Constitutional Reforms as long back as on 1934 said :

"Every student of Indian problems, whatever his pre-possessions, from the Joint Committee of 1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the inexorable force of facts".

The inexorable force of facts are the result of continental geographic dimensions of India, various nationalities living here with their distinct languages, cultures, history and habits and each State in different stages of economic development.

It was true that India enjoyed her pinnacle of glory whenever there were powerful rulers like Asoka and Akbar. But they could not keep tight control over the far-flung parts of their empires and their edifice crumbled the moment they were taken out of the scene. This establishes the historic necessity that for a mighty and prosperous India the Centre of power alone should not be strong but the units also should be made equally strong. Unitary form of Government had been experimented in our country; but was repelled ultimately as unsuitable to our needs and genius.

——As such, federal polity for India is an inevitability, as it provides a chance of linking union with diversity as the democratic alternative.

Our experience with the present Constitution for the past 25 years has brought to light its inadequacies to meet the growing needs of the people and various nationalities. A theme of subordination of the State to the Centre runs right through its fabric. As the present Constitution is largely adopted from the 1935 Act, it is based "on the suspicion of individuals and component units" which was necessary during that Colonial age. Even though nation-building activities are with the States, their financial resources are not commensurate with their responsibilities and the highly centralised administration at New Delhi has smothered the individuality and initiative and the social and economic innovation of the States. One tragic result of this scheme is that the problem of regional backwardness has not been tackled and the so-called advanced States are groaning that their further advancement has been frozen and many of State has raised the cry that the State is being treated as an "internal colony".

We firmly believe that State Autonomy will not be disadvantageous to the backward States; on the contrary we affirm that only when backward States are given the opportunity and freedom to utilise their own resources by the efforts of their own bset choice they would have the hope of getting out of the vicious circle of backwardness. Because of backwardness they depend upon doles from the Centre; because they are dependent on doles they do not have the self-confidence or the initiative or the economic strength to grow as strong economic units.

The States are nearer to the common men. But Delhi is distant physically and figuratively. So it is not an accident that the Simon Commission of the thirties and the Administrative Reforms Commission of the seventies have both used the phrase that "Delhi is distant". The hands of the States, the instruments for rendering social and economic services, are tied in their genuine efforts to ameliorate the conditions of the poor and to bring in socialism. Priorities are imposed on them from above without any relevence whatsoever to prevailing conditions. This is the sorry state of affairs, whether it is a State ruled by Congress or C.P.I. or C.P.I. (M) or D.M.K. and it is our firm belief that the present Constitution is not equipped to meet this challenge.

We once again reiterate that we are second to none in our concern for the unity and integrity of India and if we could once be accused of being guilty of preaching secession then the Congress too can be accused of having been guilty of offering self-determination to the units of India and the Communist Party (then united) too could be charged with having demanded the same in the past. The D.M.K. is an open organisation and it never believes in surreptitious designs and secret theories.

*IVER JENNINGS, "Some Characteristics of Indian Constitution". p. 55.

It is too easy to dub these regional claims as parochialism but to those critics we want to repeat what the "Report of the States Reorganisation Commission" has said :

"The national movement which achieved India's Independence was built up by harnessing the forces of regionalism. It is only when the Congress was reorganised on the basis of language units that it was able to develop into a national movement. The Congress under Mahatma Gandhi realised that the same forces which worked for our national unity had also helped to develop the regional languages, which led to the integration of language areas. It is this alliance between regional integration and national feeling that helped us to recover our freedom".*

An "true development will be possible only if we are able to utilise genuine loyalties which have grown up around historic areas united by a common language".**

It . our firm belief that national unity should be based on State Autonomy. Along with the Royal Commission on Dominion--Provinces in Canada, we say :

"National Unity and Provincial Autonomy must not be thought of as competitors for the citizens allegiance, for...they are but two facets of the same thing, the same federal system".

As Mac Iver has rightly pointed out, "a federation once formed on sound basis is a continuous process of integration. It by no means follow that the autonomy of states will finally disappear"***

We also believe in the strong Centre—strong in the sense that the Centre should have strong army, strong navy and a strong air-force; but the strength does not lie in emasculating the initiative of the units and in heaping up hills of files in the Central Secretariat. Strength does not lie in the width of assorted powers assumed by the Centre but in the depth and efficiency in the chosen fields necessary to maintain the unity and integrity of the country. To quote the Government of West Bengal under the Chief Ministership of Dr. B.C. Roy in their Memorandum to the First Finance Commission, "an attempt to build a strong Centre of the foundations of weak States is like an attempt to build a strong building on the foundation of sands. Strength means in this context ability to perform adequately and properly the duties assigned to each." It approvingly quoted the recommendations of the Constituent Assembly's Expert Committee on the financial provisions of the Constitution which said: "The basic functions of a Federal Government are defence, foreign affairs and the bulk of the national debt."

Pandit Jawaharlal Nehru has put in unequivocal terms that "it is not difficult if passions and unreasoning emotions are set aside, to devise such freedom with the largest autonomy for provinces and States and yet a strong central bond."

Powers heaped up in one centre may lead to serious dangers to the nation; for, if not today, some other day, it may become easier for facist forces to grab power and sabotage the very democratic basis of our society.

The country needs urgent measures of economic development by using the natural resources available in the States to mitigate the pitiable plight of the toiling millions. No country of the size and population of India can ever deliver the goods by accumulating powers at one point and by remote control. So with a view to avoiding frustration and feelings of helplessness, we sincerely advocate State—autonomy to prevent further division; and the restructuring of the relations between the Centre and States is a task which should receive top priority among the democratic forces as it would be the culmination of the democratic revolution in India.

Our beloved leader Dr. ANNA in his own inimitable way described the position of D.M.K. in power *vis-a-vis*, the demand of autonomy :

"Dear brother, Never have I been mad after power. Nor am I happy of being the Chief Minister of our State under a Constitution which on paper is federal but in actual practice tends to get more and more centralised. On that account, I do not declare that it is my intention to irritate the Centre or pick up quarrels with Delhi. That helps none. True, a sense of determination at the appropriate stage is all important. But this should be preceded by educating the public on federalism itself. In fact. dear brother, I am quite confident of your active cooperation and intimate participation".

Thus, he wrote in his last epistle published in "HOME RULE", Pongal Number, 1969.

As he has put it, educating the public on federalism procedes all other efforts. In this regard, the D.M.K. has already dedicated itself to that task and it is our plea to give greater momentum to this endeavour and to gather support from like-minded forces all over India. We do not hold any dogmatic approach to this problem and as federal Government is the 'product of economic and social pressures', nothing can be said as the last word on this subject. Federalism is a growing concept capable of improvement according to change of times and needs and we are prepared for any fruitful dialogue with all interested parties and individuals.

We once again stress that the States should be given "a position that is self-respecting" to build a socialist society as equal and honourable partners. In this context it is worthwhile to quote the pronouncements made by Dr. Karunanidhi while announcing the appointment of the Rajamannar Committee :

"It should be viewed more as a part of the theme of Socialism that the organs of peoples' power should be vested with necessary resources and authority. In our view, the surest way to ensure the implementation of socialist ideals in a large country like India, whose constituent States are politically and geographically distinctive is to endow the States with greater autonomy. If therefore we reiterate our pleas for greater powers for the States, it is only because of our earnest desire that a strong Centre should emerge, underpinned by prosperous and powerful States." *

* Report of the States Reorganisation Commission, 1955, p. 38.

** *Ibid.*, p.38.

*** Mac Iver, "Modern State", p. 361.

*Budget Speech 1971-72, Part A.

With this background we approached the Report of Centre-State Relations Inquiry Committee with Dr. P.V. Rajamannar as Chairman and Dr. A. Lakshmanaswami Mudaliar and Thiru P. Chandra Reddy, as Members. The Committee was set up by the Government of Tamil Nadu "to enquire into Centre-State Relations, to examine the existing provisions of the Constitution and to suggest the measures necessary for augmenting the resources of the State and for securing the utmost autonomy of the State in the Executive, Legislative and Judicial branches including the High Court, without prejudice to the integrity of the country as a whole". Though the Centre-State Relations have been the subject of discussion several times before, it was the first time that a State Government has initiated a comprehensive and scientific inquiry on the subject. The Committee, popularly known as Rajammannar Committee has done a commendable work and the erudite scholars have brought to bear upon their enquiry a judicious and deep insight into the problem. It has indeed become a valuable document and a bench-mark in the study of the working of federal Constitution in India. For the first time, the issues involved have been analysed threadbare and concrete solutions offered. *Whether one is inclined to accept these recommendations or not, it is beyond doubt that this Report can be a starting point for any discussion on this subject.*

This Committee of D.M.K., with its political philosophy and approach, carefully went into the recommendations of the Rajamannar Committee and offer the following suggestions and comments for consideration and acceptance of the Party. While we are in total agreement with many of the recommendations, in some cases we have sought to amend, alter and improve. We have also suggested additional amendments to the provisions of the Constitution not included in the Rajamannar Committee Report.

Thiru M. Karunanidhi, Chief Minister of Tamil Nadu, moved a Resolution on State Autonomy in the Legislative Assembly on 16th April, 1974

RESOLUTION

I move the following Resolution :—

The House taking into consideration "The Tamil Nadu Government Views on State Autonomy and the Rajamannar Committee Report" and the Report of the Rajamannar Committee;

Resolves that, in order to secure the integrity of India with people of different languages, civilisation and culture, to promote economic development and to enable the State Governments having close contact with the people to function without restraints, and

In order to establish a truly Federal set-up with full State autonomy, the Central Government do accept the views of the Tamil Nadu Government on State Autonomy and the recommendations of the Rajamannar Committee and proceed to effect immediate changes in the Constitution of India.

16th April, 1974 M. KARUNANIDHI

The speech of the Chief Minister Thiru M. Karunanidhi on the 16th April, 1974 moving the resolution on "State Autonomy" in the Legislative Assembly

Hon'ble Mr. Speaker,

I am indeed very happy to have privilege of moving this epochmaking resolution which, I am confident, will form a landmark in the History of India. Ibeseech the Honourable Members of this House, renowned as they are for their sagacity, to give deep and deliberate consideration, keeping in view the laudable object of this resolution and to extend their support to it. We are all aware that the ruling party—Dravida Munnetra Kazhagam—has, on many occasion, demonstrated its determination to play its full part to enhance India's might and strength and in safeguarding and securing that the integrity and unity of India are not affected in the slightest extent.

If proof were needed of the ardent patriotism of the Dravida Munnetra Kazhagam party, it is seen in the fact of how in 1962, the Party gave up its demand for secession, how it enthusiastically took part in the preparations for defence to repel the Chinese aggressors, how it contributed Rs. 6 crores to the National Defence Fund and thus was in the forefront of all the States. Indeed the Dravida Munnetra Kazhagam party had rendered heroic service for the defence of the country imbued by the spirit of being in the very battlefield of India's fight.

I am mentioning all these just to discourage consideration of this resolution on the basis of and with the point of view of unwarranted and unnecessary doubts.

In 1945, in its Election Manifesto, the All India Congresss Party had described the nature of the future Federal Constitution of India as below :—

"The Federation of India must be a willing Union of its various parts. In order to give the maximum of freedom to the constituent units there may be a minimum list of common and essential federal subjects which will apply to all units, and a further optional list of common subjects which may be accepted by such units as desired to do so."

Following this, in 1947, the resolution moved by Pandit Jawaharlal Nehru in the Constituent Assembly emphasized that except the powers assigned to the Union, all the other powers shall vest with the autonomous States. The material part of the Resolution runs as follows :

"Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States. .shall be a Union of them all; and the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers".

After India attained independence, these resolutions and election manifestos which are part of history have been either conveniently forgotten or deliberately suppressed.

This truth was on many occasions brought out both in Parliament and the State Legislature by the Dravida Munnetra Kazhagam while it was in the Opposition; and it has consistently pleaded for suitable amendments to the Constitution. The idea of State autonomy has also been continuously propagated in Tamil Nadu by the Tamil Arasu Kazhagam.

In 1967, in the Election Manifesto of the D.M.K., it was stated as follows :—

"The D.M.K. had taken upon itself the responsibility of seeing that no region of the country dominates another region in the name of implementing integration;

"The D.M.K. is determined to protect the rights of the States from being suppressed and to chalk out a plan for the uniform economic development of all the States;

"It shall be the endeavour of the D.M.K. to protect the interests of the States and to transfer the residuary powers from the Centre to the States; it will reiterate the necessity to amend the Constitution for this purpose."

Dr. Anna as the Chief Minister of Tamil Nadu, while presenting the Budget for the year 1967-68, had forcefully pleaded against the financial dependence of the States on the Centre—

"We have obviously had to take note of the limitations under which the State Governments have to function in our federal set up. Apart from the provisions of the Constitution which are themselves weighed in favour of the Centre, the practices and conventions which have evolved in the last fifteen years of economic planning have also tended to strengthen the role of the Central Government at the expense of the States. With the delimitation of powers as provided in the Constitution, which gives it the authority to regulate foreign trade, monetary and credit policy, the responsibility for overall direction of our economy vests with the Central Government. Through its access to the more elastic sources of revenue, including residuary powers of taxation, the Centre is in a position to syphon off a large share of the national income, leaving the States in a position where they have to depend on discretionary loans and grants-in-aid from the Centre for implementation of their plans and policies. The Centre also regulates directly through powers vested in it under Article 293 of the Constitution, and indirectly through the Reserve Bank, the terms and conditions and limits subject to which the State Governments can augment their resources through public borrowings. The provision for an objective review of the financial needs of the States at quinquennial intervals through the Finance Commissions has not in any way served to mitigate substantially the dependence of the States on the Centre in view of the various limitations on the terms of reference of such Commissions".

In the concluding part of his Budget Speech, Dr. Anna observed—

"The House is aware that there is need for rethinking on the relations between the Centre and the States. I have no doubt that every one will agree on the need for placing existing relations on a satisfactory basis. No one can deny that the experience so far in regard to distribution of revenues, delimitation of powers and allocation of assistance for Plan has been such as to cause bitterness. It has become an urgent necessity to eliminate this bitterness and evolve ways and means of promoting fruitful relations between Centre and States. The problem I have posed need cause no apprehension or misgiving but should only provok thought. It is my earnest desire that through mutual goodwill and understanding we should forge a fraternal and beneficial nexus".

Again, in 1969, the last article written by Dr. Anna, in the English Journal "Home Rule" runs as follows :

"Dear Brother,

Never have I been mad after power. Nor am I happy of being the Chief Minister of our State under a a Constitution which on paper is federal but in actual practice tends to get more and more centralised. On that account, I do not like my good friend E.M.S. declare that it is my intention to irritate the Centre or pick up quarrels with Delhi. True, a sense of determination at the appropriate stage is all important. But this should be preceded by educating the public on federalism itself. In that, dear brother, I am quite confident of your active co-operation and intimate participation.

If by being in office, the D.M.K. is able to bring to the notice of the thinking public, that the present Constitution is a sort of dyarchy by the back door that would be a definite contribution indeed to the political world".

On the 8th April, 1967, at a Press Conference in New Delhi, Dr. Anna observed—

"It will be sufficient if the Centre retains only such powers as are necessary for preserving the unity and integrity of the country leaving adequate powers to the States. In order to distribute the powers and to suggest the method of working out the Constitution, a High Power Commission should be appointed".

In pursuance of those observations and of my announcement on the floor of the Assembly on the 19th August, 1969, a Committee consisting of Dr. P. V. Rajamannar as Chairman and Dr. A. L. Mudaliar and Thiru P. Chandra Reddy as Members was constituted by the Government on 22nd September, 1969 in order to examine the question regarding the relationship between the Centre and the States on the basis of autonomy for the States without in the least impairing the integrity of the country.

It is to be remembered that, subsequently in 1971, in the Election Manifesto of the D. M. K., it was announced—

"Though the Constitution of India is described as a Federal one, the balance is more tilted towards the Centre, and hence the States are not able to function freely in the administrative and financial spheres. Only such powers as are necessary for be the Centre to preserve to strengthen of India should be assigned to the Centre and all the other powers should be left to the States, without impairing the ideal of a strong India; and for this purpose, the Constitution should be amended. After the receipt of the report of the Expert Committee appointed for this purpose, the D. M. K. would seek support on an All-India level to the movement for State autonomy. More powers in the executive and financial spheres are demanded to the States not for the mere sake of enjoying those powers. Since only the States are in close contact with the people, the States alone can serve the people up to their expectations. Hence it is that we demand State autonomy."

It will be relevant in this connection to point out that the election manifesto of the Mysore Pradesh Congress (O) issued in 1972 contained the following reference to State autonomy :—

"Congress will fight in a determined manner for greater autonomy for the State and against all discrimination and step-motherly treatment by the Centre."

The Report of the Rajamannar Committee was received on the 27th May, 1971. The said report was sent to the Prime Minister of India, Thirumathi Indira Gandhi.

Acknowledging the receipt of the Report, the Prime Minister, in her letter dated 22nd June, 1971, wrote to me as below :—

"Dear Thiru Karunanidhi,

I have received your letter of the 15th June with which you have sent me a copy of the report of the Centre-State Relations Inquiry Committee. Your Government will probably examine the recommendations of this report. As you know, the Administrative Reforms Commission also went into this question and has already submitted a report which is under our consideration. If the views of your Government on this matter are made available to us, they will also be taken into account. These are important issues and we intend to consult all the Chief Ministers.

With regards,

Yours sincerely,

(*Sd.*) INDIRA GANDHI

In the meeting of the National Development Council held on 30th May 1972 under the Chairmanship of the prime Minister while explaning the policy of this Government, I said that—

"Decentralisation is particularly necessary if a large country like ours is to cope with the problems of a modern economy. It is in this sense that our demand for State autonomy should be understood—as a request for more efficient management of the country's resources, as a means to enable the Centre to strong in areas of vital national concern, as a method of enabling the minimum demands of our people to be met in the quickest time and in the most efficient manner."

Though we do not accept the Report of Dr. Rajamannar's Committee in full, we take the Report as the basis for the exposition of our policy in this regard.

As it was thought that a decision on these issue of historic importance had to be taken after great deliberation, the problem was considered at different levels. The Ruling Party appointed the Chezhiyan-Maran Committee and in the light of its observations, the report of Dr. Rajamannar's Committee was analysed. The Government also considered the report of the Administrative Reforms Commission appointed by the Centre. This Government, after a deep counsideration of the various opinions expressed by the several Statesmen in India on this issue and after carefully studying the position in the other countries of the world, has formulated its views on the report of Dr. Rajamannar's Committee and on the question of State autonomy; and the said views have been placed before this House alongwith my resolution for the acceptance of the same by this House.

In the recent meeting of the Consultative Committee on Home Affairs, Thiru Dandapani, Member of Parliament, enquired why the Central Government had not taken any decision on the healthy suggestions made by the Rajamannar Committee on the question of re-examining the powers of the Centre and State Governments, and the Union Minister for Home Affairs, Thiru Dikshit replied that the said Committee was appointed by the State Government and the State Government had not yet communicated its views on that report.

In pursuance of the said reply by Thiru Dikshit and in response to the desire of the Hon. Members of this House to express their views on the Report of the Rajamannar Committee, this Government has brought forward this resolution in order that all the States in India attain State autonomy and the Centre becomes a shining examples of a true Federal Government.

The National flag of India flutters in the glittering sun. We lift our eyes to the high skies beyond the clouds in our attempt to enjoy the majesty of the flag. We hear the National Anthem composed by Tagore, the golden voice of Bengal. The sweet melody of the Anthem rings in our ears like the soft music of the Courtallam Falls. Yes! Our country has awoken from its slavery liberating itself from foreign domination. The epic story of our heroic struggle for liberation of India from which we emerged, holding our heads high, is writ large in the history of the world.

The imprisoned nation has become free. The door has opened. With a smile, the prisoner comes out of the iron cage. The tender tottering child eagerly leaps towards its father to embrace him after the languish of long separation. The father with boundless joy stretches out his hands to lift and kiss his child. Alas ! The hands do not function ! Why is this so ? He has been released from the prison.

What is the further obstacle? What is it that prevents him ? He looks around in surprise. He has come out of the prison and he is free. Then, who prevents him from embracing the child. Nobody prevents him. When he was in prison, his hands and legs were fastened with chains. In his joy of release, he came out of the prison without removing those chains. No doubt he is free, but the chains that bind his limbs had not been removed. Man has become free. Then why should his hands and legs be kept bound ? India has become free. Then why should its limbs, namely the States, be kept bound by the chains of concentration of power in the Centre ?

This is a burning question which has been before us for a long time. I bring forward this resolution to-day before this august House in the hope that it will help to quench the thirst that the question represents.

Our Constitution is not immutable. It has been amended more than thirty times.

It is my earnest appeal to the Central Government that they should realise that implementation of these great changes in the Indian Constitution will form the basis for strengthening our country and increasing its prosperity and that it will contribute to develop the languages of the States, to preserve and protect the different cultures, to foster good relations among the States, to promote healthty relationship between the States and the Centre and to improve the economic conditions of our country. I seek your kind co-operation in this great endeavour. Moved by an ardent desire that the fruits of our freedom should be enjoyed fully by the people and keeping their welfare at heart, we, on behalf of the Government of Tamil Nadu have kindled this luminous lamp at the centre of the stage of Indian politics. I beseech the statesmen of India to help us to keep this flame alive and assist in preserving its glow.

Tamil Nadu Government's views on State Autonomy and the Rajamannar Committee Report

The Government of Tamil Nadu solemnly declares its firm resolve to uphold the sovereignty and integrity of India and expresses its deep conviction that for the speedy economic and social progress of the Nation, the Constitution of the country should be federal in its true sense.

In this connection, it is relevant to refer to the material part of the historical objectives resolution moved by Pandit Jawaharlal Nehru in the Constituent Assembly which adopted it on 22nd January 1947 :—

"Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States, as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

"Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom;".

India is a vast country with people of different languages, culture and history. Each State has its own peculiar needs and problems. Hence, the States should have freedom of action and sufficient powers, legislative and executive, to secure their progress without impairing the unity of the country. This is possible only under a truly federal set up.

In our country, unfortunately, the experience during the past twenty-five years after Independence is that the powers concentrated in the Centre have been so exercised as to inhibit the States and to deprive them of their initiative.

There has been a strong tendency to work the Constitution as a unitary one treating the States as subservient to the Centre. It is myth to say that the Centre can be strong only if most of the powers are concentrated in the Centre. Thiru K. Santhanam, an elderly statesman, who was a member of the Constituent Assembly has critically examined the plea for a strong Centre and says—

"....a strong Centre is indispensable if India is not to disintegrate and dissolve in chaos. But I........do not agree with those who equate strength with the range of formal constitutional powers. On the other had, I am emphatically of opinion that by taking upon itself too many obligations in relation to the vast pupulation spread over the length and breadth of India, the Centre will become incurably weak. It is only through concentration on essential All-India matters and by refusing to share the responsibility in such matters with the States, while giving complete autonomy to the States in the rest of the field of Government, the Parliament and the Central Government can be really strong. The tendency towards vague unhealthy paternalism which has come to envelop Indian Federalism as a result of the dominance of a single party during the first two decades of independence is as bad for the Centre as it is unpleasant and provocative to the States".*

Dr. Anna, Chief Minister of Tamil Nadu, while presenting the Budget in the Legislative Assembly on 17th June 1967, has observed as follows :—

"It is futile to raise the altruist argument that national unity will be impaired by such pleas for development of the States. There has been considerable change in the matrix of Central-State financial relations since the provisions of the Constitution in this regard were settled. There have been a number of new trends and developments which could not have been visualised when the Indian Constitution was framed. The Constitution had already provided for considerable concentration of powers in the hands of the

*Vide the paper of Thiru K. Santhanam presented by him to the National Convention on Union-State Relations held in New Delhi in April 1970.

Central Governemnt. Through a new institution which was beyond the ken of the architects of the Constitution, the Centre has acquired still larger powers causing concern about the position of the States. This new development relates to economic planning. The powers which the Central Government have assumed in regard to mobilisation, allocation and pattern of utilisation of resources for the Plan have reduced the States to the status of supplicants for aid from Centre. Though some may shrink from discussing this issue on account of party discipline, all those who have looked at this problem from the purely economic angle, have expressed regret at these trends in financial relationship between Centre and State. By virtue of the powers vested in it such as those under entries 36 to 38 in the Central List under the Seventh Schedule of the Constitution relating to issue of currency and foreign exchange, the Centre is fully accountable for inflation and deficit financing. The responsibility for rise in prices due to these factors is thus squarely with the Centre. The Centre has consequently also to assume responsibility for control of prices. Though the State Governments have to suffer from the impact of rising prices due to the policies of the Central Government, the Indian Constitution has not vested the States with necessary powers to control the prices and set right the situation. Hence it is that I am faced with the situation in which I have to request the Centre to share the additional expenditure involved in payment of dearness allowance to Government employees due to rise in prices and the loss on account of distribution of foodgrains at reduced rates. It will now be possible to appreciate why I feel aggrieved when the Centre asserts that each State Government should itself bear the burden involved in distribution of foodgrains at subsidised rates and grant of dearness allowance to Government employees. Unless considerations of party cloud their judgement, those who have made a study of the relationship between the Centre and States in our Constitution, will not hesitate to endorse the validity of my argument."

It will be seen that through concentration of powers in its hands, the Centre actually becomes weak. The States have been made completely subservient to the Centre and they find themselves helpless under the present Constitution.

In a true federation, the Federal Government should have only powers relating to defence, foreign affairs, inter-State communication and currency. All the other powers along with the residuary powers should only vest with the States. The Federal Government and the State Governments should be completely independent of each other in their respective spheres. This Government firmly believes that only under such a Federal Constitution, the Nation can prosper as a whole.

With this end in view, this Government appointed a Committee in 1969 headed by Dr. P. V. Rajamannar with Dr. A. Lakshmanaswami Mudaliar and Thiru P. Chandra Reddy as members to suggest suitable amendments to the Constitution of India so as to secure to the States the utmost autonomy. This Committee submitted its Report in 1971.

In the Constitution, legislative powers of the Parliament and the State Legislatures are given in the Seventh Schedule under the headings "UNION LIST", "STATE LIST" and the "CONCURRENT LIST". The Rajamannar Committee has suggested certain changes in those Lists. With the aim of setting up a true federation, with a Federal Government having powers only relating to Defence, Foreign policy, inter-State communication and Currency and the States having all the other powers including the residuary power, the Government of Tamil Nadu, after taking into consideration the recommendations of the Rajamannar Committee, has formulated changes in the constitutional provisions and also the entries of the legislative power. Incidental and consequential changes in the Constitutional provisions should also be made. THE following are the important changes suggested in the Constitutional provisions :

Issue of Directions to the States by the Union.—Articles 256, 257, 339(2) and 344(6) empowering the Central Government to issue direction to the State Governments should be omitted. Federal Government should have no such power to give directions.

Inter-State Council.—The Inter-State Council should be constituted Consisting of all the Chief Ministers or their nominees, with equal representation for all the States and the Prime Minister as its Chairman. No other Union Minister should be a Member of the Council.

In respect of any action to be taken in any matter relating to defence, foreing affairs, inter-State communications and currency in so far as it affects the Centre-State relations or State or States, the Inter-State Council should be consulted.

Similarly, the Inter-State Council should have the opportunity to discuss all economic, fiscal, monetary and financial measures undertaken by the Federal Government.

The Inter-State Council envisaged by article 263 of the Constitution will be ineffective and will not serve any purpose.

The recommendations of the Inter-State Council should ordinarily be binding on the Centre and the States. If, for any reason any such recommendation is rejected, the recommendation together with the reasons for its rejection should be laid before Parliament and the State Legislatures.

Legislative power under Concurrent List.—Before any Bill is introduced in Parliament in relation to any entry of the Concurrent List, the Inter-State Council and the States should be consulted. At the time of introduction of the Bill, the remarks of the Inter-State Council and a brief resume of the opinions, if any of the State Government should be placed before the Parliament.

Residuary powers.—The residuary power of legislation and taxation should be vested in the State Legislatures.

Article 154 and 258.—The provision giving power to Parliament to make laws conferring power on State and State authorities should be omitted.

Article 169.—The power to abolish or create Legislative Councils should be vested exclusively in the State Legislative Assemblies without the necessity of any Parliamentary Legislation.

Article 249.—This article, which empowers the Parliament to legislate with respect to a matter in the State List, shall be omitted.

Article 252.—This article empowering the Parliament to legislate for two or more States by consent should be omitted.

Reservation of State Bills for consideration by President.—The provision regarding the reservation of State Bills for the consideration and assent of the President should be omitted. Article 254 should be so amended that in respect of matters falling within the concurrent legislative list, the State law shall prevail over the federal law.

Promulgation of Ordinance by Governor.—The proviso to article 213 (1), which makes it necessary to obtain the instructions of the President before the promulgation of Ordinance should be omitted.

Grants.—The grants by the Centre to the States, both for Plan expenditure and non-plan expenditure should be made only on the recommendations of an independent and impartial body like the Finance Commission or similar statutory body.

Finance Commission.—The Finance Commission as envisaged in the Constitution examines the financial resources and the needs of the States. But it does not discharge a similar function in relation to the finances of the Centre. It is necessary that there should be a periodic assessment of the financial resources and the needs of the Central Government also. The Finance Commission should accordingly be empowered to examine the resources and needs not only of the States but of the Central Governments as well. The Finance Commission will then recommend the amounts necessary for enabling the Central Government to discharge its responsibilities and the amounts so recommended should be allocated from out of the taxes levided by the Central Government.

The Members of the Finance Commission should be appointed in consultation with the Inter-State Council.

It should be expressly provided in the Constitution that the recommendations of the Finance Commission should be binding on all the parties—Centre as well as the States.

Loans and indebtedness of States.—There should be a Federal Debt Commission which should examine the entire issue relating to the indebtedness of States. This Commission should in course of time function as a Federal Development Bank consisting of representatives of the Centre and the States. This Bank should deal with applications for loans made either by the Centre or any State over and above borrowings in the open market.

Relief Fund.—There should be a fund for each State for the relief of distress arising out of natural calamities. The fund may also be utilised for ameliorative measures.

Planning Commission.—The Planning Commission should be placed on an independent footing without being subject to control by the Union Executive or to political influences. To secure this objective, it should be placed on a statutory basis by Parliament enacting a law providing for the establishment of a Planning Commission.

The Planning Commission to be established by law should consist of only experts in economic, scientific, technical and agricultural matters and specialists in other categories of national activity. No member of the Government of India should be on it. The law to be made in this behalf should deal with the tenure, term of office and conditions of service of the members of the Planning Commission which should have a Secretariat of its own. The existing Planning Commission should be abolished.

The duty of the Planning Commission should be to tender advice on schemes formulated by the States.

It will also have the responsibility of making recommendations for consideration by the Finance Commission regarding grant of foreign exchange to States for industrial undertkings started by or in the States. The Finance Commission will keep the recommendation of the Planning Commission in view, in recommending grants.

Each State may have a Planning Board of its own.

Planning and Development.—The Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951), should be rapealed.

The State should have the power to start and carry on new industries and to grant licences to start new industrial undertaking within the State, and where foreign exchange is needed for any industrial undertaking licensed or started by a State, it should be provided by means of block grants to be allocated to each State, subject to National Plan Priorities, National Demand Projections and Information Sharing System.

Judiciary—The Supreme Court.—No appeal from the High Court should lie to the Supreme Court in ordinary civil, criminal or other matters, whatever be the pecuniary interests involved and whatever the sentence imposed, except in a case involving constitutional issues including inter-State issues or the interpretation of a Central Act.

In appointing judges of the Supreme Court, It is desirable to secure, as far as possible and without detriment to efficiency, representation for the High Court and the Bar of the different parts of the country.

High Courts.—Since the legislative power relating to constitution and organisation of High Court is proposed to be transferred to the State List, articles 217, 222, 223, 224 and 224-A require suitable amendment or omission.

Reference to the High Court.—Whenever any particular provision of a State Act is challenged before the High Court on the ground that the provision is unconstitutional, the State Government concerned should have the power to move the High Court for referring the question to a Full Bench of three or more Judges of whom one should be the Chief Justice. The Bench as constituted should consider each and every provision of the Act concerned and once its decision is rendered no provision of the Act should be challenged thereafter, on the ground of unconstitutionality. The State Government should be empowered to refer any question of law or fact of public importance to the High Court for its advisory opinion.

Governor.—The office of the Governor is a legacy of the British colonial system. The method of appointment of the Governor as provided for in our Constitution makes it an anachronism in a democratic set up. He is a functionary appointed by, and responsible to, the Central Government and as such, he could not be expected to understand the local conditions and the political situation. The expenditure incurred on the office of the Governor does not seem to square with the socialistic pattern of society. The expenditure is a wasteful one, which should well be dispensed with. The Supreme Court in Rao Shiv Bahadur Singh *v.* State of Vindhya Pradesh (1953) SCR (1188) has held that a Minister is an officer subordinate to the Governor. Thus, the elected representative of the people in Legal theory is nothing more than a servant of nominee of the Central Government. The time is ripe for doing away with the office of the Governor.

Where the office of Chief Minister falls vacant by death, resignation, etc., under the West German procedure, the successor should be elected within a fixed period of time and if this is not done the Assembly will automatically stand dissolved. During this interregnum, it is suggested that the Chief Justice of the State may take charge of the administration till such time as a new Chief Minister assumes office. If the principle underlying this suggestion is accepted, the other details may be worked out.

The executive can be dismissed under the West German System by a vote of no-confidence called as the "Constructive Vote of non-confidence". Under this provision the executive cannot be dismissed by a no-confidence motion unless it is accompanied by the selection of his successor. A system similar to this may be adopted here also. The Chief Minister will discharge the functions at present being attended to by the Governor. If there is any interregnum, the Chief Justice of the State will discharge the functions while there is no Chief Minister.

Emergency Powers.—Emergency powers under articles 356 and 357 which enable the imposition of the President rule in States shall be omitted.

Article 365.—Provisions for issue of directions by the Federal Government have been omitted. Consequently, this article also has to be omitted.

National Emergency-Articles 352 and 354.—Powers under articles 352 and 354 relating to proclamation of emergency and the consequential powers should be restricted only to war or external aggression.

Article 353 (a).—Power to issue directions while there is proclamation of emergency should be restricted only to war or external aggression. But such directions shall be issued only with the approval of the Inter-State Council.

Article 355.—The duty of the Federal Government to protect every State should relate only to war and external aggression.

Financial Emergency--Article 360.—The provision which empowers the President to issue a proclamation of emergency in cases of threat to financial stability or credit of India shall be omitted.

Public Services.—There should be only two classes of services—

(1) Services for the purpose of Federal Government, and

(2) Services for the purpose of State Government.

The existing all-India services including the I.A.S. and I.P.S. should be absorbed either with the Federal services or with the State Services.

The recruitment to the State services and conditions of service will continue to be regulated by the States. Recruitment to the Federal services will be in accordance with the existing procedure subject to the modification that such reacruitment should be made on a Statewise basis, with provision for reservation of posts for members of the Scheduled Castes, Scheduled Tribes and Backward Classes, with reference to their population in each State.

There should be provision for mutual exchange of members of the State services and the Federal services on such terms and conditions as may be agreed to between the Federal Government and the State Government concerned.

Article 312.—This provision relating to all-India services and creation of new all-India service should be omitted.

Emoluments of Central Employees.—The emoluments of Government employees of the Central and States should be uniform throughout the country, making due allowance for local or special conditions.

State Public Service Commission.—The power relating to State Public Service Commission and the removal and suspension of the members thereof shall vest with the State Government.

Territory of the State.—It should be expressly provided in the Constitution itself that the territorial integrity of a State should not be interfered with in any manner, except in accordance with any one of the following three alternatives—

(1) The consent of the State Legislature concerned should be obtained.

(2) The issue should be referred to, and decided by a high level judicial tribunal, to be constituted for the purpose with the consent of the contending parties and its decisions should be binding on all the parties.

(3) The opinion of the people of the area or areas concerned should be ascertained by holding a special poll.

In other words, articles 3 and 4 should be omitted and for altering the boundaries, area, etc. of any State, a Constitutional amendment would be necessary.[1]

Representation of States in Parliament—Council of States.—There should be equal representation for each State, that is to say, each State should have the same number of representatives irrespective of population.

There should be no nominations to the Council of States.

House of the People.—The number of seats fixed for each State in 1951 should remain unaltered except where there is increase in population in which case the number of seats may be increased subject to a maximum. However, in no case should the number of seats fixed for each State in 1951 be reduced.

Language.—The Official Language of the Union Government will be all the languages specified in the Eighth Schedule to the Constitution. Till this is achieved, English should continue as the official language in all the Union Government departments including Central Secretariat and for purposes of communication between Centre and States. English should continue to be the language of Supreme Court. The official language in all the courts including High Court will be decided by the respective State Governments. The offices of the Federal Government situated in any State should in addition to English, use the official language of that State for transaction of business in those offices with the public. All communications by and between the Federal Government offices in the State and the Government of the State and its offices should be in the official language of that State for transaction of business in those offices with the public. All communications by and between the Federal Government offices in the State and its offices should be in the official language of the State. Members of the Central services employed in a State should be well conversant with the official language of the State.

Trade and Commerce-Article 302.—This article, which empowers the Parliament to impose restriction on trade and commerce and intercourse should be omitted.

Article 304 (b).—The proviso to article 304 (b) which requires the previous sanction of the President for the Bills of the State Legislature, should be omitted

Public Order.—The Central Reserve Police Force should not be deployed in any State except at the request or with the consent of that State.

Machinery for conducting Elections to the State Legislatures.—Both the Representation of People Act, 1950 and the Representation of People Act, 1951 should be amended so as to confine the provisions and the rules made thereunder to elections to Parliament. That State Legislatures must be left free to enact laws in relation to elections to the State Legislature.

Inter-State Water Disputes.—If there is a water dispute in respect of an Inter-state river, there must be negotiations between or among the Chief Ministers of the States concerned or their representatives. If in such negotiations no agreement is reached within a prescribed time, then the Prime Minister should settle the issue within the period prescribed. If there is no such settlement, then, the issue should be referred to the Supreme Court by the Federal Government itself directly within the prescribed period. If the Federal Government fails to make such reference, any of the parties to the dispute may make a reference to the Supreme Court. Such reference should be heard by a Bench of the Supreme Court consisting of all the Judges.

Satisfactory provisions should be made for implementing the decisions of the Supreme Court.

Sea-Bed under Territorial Waters.—Article 297 should be amended so as to vest in the State itself all lands, minerals and other things of value underlying the ocean within the territorial waters adjacent to that State.

Union Executive.—Conventions should be established regulating the formation of the Union Cabinet in such a way as to secure, consistent with the parliamentary type of Government and all that it involves, representation for the various regions of the country.

The number of Central Ministers of Cabinet rank belonging to any one single State should not be more than one-fifth of the total number.

The Study Team under the Chairmanship of Thiru M.C. Setelvad constituted by the Administrative Reforms Commission to consider Centre-State relationship has devoted an entire Chapter to the role of Central agencies dealing with matters in the State and Concurrent Lists. According to the recommendation of the Study Team the items of work should be decentralised to the States and the role of the Central Government should be that of guide, planner and evaluator. The Administrative Reforms Commission has recommended that the role of the Central Ministries and Departments with regard to the subjects falling within the State List should be restricted. There is no need for a full-fledged separate Ministry or Department at the Centre for dealing with a subject falling within the State List.

Amendment of the Constitution.—Every amendment of the Constitution, irrespective of the provision involved, should need ratification by the Legislatures of all the States.

Legislative power.—The legislative powers of Parliament and the State Legislatures have been enumerated in the Seventh Schedule to the Constitution as Union List, State List and Concurrent List. These entries of legislative powers have been examined in detail and a new set of three lists of legislative powers, namely Federal List, State List and the Concurrent List, have been

prepared with the object of setting up of a true federation with a Federal Government having powers only relating to defence, foreign policy, inter-State communication and currency and the States having all the other powers, including residuary power giving due consideration to the recommendations of the Rajamannar Committee.

Federal List

Legislative power retained

The following entries of legislative powers in the Union List have been retained in the Federal List as follows :—

Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.

Naval, military and air forces; any other armed forces of the Union.

Delimitation of cantonment areas, local self-government in such areas, the constitution and powers with such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas;

Naval, military and air force works;

Arms, firearms, ammunition and explosives;

Atomic energy and mineral resources necessary for its production so far as it relates to the defence of the country;

Industries so far as they are necessary for the purpose of defence or for the prosecution of war;

Central Bureau of Intelligence and Investigation;

Preventive detention for reasons connected with Defence, Foreign affairs; or the security of India; persons subjected to such detention;

Foreign affairs; all matters which bring the Union into relation with any foreign country;

Diplomatic, consular and trade representation;

United Nations Organisation;

Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries;

War and peace;

Foreign jurisdiction;

Citizenship, neutralization and aliens;

Extradition;

Admission into, and emigration and expulsion from India; passports and visas;

Pilgrimages to places outside India;

Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air;

Inter-State railways;

Maritime and Shipping navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training;

Lighthouses, including lightships, becons and other provision for the safety of shipping and aircraft;

Major ports and the constitution and powers of port authorities therein including their delimitation.

Port quarantine, including hospitals connected therewith; seamen's and marine hospitals;

Airways, aircraft and air navigation; provision of aerodromes; regulation and orgainsation of air-traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training;

Carriage of passengers and goods by inter-State railways, sea or air;

Posts and telegraphs and telephones;

Property of the Federal Government and the revenue therefrom, but as regards property situated in a State, subject to legislation by the State;

Courts of wards for the estates of Rulers of Indian States;

Public debt of the Federal Government;

Currency, coinage and legal tender; foreign exchange;

Foreign loans;

Reserve Bank modelled on Federal Reserve system;

Trade and Commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers;

Establishment of standards of quality for goods to be exported out of India;

Fishing and fisheries beyond territorial waters;

Industrial disputes concerning Federal Government employees;

The institutions known at the commencement of the Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial;

The institutions known at the commencement of the Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University;

Census;

Federal Government Services and Federal Government Public Service Commission;

Federal Government pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India;

Elections to Parliament and to the offices of President and Vice-President;

Election Commission in respect of such elections;

Salaries and allowances of Members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament;

Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President; salaries and allowances of the Ministers for the Federal Government; the salaries, allowances and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General of the Federal Government;

Audit of the accounts of the Federal Government;

Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court) and the fees taken therein, persons entitled to practise before the Supreme Court;

Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of, a High Court from any Union Territory with the concurrence of the concerned State Government;

Inter-State migration inter-state quarantine;

Duties of customs including export duties;

Offences against laws with respect to any of the matters in the Federal List;

Inquiries, surveys and statistics for the purpose of any of the matters in the Federal List

Jurisdiction and powers of all courts except the Supreme Court with respect to any of the matters in the Federal List; admiralty jurisdiction;

Fees in respect of any of the matters in the Federal List but not including fees taken in any Court.

State List

(1) *Legislative powers retained in the State List*

The following entries of legislative powers in the State List have been retained in the State List :—

Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power);

Police, including railway and village police;

Administration of justice; constitution an organisation of all courts, except the Supreme Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court;

Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions;

Local government, that is to say, the constitution and powers of municipal corporations, improvment trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration;

Public health and sanitation; hospitals and dispensaries;

Pilgrimages, other than pilgrimages to places outside India;

Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors;

Relief of the disabled and unemployable;

Burials and burial ground; cremations and cremation grounds;

Education including universities;

Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records;

Communication, that is to say, roads, bridges, ferries, and other means of communication, municipal tramways, ropeways; inland waterways and traffic thereon; vehicles other than mechanically propelled vehicles;

Agriculture, including agricultural education and research, protection against pests an prevention of plant diseases;

Preservation, protection and improvement of livestock and prevention of animal diseases; veterinary training and practice;

Ponds and the prevention of cattle trespass;

Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power;

Land, that is to say rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans; colonization;

Forests;

Protection of wild animals and birds;

Fisheries;

Courts of wards subject to the provisions of List I; encumbered and attached estates:

Regulation of mines and mineral development;

Industries subject to the provisions of List I;

Gas and gas-works;

Trade and commerce within the States;

Production, supply and distribution of goods;

Markets and fairs;

Weights and measures except establishment of standards;

Money-lending and Money-lenders; relief of agricultural indebtedness;

Inns and inn-keepers;

Incorporation, regulation and winding up of corporations and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies;

Theatres and dramatic performance; cinemas; sports, entertainments and amusements;

Betting and gambling;

Work, lands and buildings vested in or in the possession of the State;

Elections to the Legislature of the State;

Salaries and allowances of the members of the legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof;

Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State;

Salaries and allowances of Ministers for the State;

State public services; State Public Service Commission;

State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State;

Public debt of the State

Treasure trove;

Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues;

Taxes on agricultural income;

Duties in respect of succession to agricultural land;

Estate duty in respect of agricultural land;

Taxes on land and buildings;

Taxes on mineral rights;

Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

Taxes on the entry of goods into local area for consumption, use or sale therein;

Taxes on the consumption or sale of electricity;

Taxes on the sale or purchase of goods other than newspapers;

Taxes on advertisements;

Taxes on goods and passengers carried by road or on inland waterways;

Taxes on vehicles, whether mechanically propelled, or not, suitable for use on roads, including tramcars;

Taxes on animals and boats;

Tolls;

Taxes on professions, trades, callings and employments;

Capitation taxes;

Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling;

Rates of stamp duty in respect of documents:

Offences against laws with respect to any of the matters in this List;

Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List;

Fees, in respect to any of the matters in this List, but not including fees taken in any court.

(2) *Legislative powers transferred from the Union List to State List*

The following entries of legislative powers in the Union List have been transferred to the State List :—

Atomic energy and mineral resources for purposes other than defence;

Railways within the State;

All Highways within the State;

Shipping and navigation on inland waterways as regards mechanically propelled vessels the rule of the road on such waterways;

Carriage of passengers and goods by railways within the State;

Wireless, broadcasting , television and other like forms of communication;

Savings Bank;

Lotteries;

Inter-State trade and commerce;

Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations;

Incorporation, regulation and winding up of corporations whether trading or not;

Banking;

Insurance;

Stock exchanges and future markets;

Regulation and development of oil-fields and mineral-oil resources; petroleum and petroleum products; other liquids and substances;

Regulation of labour and safety in mines and oil fields;

Fishing and Fisheries within territorial waters;

Manufacture , supply and distribution of salt; regulation and control of manufacture; supply and distribution of salt;

Cultivation, manufacture and sale for export, of opium;

Sanctioning of cinematograph films for exhibition;

Institutions for scientific or technical education;

Institutions for professional, vocational or technical training, including the training of police officers; or the promotion of special studies or research; or scientific or technical assistance in the investigation or detection of crime;

Determination of standards in institution for higher education or research and scientific and technical institutions;

Ancient and historical monuments and records, and archaeological sites and remains;

Elections to the Legislatures of States; Election Commission relating to such elections;

Audit of the accounts of the State;

Constitution and organisation (including vacations) of the High Court; provisions as to officers and servants of the High Court; persons entitled to practise before the High Court;

Taxes on income;

Duties of excise on tobacco and other goods including medicinal and toilet preparations containing alcohol or any substance;

Corporation Tax;

Taxes on the capital value of the assets of individuals and companies; taxes on the capital of companies;

Estate duty in respect of property;

Duties in respect of succession to property;

Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights within the State;

Taxes other than stamp duties on transactions in stock exchanges and future markets;

Rates of stamp duty in respect of bills of exchange, cheques, promissory notes , bills of lading, letter of credit, policies of insurance, transfer of shares, debentures, proxies and receipts;

Taxes on the sale or purchase of newspapers and on advertisements published therein;

Taxes on the sale or purchase of goods other than newspapers;

Any other matter not enumerated in List I or List III including any taxes not mentioned in either of those Lists.

(3) *Legislative powers transferred from the concurrent list to the State List*

The following entries of legislative powers in the Concurrent List have been transferred to the State List :—

Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in the Federal List and excluding the use of naval, military or air forces or any other armed forces of the Federal Government in aid of the Civil powers;

Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

Preventive detention for reasons connected with the security of the State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention;

Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law;

Transfer of property; registration of deeds and documents;

Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts;

Actionable wrongs;

Bankruptcy and insolvency;

Trust and Trustees;

Administrators-General and official trustees;

Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings;

Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration;

Contempt of court, but not including contempt of the Supreme Court;

Vagrancy; nomadic and migratory tribes;

Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients;

Prevention of cruelty to animals;

Adulteration of foodstuffs and other goods;

Drugs and poisons;

Economic and social planning;

Commercial and industrial monopolies, combines and trusts;

Trade unions; industrial and labour disputes;

Social security and social insurance; employment and unemployment;

Welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old-age pensions and maternity benefits;

Vocational and technical training of labour;

Legal, medical and other professions;

Charities and charitable institutions, charitable and religious endowments and religious institutions;

Vital statistics including registration of births and deaths;

Ports other than major ports;

Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such weterways, and the carriage of passengers and goods on inland and waterways within the State;

Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oil cakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(d) raw jute;

Price control;

Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied;

Factories;

Boilers;

Electricity;

Newspapers, books and printing presses;

Archaeological sites and remains;

Acquisition and requisitioning of property;

Recovery in a state of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears;

Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty;

Inquiries and statistics for the purposes of any matters specified in the State List.

Concurrent List

(1) *Legislative powers retained.*

The following entries of legislative powers in the Concurrent List have been retained in the Concurrent List :—

Removal from one State to another, State of prisoners, accused persons and persons subjected to preventive detention;

Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants;

Custody, management and disposals of property declared by law to be evacuee property;

Relief and rehabilitation of persons displaced from their original place of residence by reasons of the setting up of the Dominions of India and Pakistan;

Inquiries and statistics for the purpose of any of the matters specified in the Concurrent List;

Jurisdiction and Powers of all Courts, except the Supreme Court, with respect to any of the matters in the Concurrent List;

Fees in respect of any of the matters in the Concurrent List but not including fees taken in any Court.

(2) *Legislative powers transferred from the Present Union List to the Concurrent List.*

The following entries of legislative powers in the Union List have been transferred to the concurrent List :—

Bills of exchange, cheques, promissory notes and other like instruments;

Patents, inventions and designs, copyright, trade marks and merchandise marks;

Establishment of standards of weight and measure;

Establishment of standards of quality for goods to be exported out of India or transported from one State to another;

Regulation and development of inter-State rivers and river valleys:

The Survey of India, the Geological, Botanical Zoological and Anthropological Survey of India, Meteorological organisations;

The above changes in the List of legislative powers have also to be incorporated in the Constitution with necessary amendments, supplemental, incidental and consequential.

DRAVIDA MUNNETRA KAZHAGAM

Supplementary Memorandum

INTRODUCTION

In 1969, for the first time in India, the D.M.K. Government of Tamil Nadu constituted a Committee of Experts, with Dr. P. V. Rajamannar as the Chairman, to inquire into the relations between Centre and the States and to make recommendations thereto.

Dr, A. Lakshmanaswamy Mudaliar, former Vice-Chancellor of Madras University, Thiru P. Chandra Reddy, former Chief Justice of the High Court of Madras are the other members of the Committee.

The Rajamannar Committee, as it is popularly called, presented its report in May, 1971.

Largely based on that Report, Thiru M. Karunanithi, the then-Chief Minister, moved a resolution on State Autonomy in the Legislative Assembly of Tamil Nadu.

The Assembly discussed the same for five days and for the first time in the history of India a Resolution about Centre-State Relations, commending suitable changes and amendments to the Constitution, was passed on 20-4-1974.

Those documents with title "The D. M.K.'s views on State Autonomy" forms our Memorandum to the Commission on Centre-State Relations.

In this Supplement we are presenting our further views on the said subject.

Madras

30*th* *December* 1985. M. KARUNANITHI

President, D.M.K. Party.

PART 1

India, like U.S.S.R., Peoples' Republic of China and Switzerland etc., has many nationalities with distinct languages, cultures, religions, traditions and history of their own. Another important factor is the continental geographic dimensions, with different States at different stages of development.

As professor Toynbee observes, "the growing consciousness of Nationality had attached itself neither to traditional frontiers nor to new geographical associations but almost exclusively to the mother-tongues."*

*Quoted in 'The Report of the States Reorganisation Commission', 1955, p. 41.

The Report of the Linguistic Provinces (Dar) Commission, 1948, states that creation of linguistic provinces would bring 'sub-nations' into existence.

But forces of history have created the linguistic states and today nobody could undo them and face the public wrath.

Those who object the use of the terminology of 'nationalities' may, like the Dar Commission, use the nomenclature of 'sub-nations' or call our country as 'polyglot' or 'poly-ethnic'.

Only these inexorable facts of life demand federalism for our country because as Prof. Kenneth C. Wheare has put it, that "as a matter of history, federalism has provided a device through which differing nationalities could unite, and. while retaining their own distinct national existence, attempt to create in addition a new sense of common nationality. Nationalism in a federation can be expressed on at least two levels; it is not exclusive, homogenous passion". *

We feel federal polity for India is an inevitability as it provides a chance of linking union with diversity as the democratic alternative.

It is our opinion that if Canada has one Quebec India has many Quebecs.

Mr. Gerald Pelletier, M. P. of Canada and Editor of 'La Presse' has stated;

"If I told you that I am firstly a Canadian and that my belonging to the French Community comes second that would be shameful lie.... Confederation is good in so far as it allows my own people to live in the best possible conditions, to develop their own capabilities within their own culture. If confederation means abandoning the French-Canadian identity, giving up our French culture, disappearing into the North American melting pot then I am against Confederation". **

In the same way we, the Tamils, also feel. No self respecting Tamil would sacrify his language culture and identity for anything. So also is the case with others.

We should not forget that after the birth of linguistic states the States have come of age and each State has acquired a personality and identity of its own and the people are State conscious. Nay; as many state boundaries coincide with the languages they speak we could say that they are nationality-conscious.

"Without federalism Canada could not continue to exist, for French-Canadians would not feel that their distinct nationality would be preserved—the basis upon which alone they are prepared to think of themselves as Canadians". ***

*Kenneth C. Wheare, "Federalism and the Making of Nations", in "Federalism : Mature and Emergent", edited by Authur W. Macmohan, p.35.

** GERALD PELLETIER, "Confederation at the Cross-roads", University of Saskatchuam, 1965, p. 4-5.

***Kenneth Wheare, *Ibid*, p. 36.

—The same holds true in India which has many Quebecs.

—Wholesome federalism alone can keep India together and strengthen her from within and without.

In a federation, Governments—the Union and the States, must have complete freedom from mutual control and encroachment in the determination of their policies and the way in which they are implemented. —This freedom is the soul of federalism. We call this freedom as Autonomy. It should not be confused with separation involving seccession.

It is our firm belief that National Unity should be based on State Autonomy.

Along with the Royal Commission on Dominion-Provinces in Canada, we say:

"National Unity and Provincial Autonomy must not be thought of as competitors for the citizens' allegiance, for.... they are but two facets of the same thing, the same federal system".

Political autonomy for the States would be useless unless they are backed by adequate fiscal autonomy and financial resources.

So, we demand a reapprisal of the Constitution to achieve that end.

If the present Hon'ble Commission is not to suggest any amendments to the Constitution in the light of our past experience and in view of our future needs, then it is our opinion that the entire efforts would become an exercise in futility.

There are some quarters who consider the demand for 'Autonomy for the States and Federal Union at the Centre' and regionalism as anti-national. They are wrong.

Autonomy for the units is the life of blood of federalism. Even the present Constitution provides for some amount of autonomy. Our demand is that they should be more; that they should be sufficient and that they should be real to develop their units in their own way and genius without hampered by the overlordism of the Centre.

Regionalism and sub-regionalism are recognised in the Constitution.

There are special provisions in the Article 370 of the constitution for Jammu & Kashmir.

Article 371 speaks about special provisions in respect of Vidarbha, Marathwada, Saurashtra and Kutch.

Article 371-A speaks about special provision with respect to the State of Nagaland.

There are special provisions for the tribal areas of Assam, for the Hill areas of Manipur.

Article 371-D speaks about special provisions with respect to Telengana in the State of Andhra Pradesh.

One should not forget the fact that "the National movement which achieved India's independence was built up by harnessing the forces of regionalism". As the Report of the States Reorganisation Commission (1955) puts it:

"It is only when the Congress was reorganised on the basis of language units that it was able to develop into a national movement. The Congress under Mahatma Gandhi realised that the same forces which worked for our national unity had also helped to develop the regional languages, which led to the integration of language areas. It is this alliance between regional integration and national feeling that helped us to recover our freedom.

"With the achievement of freedom, a tendency has developed to overlook the claims of different regions by denying to them the right to internal integration, on the plea that this will weaken the unity of the nation. This, however is false cry, for true development will be possible, only if we are able to utilise genuine loyalties which have grown up round historic areas united by a common language".

(—*Page* 38, *Emphasis ours*)

Those who decry the demand for more powers for the States in the name of State. Autonomy are those who fail to understand the efficacy of federalism. By uttering this criticism they also fail to understand the necessity to harness the aspirations of genuine and basic loyalties which have grown up around historic areas united by a common language which are the cementing forces of national integration.

As Dr. Chandra Pal puts it, "the demand for state autonomy is not at all incompatible either with the process of nation-building or with national integration. Rather it is essential. The need of the hour is "Unity" and not "Uniformity". Unity in diversity cannot be maintained without permitting diversity in unity. Any attempt to crush "diversity" is fraught with dangerous consequences and may eventually lead to disintegration and balknisation of the country".*

The problem of State Autonomy has been a live issue in Indian federal system as in any federal systems since the birth of our Republic, nay, even, earlier. Student of Indian constitutional history are conversant with the fact that the federal idea which was mooted in the Nehru Report and the Report of the Indian Statutory Commission was assiduoulsly pursued in the Round Table Conference and was adopted in the Government of India Act of 1935. The two major characteristics of the aforesaid Act were that (1) It proposed a Federation for India; and (2) It provided for provincial Autonomy. Even though the proposed Federation could not see the light of the day the issue of provincial autonomy gained momentum.

The historic fact was that the Constitutent Assembly met to consider the proposals of the Cabinet Mission Plan, constituting India into a Union under which the Provinces would have full autonomy, subject

*Dr. Chandra Pal, "State Autonomy in Indian Federation : Emerging Trends", p. 53.

only to a minimum of Central subjects comprising Foreign Affairs, Defence and Communications and vesting all subjects@ and all residuary powers in the Provinces. According to K. M. Munshi, "Gandhiji saw in the Plan the seeds to Convert this land of sorrow into one without sorrow and suffering".*

On 3 June 1947 the decision to partition India was announced. Sensing this before-hand B. N. Rau had sent a memorandum on the Union Constitution on 30 May 1947 as follows :

"If it is decided to abandon the Cabinet Mission Plan ...the whole matter may have to be considered afresh. In that event we may either have a unitary type of constitution, as before the Government of India Act of 1935, or we may have a federation with the present distribution of powers between the Centre and the Units. The former, however desirable, may no longer be practical politics."**

On 4 July 1947 the Second Report of the Union powers Committee presented its Report to the constituent Assembly recommending that "The Constitution should be a federal structure with a strong centre". The objectives Resolution moved by Pandit Nehru to create" a complete, adulterated federation" *** and the first Report of the Union Powers Committee had been given a go-bye.

As K. Santhanam States, "....the main constitutional results of the partition of India was that the pendulum swung from one extreme to another extreme. From the idea of minimal federation, almost all leaders and, much more than leaders, the followers, wanted a maximal federation".****

H.V. Pataskar had explained this aspect very clearly in the Constituent Assembly:

"....at the time of the second reading, we developed a fear complex.....the result was that the autonomy of the States, or their semi-autonomy came to be looked upon as a matter of national danger....It was with the idea of having a federation that we began changing the name of the Provinces into States. If the present idea had existed throughout, we never would have made that change. But while the name of "State" is there, the power of the State is so curtailed that it is a misnomer to call it a "State" any longer".†

With the result they created our Constitution in the Plaster cast set in the Act of 1935, which was anathema to those Constitution-makers themselves.

The Constituent Assembly had also formally endoresed the federal principles when Pandit Nehru moved the objectives Resolution which stated that:

"the said territories....shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of Government of administration, save except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom.‡

Those proposals had been accepted by the Congress Party and 'therefore by the people' could be evinced by the following statement of N. Gopalaswami Ayyanger in the constituent Assembly:

"The statement of the Cabinet Mission, I would describe as the law of the constitution of this Assembly. That Constitution derives it authority not from the fact its authors were three members of His Majesty's Government but from the fact that the proposals made therein have been accepted by the people of the Country."§

It should be noted that the Congress Party of yester-years stood for genuine federalism with maximum autonomy to the Units. Pandit Nehru in his book "The Discovery of India", which was written during April to September 1944 in the Ahmednagar Fort Prison has opined as follows :

"It is clear that any real settlement must be based on the good-will of the constituent elements and on the desire of all parties to it to co-operate together for a common objective. In order to gain that any sacrifice in reason is worthwhile... It is not difficult, if passions and unreasoing emotions are set aside, to derive such freedom with the largest autonomy for provinces and States and yet a strong central bond."@@

He even went to the extent of granting the Units the right to secede, "say ten years after the establishment of the free Indian State."@@@

His views were echoed in the election manifesto of the Congress Party when it fought the elections in 1945. It assured "a minimum list of common and essential federal subjects" and "the right of any well constituted area to secede from the Indian federation or Union"††

——Undoubtedly this was "the predominant idea of our national leaders" at the outset.

But, with the birth of Pakistan came a right-about turn in their thinking and it not only destroyed the concept of United India but also the concept of genuine and wholesome federalism.

It should be noted that the Congress Party stoutly opposed the Act of 1935.

The following reasons were given by Pandit Nehru:

"The Act of 1935 was bitterly opposed by all sections of Indian opinion. While the part dealing

@Other than the Union Subjects.

* K. M. Munshi, "Indian Constitutional Documents" Vol. 1. p. 103.

** B. Shiva, Rao, "India's Constitution in the Making", pp. 92-93.

*** CAD, XI, 5, p. 670.

****K. Santhanam, "Union-States Relations in India", p.4.

†CAD, Vol. XI, pp. 670-673.

‡ CAD, Vol. 1, No. 1, p. 57.

§ CAD, *Ibid.*, p. 39.

@@ Jawaharlal Nehru, "The Discovery of India", 3rd Edition, 1947, Signet Press, p. 448.

@@@ Jawaharlal Nehru, *Ibid.*, p-452

†† Central Parliamentary Board, Indian National Congress, Handbook for Congressmen, New Delhi, (undated) p. 98.

with Provincial Autonomy was severely criticized for its many reservations and powers given to the Governors and the Viceroy, the Federal part was even more resented. Federation as such was not opposed and it was generally recognised that a Federal structure was desirable for India. But the proposed Federation petrified British rule and vested interests in India.*

——It is a tragedy that a number of provisions of the very Act which was created by the 'Colonial Masters' 'representing the old tradition of British imperialism' to suit their exploitation and which was then totally objected to by the Congress party had been incorporated verbatim in our present Constitution and that is why some authors call our Constitution as the 'Palimpsest of the Act'. The Constitution, as Ivor Jennings puts it, "derives directly from the Government of India Act 1935, from which in fact many of its provisions were copied almost textually" and as Dr. Durga Das Basu observes, "75 per cent of the Constitution owes its origin to that Act", with the basic difference that the paramountcy of the British Crown over the States and, Provinces had been transferred to the Government of India.

The Main reasons for copying the much hated Act of 1935 may be summarised as follows:

1. The anxiety-Complex was predominant; therefore those who advocated State-rights were suspected of lack of loyalty to the country because of the creation of Pakistan.
2. In a hurry to create a Constitution of our own they simply forgot the mandate they got from the people, the primary plank being federalism.
3. In their jubilation over Independence, they thought that Congress and its 'God-like' leaders would rule the country for ever and they never even considered the possibility of other parties coming to power in the units. Even if such a situation arises, they thought, that it would be convenient to suppress them by some of the provisions of the Act of 1935.
4. The Congress Party was and has been unitary in character. During the days of Provincial Autonomy the top-most leaders like Pandit Nehru, Sardar Patel, Rajendra Prasad etc. stood outside the new ministries as the High Command and it was that High Command which made the choice of Premiers and settled the differences of opinion in the Cabinets of the provinces. "What happened in practice was that Constitutional federalism was superseded by political unitarianism". —Therefore States were looked down upon as the fiefdom of Delhi.

——In effect the Congress High Command stepped into the shoes of the "irresponsible and unresponsive" British imperialism and a Swadesi Imperialism was established with the States as the internal colonies. Like the British they continue to treat the States with suspicion and distrust. Otherwise there is no need to retain many of the provisions of the Act of 1935 which they hated.

* Pandit Nehru, Ibid., p. 307.

——That is why mild criticism calls our Constitution as a federation with unitary features or quasi-federal while pungent comment describes the States as 'no better than glorified municipalities' or' dole-getting Corporations**

Here below are some of the comments about our Constitution:

K. M. MUNSHI	"a quasi-federal union invested with several important features of a unitary Government" ("The President under the Indian Constitution", Bombay, Bharatiya Vidya Bhavan, 1967, p.1.)
Dr. GAJENDRA GADKAR	"..though it partakes some of the characteristics of federal structure, it cannot be said to be federal in the true sense of the term". ("The Constitution of India—Its Philosophy and Basic Postulates", Bombay (1969), p. 67.)
HANUMANTHAIYA	"The Constitutional edifice of India is neither unitary nor federal in the strict sense of term". (—The Report on Centre-State Relationships, A.R.C., p(i))

As Dr. V. K. R. V. Rao has stated, "There is a feeling that we should come to Delhi and by the very fact you have come to Delhi you now much more than what you would know if you are in Bangalore or Madras or Lucknow or Chandigarh". †

It is that wrong feeling that wants to give an omniscient and omnipotent role to the Centre. Dr. Sampurnanand had expressed it in no uncertain terms:

"There is less and less an inclination to treat the State Governments as partners in a common endeavour and a growing inclination to treat them as subordinates and agents, whose outlook is narrow and who cannot be trusted to take important decision by themselves.... At times it creates irritation and there have been occasions when state ministers have expressed the view that the Constitution had better be scrapped and the country made a Unitary State under one Government".

—"*Reflections*". 1962.

As the Report of the Study Team of the Administrative Reforms Commission says, "at the Centre, dominant financial power in relation to the states gives central authorities exaggerated notions of their importance and knowledge and does not allow, sufficient place to the points of view of the states. It is important, therefore, that the degree of financial dependence of the states on the Centre should be reduced to the minimum".

(*Vol. I, Page*—23)

More often we read in the newspapers that one Chief Minister or the other has been "summoned to New Delhi" not invited——This shows the attitude of the Centre. It is nothing but an insult to the people of the States.

**Dr. Anna, 'The Hindustan Times', 5 Feb., 1963.
†VKRV Rao, Lok Sabha Debates, Vol. XV, 1972, P-251.

The result is that the Centre is behaving as if it has inherited the Viceroy's mantle of paramountcy. That is why the elected representatives of the States have to make so many pilgrimages to New Delhi with begging-bowls in their hands.

The West Bengal Government's memorandum, prepared under Dr. B. C. Roy as the Chief Minister says:

"In our view one of the major tasks of the Finance Commission would be to assess the needs of the Centre according to them functions it is required to discharge under the Constitution and to allow it to retain so much, and so much only, of the funds that are actually required for the discharge of those specifically Central functions in an efficient manner".*

Ten years before this, the State Government had explained to the First Finance Commission:

"An attempt to build a strong Centre on the foundations of weak States is like an attempt to build a strong building on the foundation of sands".**

It approvingly quoted the recommendations of the Constitutent Assembly's Expert Committee on the financial provisions of the Constitution which has said : "The basic functions of a Federal Government are defence, foreign affairs and the bulk of the national debt."

—We entirely agree with the above views.

Therefore there should be a reappraisal of the Constitution on the following principles:

1. The basis for the adoption of genuine and wholesome Federalism and States' Autonomy lies in the multinationality of India, its continental geographic dimensions, various languages, cultures, religions, traditions, and history of the States.
2. The re-structuring of the relations between Centre and States requires first of all genuine equality of all States, equality of the States and the Centre both formally and materially-including equality of all national language, not excluding Hindi and equal development of all States.

Besides other details given in "The DMK's views on State Autonomy" we reiterate the following:

Language:

The group of Articles collected in Part XVII of the Constitution deals with language.

There is a Constitutional declaration that the official language of the Union shall be Hindi.

It is left to the Parliament and the Legislature to continue English or not.

In regard to the Laws and Courts, there is a declaration that English shall be the language until Parliament by law otherwise provides.

*West Bengal Government, Memorandum to the (Third) Finance Commission, 1961, p-6, (Original emphasis).

** West Bengal Government Memorandum to the (First) Finance Commission, p.-63.

There is a directive for the development of the Hindi language.

We demand that a regional language like Hindi should not be chosen and crowned with the status of the official language of the union.

The people of Tamil Nadu have been fighting for the last 50 years against Hindi domination in one form or other. Even though Pandit Nehru, and other Prime Ministers after him, have given an assurance that Hindi will not be imposed on non-Hindi people, Hindi is being imposed directly and indirectly—mostly by back door means.

Moreover, there is the liklihood of Hindi being made the sole official language of the Union, the language of the laws of the Parliament and the language of the High Courts and the Supreme Court etc., by an Act passed in the Parliament by a simple majority.

——The non-Hindi people cannot anymore trust that the assurances of the previous Prime Ministers would be kept up.

Therefore we demand,

1. The provisions to make Hindi the official language of the Union, the Courts, and the Legislature etc. should be deleted.
2. The directive for the development of Hindi language should also be deleted, and
3. All the languages specified in the Eighth Schedule should be made as the Official Languages of the Union. Till it is achieved English should continue as the official language of the Union.

In the words of Dr. Anna "the Government of Tamil Nadu has stated in unmistable terms that Tamil and English can serve all purposes, the former as the official Language of this State and the latter as the link language....It is accepted that English can serve admirably as link between our State and the outside world, why plead for Hindi to be the link language here? What serves to link us with the outside world is certainly capable of rendering the same services inside India as well. To plead for two link languages is like boaring a smaller hole in a wall for the kitten while there is bigger one for the cat. What suits the cat will suit the kitten as well".

We strongly believe that Hindi is a divisive factor and our hard-won national integrity would meet its Waterloo on the day if any fanatic, by mistake or by scheme, makes Hindi as the Official Language.

The Office of the Governors

Pandit Nehru "The Discovery of India", described that Governors were "acting on instructions from New Delhi or Simla†"

——The same position continues even now. The Governors act as the agents and spies of the centre and their executioners of Democracy in the States.

†Ibid. Page : 313

During 1977 when the D. M. K. Government was dismissed in Tamil Nadu it was said that the Centre did so on the Report of the Governor. In fact it was not so. The Report was prepared and kept at New Delhi and the Governor was later summoned to affix his signature after the Proclamation was issued by the President under Article 356.

The Office of the Governor is legacy of the British Colonial System. The method of appointment of the Governor makes it an anachronism in a democratic set up.

As Mrs. Vijaya Laxmi Pandit described, the office of the Governor's should be abolished and the West German model should be adopted.

If a system is successfully working in a federation like West Germany there is not reason why it should not work in India also.

President's Rule

As there is no provision for President's Rule at the Centre so also there must not be any provisions for President's Rule in the States. Therefore those provisions like the much misused Articles 356, 357, 360, 365, etc., should be deleted from the Constitution.

PART II

In this part II and attempt is made to show how some of the original provisions of the Constitution have been subsequently amended, if not amended, bypassed or maneuvred to take away what little powers that had been given to the states.

It also, tries to explain how the centre, with its enormous resources and dominant budgetary involvement, has made massive inroads into state subjects through the financial backdoor, thereby enrasculating autonomy of the states. As a consequence thereof and with the addition of planning the enumeration of state subjects and union subjects can be said to have become blurred and less and less clear, there by effacing what little federalism we have been left with. We have cited only some examples; and indepth study would reveal how our federalism has become a shame-faced.

1. There are three significant entries in the State List :

(1) Industries

(2) Trade and Commerce; and

(3) Production, supply and distribution of goods.

The Union list permits Parliament to legislate in respect of "Industries, the control of which by the Union is declared by Parliament by law to be expendient in the public interest."

——These are Entries 24, 26 and 27 in the State List and entry 52 in the Union List in the VII Schedule to the Constitution.

——Thus the basic scheme of the Constitution is industries and commerce should remain State subjects and should be dealt with primarily by the States; and that it is only those industries the control of which by the Union is expendient in the public interest, that must be regulated by the Centrre.

Parliament passed the Industries (Development and Regulation) Act in 1951 specifying those industries which in the public interest had to be controlled by the centre.

—This is the single most important legislation through which the centre has invaded and almost captured this Subject without any amendment to the Constitution.

In course of time more and more industries have been added in the Act; and the basic constitutional scheme has now been almost subverted.

Without any amendment of the Constitution, "Industries" has been virtually transformed from a State subject into a Union Subjcet, with the result the Centre has now extended its control to as much as 93 per cent of industries in terms of the value of their output.

Even items like razor blades, paper, gum, shoes, matchboxes, household electrical appliance, hurricane lanterns cosmetics, soaps and other toilet requisities have all been brought under the dominion of the Centre. The list is ever ending and now includes practically every conceivable industrial product.

As Mr. N. A. Palkivala points out, "There can be no doubt that this is a violation of the constitutional mandate".*

It is imperative that the States should remain their legitimate powers over industries and powers.

No doubt, We have permitted a clear fraud to be perpetrated upon the powers of the States under the Constitution."*

2. Central involvement in Village a Small-Scale Industries is also very high as may be seen from the share of the Centre in the total budgetary expenditure on village and small scale industries which is nearly two-thirds.**

What is more, the Centre's scheme-wise transfers financed one-thrid of what appears in the States budgets, as their expenditure.

With regard to its massive involvement in small scale industries the Centre cannot claim much legal support, constitutional or legislative, as special notifications under practically all the measures mentioned earlier exclude small scale industries from their operations.

Now the Centre is holding under the umbrella of its Control and regulation almost all industries including industries which are not in the core or heavy investment sectors. For example Centre's share in the expenditure on consumer industries is about 70% of the

*N. A. Palkhivala, "Our Constitution—Defaced and defiled", p. 119.

** All calculations in this paper are based on the "Combined in "Combined Finance & Revenue Accounts of the Union & State Governments in India", (1978-79), published by Government of India, 1983.

total. Of the agro based consumer industries, its share is 76%. Its share in the expenditure on plantations is 71%.

3. **Minerals:**—In terms of Entry 23 of the State List, regulation of mines and mineral development is a state suject. They are subjected to Entries 6,53, 54 and 55 of the Union List.

Now the States account for only one-tenth of the total budgetary expenditure on minerals. Of what it presented in the state budgets as their expenditure, more than one-fifth has been financed by the Central Government under their schemes.

The Centre's involvement in mines and minerals is nearly complete as it accounted for 97.5% of the combined budgetary expenditure.

——The result is the subject 'Minerals' has been virtually transformed from a State subject to a Central subject.

4. Originally, "AGRICULTURE, including agricultural education and research, protection against pest and prevention of plant diseases" form Entry 14 of the State List.

By the Third Amendment Act 1954, Entry 33 to the Concurrent List was brought in.

According to Entry 33, trade and commerce in and the production, supply and disribution of a wide variety of domestically produced or imported products of industry and agriculture including,

"(b) Foodstuffs, edible oilseeds and oils.

(c) Cattle fodder, including oilcakes and oils.

(d) Raw cotton, whether ginned and unginned and cotton seed, and,

(e) Raw jute"

——are subject to concurrent jurisdiction. The above articles mentioned in the Entry 33 from (b) to (e) form much of the largest part of agricultural produce.

As the Setalwad Study Group on Centre-State Relationships (of the A.R.C.) says:

If the word "production" occurring in this entry has to be given wider import AGRICULTURE FOR THE MOST PART MUST BE DEEMED TO HAVE BECOME A CONCURRENT SUBJECT

"If the term "production" is to carry a limited import, it is not clear at all what the limitation is."

(—*Volume I P.* 164; *Emphasis ours.*)

The Setalwad Study Group took the view "that Agriculture should administratively be treated as a State subject and that central encroachment in the shape of the assumption of responsibility for substantive activity should not be permissible", (Ibid.,page 64)

——The view of the Study Group has not been followed in practice, and AGRICULTURE HAS VIRTUALLY BEEN TRANSFORMED INTO A CONCURRENT SUBJECT.

5. Entry 14 of the State List a specifically mentions "research in agriculture" as a State subject.

Now it "has virtually become a Central subject and is concentrated in the IACR."

Centralisation of research with the Union Government is almost total if we take the relative expenditure of the Union on the head* "Social and Community Services". The share of the Union on, expenditure under this head comes to 99.8 per cent.

The risk of overlooking regional and even sub-regional differences in objective conditions is there because of centralisation of research.

6. Animal husbandry and dairy development can be said to be exclusive State subjects.

Entry 15 of the State List Clearly says :

"Preservation, protection and improvement of stock and prevention of animal diseases; Veterinary training and practice."

The Centre's role is limited to the prevention of cruelty of animals and the prevention of the extension from one State to another of infectious or contagious diseases of pests affecting animals under Entry 17 and Entry 29 of the Concurrent List.

Because the new Entry 33 to the Concurrent List was brought in by the Third Amendment Act of 1954, the concurrent jurisdiction of Centre now extends to the production, supply, and distribution of not only food-stuffs which can be interpreted to include dairy products, but also cattle fodder including oil cakes and other concentrates.

——This is a new invasion of powers of the States by the Union.

7. "Forests and Protection of wild animals and birds" belonged originally to the State List (Entries 19 and 20). By the Forty-second Amendment Act, 1976 they have been transferred to the concurrent List (Entries 17A and 17B).

8. According to the Government of India Act, 1935, Education was in the Provincial Legislative List.

By Forty-second Amendment Act, 1976 it has been transferred to the Concurrent List, with Entries 63, 64, 65 and 66 already remaining in the Union List.

This we consider as the cultural invasion of the Centre. With this weapon on hand the Centre Plans to open central schools in every District. perhaps with a view of impose hindi and cater to the needs of the elite. Hundreds of crores are to be dumped in this process while thousands of elementary Schools have no roofs over their heads and no Basic Amenities like black-boards etc,.

9. Fisheries belong to the State List under Entry 21. But fishing and fisheries beyond the territorial waters" is a Union subject under entry 57. Besides,

* "Scientific services and research" coming under the sub-group.

under Entry 33 of the Concurrent List, fish being a foodstuff, the Centre can claim a role in the production and distribution of fish and fish products. As ports other than the major ports belong to the Concurrent/List under Entry 31, the Centre can also lay claim to a role in the development of fishing harbours and landing facilities.

The Centre incurs 47% of the combined expenditure of the Centre and the States on fisheries.

Of what is shown as the States' expenditure, about one-sixth is financed by the Centre through scheme-wise transfers particularly for the development of inland fisheries, again purely a State subject.

Other than budgetary control the Centre exercises administrative control on fisheries through its agency, Marine Products Development Authority.

—The list may become longer as to how the Centre has made inroads into State subjects by the financial back-door.

We request the Hon'ble Commission to make an in-depth study of this particular aspect.

Making inroads into the States' field by financial back-door has been possible because the Centre has at its Command elastic and immense sources of revenue. Planning also comes handy to the Centre. Because of this, the separation between the State subjects and Union Subjects have become less and less clear and therefore blurred.

It is true because of acute financial constraints the States are not in a position to spend more on various subjects of their own.

But this is an argument for enhancing the States' access to additionl resources; and not for making inroads into States', subjects by the Centre, emasculating their autonomy.

10. Income Tax is shared between the Union and the States in the manner prescribed by the Finance Commission.

As per the provisions of Article 279 the Comptroller and Auditor General of India specified the net proceeds forming the divisible pool. His Certificate in this respect is final.

However, if we examine the 'net proceeds' arrived at in practice, we find that they are much less than what they should have been.

As per the recommendations of the Sixth and succeeding Finance Commissions, the States are entitled to get 80 to 85% of the net proceeds. In fact they are getting less.

The Table I shows the States' shares for the years from 1974-75 to 1979-80, for which period the reports of the Combined Finance and Revenue Account are available.

In 1974-75 the States and Union Territories received only 64.55%of the 'net proceeds' instead of 81.79% (80% as States' share and 1.79% as the share of Union Territories).

—Thus instead of getting Rs. 653.94 crores the States received only Rs. 516.15 crores.

TABLE I

Share of States and Union Territories in the Divisible Pool of Income-tax—Actual Accrual and Estimated Accrual

(Rs. Crore)

Item	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80
(A) Exclusively going to the Centre						
(i) Taxes on union emoluments	23.42	31.73	28.82	..	15.06	16.62
(ii) Surcharge/Super tax, etc.	27.65	62.69	63.80	74.76	115.92	183.61
(iii) Misc. receipts	7.64	15.97	9.94	16.58	13.02	11.53
(iv) Total i+ii+iii	78.71	110.39	102.56	..	144.00	241.76
(B) Net proceeds of income tax after deducting cost of collection	878.25	1214.46	1194.40	1002.39	1177.39	1340.31
(i) Cost of collection	27.31	33.96	34.38	33.28	47.59	41.48
(C) Divisible pool (B—A)	799.54	1104.07	1091.84	..	1033.39	1128.55
(D) Union territories and States' Share						
(i) Assigned or actual	516.15	734.21	652.24	675.81	702.62	864.88
(ii) Per cent share	64.55	66.50	59.73	..	68.37	76.63
(iii) Share as recommended by Finance Commissions	653.94	883.25	893.01	..	845.20	983.98
Recommended Share (Per cent)						
States	80.00	80.00	80.00	80.00	80.00	85.00
Union Territory	1.79	1.79	1.79	1.79	1.79	2.19
Total	81.79	81.79	81.79	81.79	81.79	87.79
Difference between the actual and estimated transfers to Union territories and States	137.79	149.04	240.77	..	138.58	119.10

——The same is the case for the succeeding years.

As our Table shows the States and the Union Territories have lost Rs. 137·79 Crores in 1974-75, Rs. 149·04 Crores in 1975-76, Rs. 240·77 Crores in 1976-77, Rs. 138·58 Crores in 1978-79 and Rs. 119·10 Crores in 1979-80.

——There is no explanation either in the Combined Finance & Revenue Account or in the Report of the Comptroller & Auditor General, Revenue Receipts, Vol. II, of the way they have determined the net proceeds of Income Tax for sharing purposes. Nor is there any explanation for allocating lower share to the States than that recommended by the Finance Commission.

——If this findings are true then what is happening is an open defiance of the provisions of the Constitution and the recommendations of the Finance Commission which may be construed as a kind of misappropriation.

We request the Hon'ble Commission to appoint a Panel of Experts to go into the question and make necessary recommendations to rectify the position, if the accusation is true.

11. The taxes on Union emoluments are excluded from the Divisible pool, which may amount to about Rs. 200 Crores per year.

As this provision of the Constitution is borrowed from the Act of 1935 it may be called as the hang-over of the Colonial past.

——As there is no justification for this exclusion Union emoluments should form part of the Divisible pool.

12. Interest on recoveries of Income Tax and penalties do not form part of the Divisible pool.

The Eighth Finance Commission felt that since the power to levy penalties and recover interest under the Income Tax Act emanates from the power to levy Income Tax, they should also fall within the concept of Income tax as the term used in Article 270.

If they are included, the Divisible pool will increase by about Rs. 10 to 15 Crores.

If Corporation Tax also is included the Divisible pool will increase by about Rs. 2,000 Crores.

13. By inflating the cost of collection of Income Tax the Centre is wantonly reducing the Divisible pool and thereby reducing the legitimate share of the States and Union Territories.

The cost of Collection of the Central Taxes is in the following proportion :

Income Tax, including	
Corporation Tax	90%
Estate Duty	2%
Wealth Tax	7%
Gift Tax	1%

The costs of collection between Corporate Tax Income Tax is made in the ratio of 1 : 7, which seems to be patently loaded in favour of Income Tax. More so, if we deduct the cost of collection of the Union emoluments which do not form part of the Divisible pool.

——It is very clear that a honest, rational and correct method is not followed in computing the 'net receipts' and thereby the States and Union Territories and deceived.

Therefore we accuse that Income Tax is nots genuinely shared at all to the benefit of the State and a jugglery in accounting reduces the legitimate share of the States and Union Territories. In fact, the Finance Commission proposes and the Centre disposes.

We request the Hon'ble Commission to put an end to this mal-practice.

14. Certain concessions are given to assessees of Income Tax if they invest in notified savings like, National Saving Certificates.

——This results in reduction of the Divisible pool and at the same time the States get a share of small savings in the form of loans for which they have to pay interest.

——The States thus loose their rightful source of Income due to the growing exemptions provided by the Centre in the Income Tax.

——We plead that the States should get adequate compensation for the various concessions and exemptions given in the case of Income Tax.

15. Article 163 states : "Council of Ministers to aid and advise Governor : (1) There shall be a Council of Ministers with the Chief Minister at the head to aid an advise the Governor ..."

Now the question arises : Whether the Governor can appoint the Chief Minister alone, without the other Ministers who form the Council of Ministers while Article 163 stipulates that there shall be a Council of Ministers with the Chief Minister at the head ?

A Committee of the Governors, appointed in one of the Conferences of the Governors, in their report to the President has categorically stated that to appoint the Chief Minister alone without a Council of Ministers is unconstitutional.

——But it has not been practiced by some of the Governors.

We want the Hon'ble Commission to give its verdict whether the opinion of the Committee of the Governors is right or not.

16. During the First Ministry formed by the Communist Party in Kerala, the Governor nominated the Anglo-Indian member to the Legislative Assembly without the advice of the Chief Minister, obviously to increase the strength of the Opposition *i.e.*, the Congress Party.

Now some Governors appoint the Vice Chancellors to the Universities in their State according to their will.

The Governor of Tamil Nadu has set up a new precedent by personally interviewing the candidates for the post of Vice Chancellor to one of the Universities.

Recently he has publicly asserted that in appointing the Vice-Chancellors, the Governor as the Chancellor, is not bound by the Cabinet.

It is our opinion that it is a wrong view and it is bound to create a lot of frictions.

——Therefore the Hon'ble Commission should clarify that Governors should not behave in an autocratic manner, brushing aside the advice of the Cabinet in selecting the nominated member to the Assembly and in appointing the Vice Chancellors to the Universities.

17. The Governors have used Articles 200 and 201 to serve the interests of the ruling party at the Centre.

During 1950—83 eleven Bills passed by the Legislative Assembly of West Bengal have been withheld by the President.

A Bill on the Abolition of Bengal Land holdings by the Government of Tamil Nadu is kept in the cold storage by the President without giving his assent.

Recently the Home Minister of the Union has stated on the floor of the Parliament that if this Hon'ble Commission recommends, then the Centre is ready to delete the portions from the Constitution which calls for the assent of the President.

We plead for the deletion of Article 200 and 201 as those provisions are anti-federal and anti-democratic.

18. The Centre has been adopting the policy of increasing the administered prices of certain key industrial goods over which it has control like Coal, Cement, Fertilizer, Steel etc.

For example last year the Centre raised Rs. 500 Crores through a hike in the price of coal. Instead, if the rate of excise was revised the States would have got Rs. 200 Crores.

The Centre should be advised not to reduce the resource-flow to the States by adopting such techniques. The Centre should not play this kind of tactics which is highly unbecoming and harmful to the interests of the States.

19. The Recommendations of the Finance Commissions should be accepted by the Union.

The recommendations of the last Finance Commission for the last year was not implemented and the Finance Minister advanced the plea that it was due to resource-crunch.

This argument if flimsy. We should not forget the fact that the Centre had spent hundreds of crores of rupees for the ASIAD. Where there is a will there is a way—Therefore it should be made mandatory that the Recommendations of the Finance Commission should be accepted and implemented by the Union in toto.

20. As K. Santhanam has put it, "Planning has susperseded the Federation."

As A. N. Jha says, "the stage has now been reached where if a State Government wishes to set up large number of Basic schools or Agricultural Colleges, Veterinary Colleges,. . .all matters obviously within the State field——it has some how got to carry the Planning Commission with it. This is a far cry, indeed, from what the earlier fighters for freedom has thought of and indeed what the makers of even our Constitution intended. But it has come about".*

——As a result of this the list of subjects of the Union, State and the concurrent have been vertically partitioned into Plan and Non-Plan sectors and that within the planning sphere the three horizontal lists have been turned into a single near-monolithik chunk controlled by and from the Centre. As the Report of the Study Team on Centre-State Relationships of the A.R.C. says "this is a distortion and the demonstrable weaknesses are so numerous as to call for a review of the system." (Page : 95—96).

Planning Commission has become the hand-maid of the Centre and the National Development Council is nothing but a mere rubber-stamp. The approval of the Plan by the N.D.C. is only an empty ritual. Both are not Constitutional or statutory bodies. Then, where is the question of "Planning from below" or "gross-root level Planning"?

Mr. Morarji Desai, who presented 10 Budgets to the nation, has stated on 2nd May 1970 in a symposium on Centre-State Relations held in New Delhi that it was true there was not a regular system in the devolution of plan resources and that "sometimes favouritism was shown to some people according as the predilections of people lay".

As more than two-thirds of the transfer of financial resources from the Centre to States is of non-statutory character at the discretion of the Centre, a donor-recipient relationship exists.

The Centre does not want to change this system because it gives them dominant financial powers.

——This system should be changed which cuts at the roots of federalism.

KERALA CONGRESS (J)

MEMORANDUM

More than three decades have elapsed since the golden lines of our Constitution have been framed. Thinkers everywhere will unanimously agree that the modern democracy is founded on those codes of conduct laid down in the Constitution which in turn have been directly or indirectly approved by the

* A.N. JHA "The Indian Journal of Public Administration". April—June, 1966 p. 164.

citizens. More and more rules and regulations will invariably check the freedom of man, even if it is for the betterment of the Society. Hence, in a modern democracy, every attempt should be made to give maximum freedom for the development of the individuality of its citizens, without being detrimental to the society. In other words, concentration of power will undermine the very idea of democracy. It is in this contest that we advocate maximum decentralisation of power, thereby delegating more and more powers to the States.

Contrary to 1916 Congress-League Lucknow Pact and the "Quit India" resolution of 1942, the Constitution of India when adopted by the Constituent Assembly in 1949, did not truly reflect the Federal character of the Union. The Quit India resolution emphatically declared "The Constitution of Free India will be a Federal Constitution with the largest powers for the States, residual power being vested with the States". It was only natural that the peculiar circumstances prevailing at the time of partition, the communal riots, the mass migration of the people and the deep scars of partition, let our Founding Fathers to think in terms of a strong Centre. But the working of the Constitution for the past three decades has further concentrated powers at the Centre. It was in this context that the Kerala Congress was formed in 1964 with the slogan "strong Centre and contented States". From the very birth of the Party (Kerala Congress) we have been pleading for necessary changes in the Constitution and for a redrafting of Centre-State relations. The past three decades have presented so many tests for our Constitution and happily our Constitution has proved its worth during this period. However, the different problems that have surfaced from time to time reminds us that it is high time that we examined and reviewed the present state of the relations between the Centre and the State, with a view to bringing about appropriate changes. We are really confident about the happy outcome of the Constitution of Commission, since it consists of eminent dignitaries who have deep knowledge and understanding not only of Constitutional and legal matters but also of the Socio-Political uniqueness of our country.

The following are the recommendations of the Party :—

(1) Before enacting legislations directly affecting the States by the Centre, the concerned States should be consulted.

(2) **Residuary Powers** : In most of the Federal Constitutions all over the world, notably U.S.A., Switzerland, Australia etc. the residuary powers are vested in the States. Contrary to this practice in our Constitution the residuary powers are vested in the Centre. We suggest that Article 248 of the Constitution which emplowers Parliament to legislate on matters not included in the State List or the Concurrent List be amended, so that the residuary powers of legislations are left to the State.

(3) As far as the List III—Concurrent List of the Seventh Schedule is concerned, for the purpose of discussions and advising the Centre before and after legislation, and to examine and re-review the problems and impacts of implementation, a high level committee represented by the Ministers concerned should be constituted.

(4) It is seen that certain Bills passed by the Kerala Legislative Assembly have not re-received the assent of the President even at this distance of time. The Party is of opinion that a definite time limit should be prescribed within which the State Government should be informed of the decision regarding assent to the Bill or with-holding of assent or of the message to the legislature for re-consideration of the Bill. Where the President withholds assent, it should be clearly laid down that the reasons therefor should be stated in writing.

(5) It is the Prime duty of any Government to feed its citizens, especially so, when there is shortage of food-grains. Hence, every State Government should be given the freedom to purchase from the open market of any State food-grains without any technical or legal hindrance.

(6) At present, entries 45, 46, 47 and 48 of List I of the Seventh Schedule gives almost complete control of the large scale financial and banking institutions to the Centre. Often, in effect, this adversely effects the balanced economic development of the country. So as to give the State economy a rejuvenating effect, the Centre must make it a policy to invest what is collected from the State through these institutions, in the same State itself. The State must have a say in such investment.

(7) Likewise, the duties and taxes including Central Excise and Customs Duty collected from One State must invariably be spent for the development of that State.

(8) The Foreign exchange obtained through export of cash crops and man power should be transferred to the concerned States for the welfare of the people who are actually behind it.

(9) While the Centre decides to import agricultural products, excluding food-grains, it should only be with the consent of the State which customarily produces the product so that its economy will not be adversely effected.

(10) The State should be given proper representation in the Planning Commission, and the Planning Commission should be made a statutory body.

(11) The present practice of imposing Central Excise duty on certain items should be abandoned and sales tax introduced instead.

(12) The practice of frequent price hike adopted by the Central Government for mobilisation of resources should be stopped and instead, excise duty should be imposed on such items.

(13) If the State Government is convinced about the availability of sufficient resources, working capital etc. required for a particular industry, the Central Government should give clearance for starting that industry.

(14) The Central Government should take steps to see that all essential commodities are made available to the public at the same price throughout the country. If this is not possible, the amount spent by the State Government towards Dearness Allowance for the employees should be reimbursed to the concerned States.

(15) Whenever a State is within the grip of some natural calamities like flood, drought etc. effective means should be adopted to send relief to the State, without any delay. The present practice is to send a Committee of experts from the Centre to study the problem, and to give some inadequate relief based on their report. This is very time consuming and hence at least 50 percent of the relief, based on the calculations of the experts from the State itself should be disbursed to the State immediately.

(16) While starting new industrial ventures, the Centre should see to it that every State receives a just proportion of the investments. To decide the proportion, the criteria must be the investment by the Centre per head in every State.

The Kerala Congress (J) is confident that the Commission would give due consideration to their views and would make recommendations that would help our nation to protect and uplift the democratic values. Moreover the Party feels that the recommendations of the Commission would help to bring in a balanced growth in the country, where one State would not be thriving at the expense of others.

MAHARASHTRAWADI GOMANTAK

MEMORANDUM

For 25 long years since our liberation from Portuguese rule we, the people of Goa, Daman & Diu are being governed by the Central Government through an Administrator assisted by a Council of Ministers. To give semblance of self rule we have been given a Legislative Assembly. However, the provisions of The Constitution of India and the Government of Union Territories Act, 1963 make it amply clear that we are no better than subordinate citizens of the great Country.

This anomalous situation needs to be permanently ended particularly in the context of the claim of various State Governments for greater autonomy as well as the feeling of resettleness pervading the minds of large section of the people of the Country over what they feel the excessive domination of the Central Government over the affairs of the various States, Union Territories and their people.

The Union Territory of Goa, Daman & Diu has taken big strides over the last 25 years in matters of every field of development. Though geographically we may appear to be a small place on the Country's map we are no doubt big in many other matters and compare favourably and even better with a number of other States and Union Territories in matters of our revenues, per capita income and in administrative infra-structure for our promotion to full fledged Statehood.

We have at present two Members in the Lok Sabha duly elected by the people. We have however no elected representative in the Rajya Sabha due to our Status as Union Territory. Consequently we cannot take part in the election of the President of India who is supposed to rule this Territory through an Administrator appointed by him.

We do not have our own Public Service Commission and are therefore dependent upon the U.P.S.C. for all appointment to the Goa Administration.

We earn a lot of revenue by way of taxes and duties. We are denied our share therein because of our status as an Union Territory.

We are richly endowed with natural beauty, a harbour and an International Airport besides rich deposits of iron ore, forest wealth, water resources and a cultural heritage which establishes out oneness with the Mother Country. For the purpose of carrying out official business we are endowed with languages like Marathi and Konkani one of which namely Marathi is already at the pinnacle of glory and the other namely Konkani is being enriched by our people to take over the challenges faced by any modern Indian language.

Our demand for Statehood is unanimous, earnest and strong. Public opinion will not brook any further delay in bestowing Statehood upon this Territory. Our Party, in consonance with the Public opinion submits that the Commission should make a strong recommendation for granting Statehood to this Territory and thus get on par with the rest of the States our relations with the Government of India. As regards our overland pockets of Daman & Diu we request that the opinion of the people of those regions may be considered by the Commission separately and in case they desire to be with Goa in the new framework of Statehood their wishes may not be ignored.

MUSLIM LEAGUE KERALA STATE COMMITTEE

MEMORANDUM

The Memorandum submitted to the Hon. Chairman of the Sarkaria Commission by N. A. Mammu Haji, M.L.A. and Secretary of the Legislative Party (on behalf of the Muslim League State Committee).

Welcoming your visit to the State, we bring to your notice the following points :

1. The Centre-State relations should not be the same as the relation between the States and Local Bodies. Except in certain specific matters, the States should be given ultimate powers.

2. The Centre and the States should have equal rights in enacting Legislations. The power for this is concentrated in the Centre at present. This should be shared by the States also.

3. At present, the States are depending on the Centre for their existence. The Commission should submit its strong recommendations about the dependence of the States.

4. Since the Central Government is misusing its power to enact Legislations on State subjects, it is better to delete this power.

5. The State Governments should have access to matters which do not come within the Union list or the Concurrent List. The interference of the Centre like giving directions to get the assent of the President in Legislations passed by the State Legislatures, should be avoided to the maximum.

6. According to the Constitution, the National Development Council, which consider the problems of the State, and the Planning Commission should be separate bodies.

7. The Governor should be answerable to the State Legislature. The consent of the concerned State Government would be obtained before the appointment of Governor.

8. Since Article 356 is frequently being misused, this must be deleted from the Constitution.

9. 75% of the total revenue mobilised from a State should be expended for the welfare of that State.

10. The Central Government should give directions to the States to preserve the rights of the minority communities and to redress their grievances; and that measures would be taken to review the implementation.

Hoping that the Commission would submit its recommendations to the Centre as early as possible.

PEASANTS & WORKERS PARTY OF INDIA
Kerala Unit

MEMORANDUM

MEMORANDUM submitted by the State Committee of the Peasants & Workers Party of India (Kerala Unit).

India is a Union of States consisting of people of different race, culture, language, religious and historical background. Unity in diversity is the core of our nation. The framers of our Constitutions had endeavoured much to strike out a balance between fissiporous and dictatorial tendencies prevalent in our nation at the time of independence. Although our constitution could survive the test of time, now it finds that the rulers at the Centre are trying to minimise the federal characters and to convert into a unitary one. Unless this tendency is checked in time, the integrity of our nation could be lost soon. Hence it is incumbant on the part of everyone to assess our experience of the last 37 years and to formulate a new approach to the whole problem.

To begin with we would like to state that the present State of affairs has degraded the functioning of the State to that of a municipal council. The States are always in need of finance to carry on welfare measures. Although the Centre is reequipped with extra ordinary power to raise money by resorting deficit finance, the States have to beg before the Centre to fill up the gap between the revenue and the expenditure. The facilities of over-draft given to the States are not sufficient to meet the present exigencies. In our opinion 75% of the total revenue of the nation should be distributed among the States in proportion to their population. Finance Commission must be constituted as a permanent body with a permanent Secretariat. The recommendations of the Finance Commission shall be made binding on the Centre as well as on the States.

It is distressing to note that several States are lagging much behind in economic progress. It is alleged that the rulers at the Centre are favouring certain States by starting new industries in that State disregarding the equitable claims of other regions. This economic disparity among the states could naturally inculcate an ill-feeling among the States. In order to avoid this the State should be given free hand to issue licence to start new industries both in the private and public sectors even with foreign collaboration. To further the inter-state trade all barriers including taxes, cesses, duties etc. must be abandoned. The Central Govt. should take the responsibility to see the essential commodities such as food grains, edible oil etc. is evenly distributed to all states at fair prices.

Education must be made a subject of list I of Sch. II of the constitution. Education must be nationalised and a national education policy should be accepted in order to imbibe secular, democratic socialist outlook in the younger generation. No activity which affects secularism should be allowed in any of the educational institutions whether it is run by majority or minority communities.

In order to solve the disputes among the States and to chalk out national programmes for the uplift of down trodden masses, inter-state council must be constituted as provided in the constitution with all Chief Ministers as members and Prime Minister as the chair person. This body should be made a permanent one. All legislation affecting the people of two or more States must be discussed and approved by the council before introducing them in the Parliament or in the State legislatures.

Planning Commission must be a statutory body independent of central executive. Outstanding scientists, economists and technicians shall be included. It should tender advice and schemes formulated by the States. It should make recommendations for consideration to the Finance Commission regarding foreign exchange to States for industrial undertakings in the States.

Governors shall be appointed by the President only after considering the views of the cabinet of the State concerned. Art. 185 shall be amended to that effect. The Governor shall be removed if the assembly passes a resolution with a 2/3rd majority expressing its displeasure.

Legislative councils should be abolished.

Art. 200 must be amended so that all bills passed by the legislature shall be assented invariably by the Governor since the provisions to withhold assent is quite redundant in the light of powers of judiciary review vested with the judiciary of the country.

Art. 356 must be amended so as to confine the power vested with the President to dissolve the State assembly and to assume power by himself only in cases where the integrity of the nation is found to be in danger or when cessionist forces are active to endanger the unity of the nation.

REVOLUTIONARY SOCIALIST PARTY

REPLIES TO QUESTIONNAIRE

1.1 No. Even though bearing a superficial structural similarity with a Federation, the constitution has reduced the constituent units into the practical status of provinces as under the Government of India Act, 1935, with sweeping overriding powers to the Union even without any clearly delineated objective conditions under which the same may be exercised. Thus in the constitution-framing the constitution-makers' declaration, as quoted here from the A.R.C. Study Team's comment, found a lop-sided implementation, with everything revolving round 'strong centre' with little room for a true 'Federation' in any sense of the term except in a very superficial form.

1.2 Arts. 251, 252, 256 & 257(1) as also Arts. 352-360 and 365 should be deleted because these Articles envisage undue inroad on States' legislative or administrative rights and abridgment of citizens' restricted fundamental rights under undefined conditions. These provisions in the constitution are most offensive ones whether viewed from the aspect of States' rights, not to speak of States' autonomy, citizens' civic and democratic rights and most of all the basic democratic principles.

1.3 Decentralisation and centralisation should not in this manner be juxtaposed against each other. It is not merely a question of integration and unity artificially created by constitutional provisions. The organic unity in thought and action should permeate units as well as the centre, while allowing for fruitful initiative and clearly demarcated jurisdiction for different levels.

1.4 This question has to be examined in the national setting. India is a multi-national State. Generally speaking, India needs a full-fledged federal system. The Constitution should be reviewed as a blue print for action and development. It has to be changed in accordance with stages of development. The constituent units of Indian federation may even be given the right to secede. Conditions, however, should be created by actual performance so that such an eventuality does not arise. Changes in basic approach on various aspects are necessary, not a patchwork.

1.5 While not accepting (a), it can, however, be contended that even the half-baked Federation of the Indian Constitution has further been diluted by various extra-constitutional means. Though the observance of Federal principles, as they are incomplete in themselves, cannot be ensured by (i), yet so long as the Constitution is not overhauled (ii) can be given a trial to check distortions even of existing constitutional provisions.

1.6 The provisions relating to the official language or those providing safeguards for minorities or reservation for scheduled castes and tribes may perhaps be cited in this regard. Experience shows that these are very insufficient for the purpose, particularly because instead of laying down any strong basis for freeing the country from the strangle-hold of superstitions and prejudices, religious and social, which really stand in the way of integration of the people of the country as human beings, most of the foregoing provisions either help in perpetuating them or give rise to new tensions, allowing for preferential treatment to a particular language in this multi-lingual country.

In order to foster national integration, it is necessary to promote communion of class interests. Even a bourgeois State System can do that unless it feels the compulsion of preventing conflict of class interests by hurturing communal and caste divisions and by fostering linguistic animosities. The social backwardness is but an outcome of economic backwardness which is the result of the failure of the State System to ensure food, clothing, shelter, health and education for all. If the entire population of the country are assured these five things, it is bound to generate a climate of change and a level of national progress in defending which as also in further improving which every citizen of the country will feel an willing obligation. As pointed out in 1.4, "the constitution should be a blue print for action and by involving all citizens in its implementation can the integrity and sovereignty of the country be best ensured."

1.7 Thoroughly unreasonable. It leads to despotic centralisation. Those provisions are virtually made the handmaids of power politics of the ruling party at the Centre. Past experience bears testimony to this.

1.8 Certainly. This provision cuts at the root of federalism which means a voluntary union of constituent units. The concerned State/States and their people should be the ultimate decision-makers in this regard and not the Centre.

PART II

LEGISLATIVE RELATIONS

2.1 & 2.2 'Legislative powers' should not be viewed in a vacuum. Legislation gives expression to social realities. Therefore whether the distribution of legislative powers is commensurate with the federal principle in a functional way should be

assessed not only in a constitutional form but in the perspective of the entire gamut of multifaceted life. It is the economy, politics and socio-cultural milieu of the country which provide flesh and blood to the polity. Hence any constitutional provision may be practically negated in actual political process. So the distribution of powers should be viewed as a comprehensive problem embracing the entire society. We have to give an economic interpretation of the constitution which would enable one to clearly analyse the class Character of the State.

It is a reality that the Centre has acquired power which it cannot usefully discharge or powers which properly belong to States. Even Sanjiva Reddy (Press Interview, Jan. 1978) complained about the erosion of federal structure. He said ——— "A State Chief Minister cannot undertake even the small things, a health scheme or a forest development scheme or something like that. Officials from the Centre thinks they have to go from the Centre to the State within the constitutional framework".

The Administrative Reforms Commission opines, "As a result of planning, the three horizontal layers of administration represented by lists of Central, concurrent and State subjects have been vertically positioned into plan and non-plan sectors and that within the plan world, the compulsions and consequences of planning have tended to unite the three horizontal piece into a single near-monolithic chunk controlled from the Centre although operated in respect of concurrent and State subjects in the States". "The committee was of the view that this position has created a distortion" with numerous demonstrable weaknesses and calls for a review of the system. The Committee feels that the constitution is well balanced, and this balance has been tilted to some extent in favour of the Centre during the last two decades. And again this refers only to matters administrative and financial and not to constitutional issues. The Committee concludes that it is not necessary to amend the constitution. The constitutional provisions should be worked by all concerned in the balanced spirit in which the founding fathers intended them to be worked.

On the other hand Rajamannar Commission wanted to make the Indian Constitution an exact replica of the U.S. constitution.

So these commissions do not see the actual problem. The former wants to make patchworks. The latter wants the American model. What India requires is neither of the two?

Article 201 of the Constitution and related provisions for the President's assent to bills passed by State legislatures call for a review in the light of experience. Assent has been delayed for months on end and to the Bills which State Legislatures were well within their rights in enacting *albeit* on matters in the concurrent list. Withholding the President's assent arbitrarily results in a virtual denial of the concurrent power to the States and drastically affects the distribution of legislative powers between the Union and the States.

Further, even a legislation by the State within its competence requires Centre's help in many a field and hence it has to be tailored according to the instructions of the Centre. This is an effective check on the legislative powers of the State.

When the State makes an enactment in the case of any subject within its competence it should have all the infrastructure and other requirements for the implementation of the law. The following instances prove a strong tendency diametrically opposite to this.

If the directive that the State Government must be in tune with the Central Government is accepted (Mrs. Gandhi 3/2/72), politically speaking constitutional division of powers becomes not only blurred, but also irrelevant, the late C. M. Stephen said (7-3-1980) that the States which did not invoke the Central law for preventive detention against boarders can or may be pushed out.

2.3 Not only consultation there should be actual concurrence regarding the issue. In that case, better understanding may develop.

2.4 This provision is an encroachment on States' legislative powers and should not be there. Such conditions should better be avoided. Such a situation is highly pathological showing lack of prudence, planning and foresightedness. The harmonious correlationship and interaction among 'national', 'public' and 'state' interests should not be assessed in a despotic or authoritarian way. In the context of deepening economic and political crisis in India, such declarations will naturally lead to usurping the powers of the State.

2.5 Residuary powers should be with States.

PART III

ROLE OF THE GOVERNOR

3.1 It should be categorically stated at the outset that we are strongly in favour of the abolition of the office of Governor as the agent or nominee of the ruling party at the Centre.

(a) What has been practised since 1950 has been as envisaged by the Constitution.

The Governor has always been and is, by all means a thorn in the flesh of any State Government as an instrument in the hand of the Centre. Legislative provisions regarding this amply prove the erroneousness of the contention that what was envisaged was something else. The founding fathers of the Constitution were not fools, neither those who came to powers since '47. The nature of the ruling class necessitated centralisation and increasing authoritarianism. Naturally the Governor both in theory and practice has increasingly become just an instrument in the hands of the Centre, for the Central ruling parties and its interests.

3.2 If there were a genuine federation in India there could be no justification for the office of the Governor. Of course there should be co-ordination between the States and the Centre by the office of

Governor hardly performs that task. This should not result in the dwindling or dwarfing the States and the imposition of the interests of the ruling party at the Centre on them. We have been simply following the colonial pattern. States in a Federation in the true sense of the term has no need of a guardian imposed by the Centre or for its watch-dog.

3.3 (a) To-day the Governor obeys and has to obey or will be made to obey the dictated of the Centre. The Governor should have no such power.

(b) The leader of the majority party or leader of the parties should be appointed Chief Minister. His power to appoint the Chief Minister should not include discriminatory exercise of discretion favouring a particular group. The Governor, of course, has the duty to see whether the leader commands the majority. In case of any doubt, different Parties in the Assembly should elect respective leaders and the Assembly should be summoned to prove the majority in the House of the leader of a Party or group of Parties.

(c) The experience, so far, has shown that this power has often been misused by the Governor in favour of the ruling party at the Centre. Before the decision to dissolves the assembly is taken, the different groups in the Assembly or at least that group which could form a ministry should be given an opportunity. So also the Governor, without exploring the possibilities for the formation of a ministry, should not decide against the summoning of the Assembly e.g. Kerala election in 1965 and its aftermath. The Assembly was not at all summoned. Here the exercise of discretion by the Governor was undemocratic, unconstitutional and he was equivocably supporting the ruling party at the Centre.

There should be done so long as the office of the Governor in its present form exists. We are strongly in favour of the abolition of the office of the Governor.

3.4 This question itself is unwarranted. The details concerning the problem involved here are well known. This question tries to collect information which is already available. Further whether the Governor has acted without advice from his Council of Ministers is not expected to be known by the public. It is something confidential. It is regretable that such a question found its place in the questionnaire. Reservation of the Bill by the Governor for the consideration of the President is done with a purpose. This gives the pressure groups, interest groups and the opposition to represent against the Bill and dilute it. Here it ultimately results in the negation of the competence of the State to legislate over the subjects assigned to it. Such instances in different States are well known. The most recent example is the act of West Bengal Governor is reserving the Calcutta University (Amendment) Bill for President's assent on his own.

3.5 Do not agree. Facts are to the contrary. The first portion of the comment is more objective.

The process of Presidential assent has not only acted as a substantial threat to the autonomy of the States but it has ultimately resulted in the virtual defeat of actual content and purpose of the Bill. Then it becomes either superfluous or anti-people, with the changing time. The delay of 1 year to 5 years is eloquent proof of the obstructionist nature of this provision, if nothing else.

3.6 **Answer to the First question:** It is only a pious wish couched in empty verbiage. They undoubtedly act from the States with a close link with the Ruling Party at the Centre, the latest example being Talyarkhan, Sikkim Governor. They have been without any dependent role.

Question No. 2: Many an instance could be quoted, (provisions governing the office and duties of the Governor combined with Art. 356) (1) Dismissal of the Communist Government in Kerala in 1959 even though it continued to have majority support in the Assembly, (2) The dissolution of the Kerala Assembly in 1965, (3) Dismissal of the United Front Cabinet in West Bengal in 1967 in spite of its majority in the Assembly, (4) Dissolution in 1971 of the West Bengal Assembly without giving an opportunity to the CPI(M), (5) The wholesale dismissals of a number of State Assemblies in 1977 and 1980, to quote a few. The role of G. D. Tapase in Haryana enabling Shri Bhajanlal to purchase support to form the Congress(I) Ministry is still too fresh. (6) In 1952 Shri Prakash, the then Governor of Madras, refused to invite Shri T. Prakasham who had been elected leader by all the opposition parties to form a Government, but nominated C. R. as a Member of the Legislative Council and then invited him as the leader of the Congress Party, to form the Government.

(7) **The worst Examples:** In Bihar in 1967, when the specially appointed Governor, N. Kanungo, appointed S. P. Singh as Chief Minister just for a day so that, on his advice, B. P. Mandal could be nominated a Member of the Legislative Council and then, as agreed beforehand, S. P. Singh resigned and B. P. Mandal was installed as Chief Minister.

3.7 In addition to this something more should be done if we decide to continue the office of the Governor.

(a) Supreme Court in Dr. Raghukul Tilak's case—(Hargovind Pant Vs. Dr. Raghukul Tilak—1979)—Governors not amenable to the direction of the Centre—not subordinate of subservient to the Centre—he is not accountable to them—his is an independent constitutional office, he is constitutional head of the State.

(b) ARC—a person should not be appointed as a Governor for more than one term.

(c) ARC—study team: Headed by M. C. Setalvad.

—No person who is appointed Governor should take part in politics after his appointment as such not even after retirement *K. Subba Rao* (former C. J. of India)—a Governor should not be eligible for any other office under Government after retirement and should be irremovable from office on any ground other than proven misbehaviour or incapacity after enquiry by the Supreme Court.

Even if all this is done, the problem is not solved. If the Governor proves to be recalcitrant, even then the President can take action under Art. 355 if he is "otherwise satisfied 'that........'. Then what is the use of bringing Amendments to the Constitutional provisions regarding Governor? It is a question of changing the basic approach of the constitution in this matter.

3.8 This can be done if property carried out, but the Speaker should conduct the meeting and forward the outcome to the Governor who should act accordingly. The legislature is the representative of the people of the State. Its decisions on the floor of the house should be accepted by the Governor. In certain cases (as in the case of Kerala in 1965) the suggestion in the Q. 3.8 could be put into effect.

3.9 The suggestion may be given a trial, but, in our opinion, the Speaker whose office should remain a continuous one should summon the House, recommend dissolution of the House when it is not possible to have a ministry enjoying majority support in the Assembly. In such a case the House should stand dissolved and elections held in two months' time during which time the outgoing Ministry would act as a Caretaker Government to discharge routine functions of the Government. The Election Commission which should be expanded, should be responsible for conducting the elections by direct arrangement with Police and General Administration through the requisition of different categories of personnel. The constitution should, accordingly, be amended.

Add 3(10). See copy.

PART IV

ADMINISTRATIVE RELATIONS

4.1 Art. 256 is concerned with wilfull neglect of enforcement of a Central law of a mandatory character, or else the word 'compliance' would have no meaning. A law like P.D. Act, for instance, is only an enabling statute which adds to the armoury of the powers of the Governments, Central and State. Each enjoys a clear discretion as to which statutory power has to be exercised. What a State cannot do, of course is to obstruct the Union if it exercises its own executive power under a Central law within that State. Article 257(1) is designed to remove an obstruction to the Centre's move to enforce direct a Central Act within A State. According to Dr. Ambedkar through Art. 257 it was sought to meet a situation 'which makes it impossible for the Provisional Government to be carried on'. However, the provisions continue permanently even after the transitional phase.

The sanction for securing compliance with a Central Directive in such a case is a drastic one which is precisely why it cannot be used without offending the autonomy of States. It is Article 365 which paves the way for imposition of the President's rule (Art. 356). The remedy against such abuse is a judicial one. The Supreme Court has opened the door ajar to judicial review. It should be persuaded to open it wider.

The idea of giving directions to the State is foreign and repugnant to a truly federal system. Arts. 256 and 257 are taken from the 1935 Act with all the attendant loopholes, drawbacks, imperfections etc. as colonial legacy, suited to the new ruling class. It is to be noted that the Constitution prescribes a coercive sanction for the enforcement of the directions issued under Articles 256 and 257, namely the powers of the President to make a proclamation under Art. 356 via Art. 365. Our opposition to Art. 356 does, by implication, envisage deletion of Art. 365 even though it contains a fecade of an objective criterion and is at best an enabling clause.

A federal constitution involves the sovereignty of the units within their respective territorial units.

The experience of the working of the constitution so far makes it clear that the constitution has been used by the Centre to establish its dictatorship over the States.

When the provisions regarding Governor and Art. 356 are there, the Central Government need not make use of 365 in order to topple any State Government. Therefore the absence of any instance of invoking 365 need not be taken as justification for the incorporation or the continuance of 256 and 257. Nor do we know of any instances which justify Arts. 256 and 257. Hence, both the articles should be deleted.

4.2 365 can safely be deleted even from the point of view of the ruling party at the Centre. Even without 365 the Centre can smoothly establish its dictatorship over the States under the Indian Constitution. The utter lack of confidence in the democratic process of the country and the principle of federalism has been writ large upon the entire process of Centre-State relationship as envisaged in the Constitution. The overabundance of safeguards for the foolproof dictatorship of the Centre is unabashedly provided for in the Constitution. Therefore one need not worry at all if 365 is deleted. Nor would it signify any significant improvement in the unitary character of the Constitution.

4.3 If the provisions remain, the Centre could exploit them at will going through motions of discussion.

In this connection a piece from the Constituent Assembly Debates may be quoted. Nehru wanted Education, Health and Forests concurrent subjects (instead of State subjects as under the 1935 Act) for integrated development of whole regions and of the country. G. B. Pant and G. B. Kher (provincial Govt. chiefs) objected. Then Nehru asked how would it be possible for an integrated plan for forest development to be carried out unless the subject was included in the Concurrent List? G. B. Pant's reply was, "It was not legislative coercion that would help in such matter, but pursuation and willing consent. It is this that most protagonists of a dominant centre have overlooked." Hence, these provisions (Arts. 256 and 257 (1)) should not bother. The foresight of Constitution-makers, as manifested in Art. 356, is an apprehension that States may slip out of their hands.

4.4 This extra-ordinary remedial power has been arbitrarily, irresponsibly and despotically used in a narrow partisan way. Instances have been cited above. Latest example was in Jammu-Kashmir where the Speaker was forcibly thrown out. All those cases are well-known and need no explanation.

4.5 Under no circumstances Art. 356 should be there in the Constitution.

4.6 It would be better if the present arrangements are continued. There can be no other suitable arrangements.

4.7 Yes, these activities could be carried out by the States. If the State actually wants any help, it may be given by the Centre in such a way that it should never become an obstacle to the State's autonomy and operational freedom. The Centre's role should at the most be that of a guide and not of an arbiter or dictator. Even advice may amount to virtual dictate and should be avoided to the extent possible. Bodies referred to here should be autonomous with complementary role both for States and Centre. They must not make inroad into States' jurisdiction.

4.8 All India services are not necessary though Inter-State transfers and open recruitment should be there. States' control over services is a must for proper functioning of the democratic system.

4.9 Only if the State wants and not otherwise. This should apply in case of all central forces. The Centre must not have the power to do so *suo moto*.

4.10 To be shared between Centre and States There is hardly any justification for these media being the monopoly of the Centre.

4.11 So far they have not been instrumental in collectively pursuing States' interests by cutting across party lines. The Councils themselves are practically non-entities and are under the thumb of the Centre.

4.12 Inter-State Council should be set up on a permanent basis. The Council should have an independent Secretariat.

In this connection the recommendations of the ARC may generally be followed to begin with (in all respect *i.e.* in organisation, functions, etc.). The Inter-State Council may be the pivotal co-ordinating body on all matters where States' interests are involved and any move of the Centre should be subject to discussion and decision in the Inter-State Council.

PART V

FINANCIAL RELATIONS

5.1 The question essentially is not whether the scheme of devolution as envisaged by the constitution-makers has worked well or not. The essential question is whether the scheme as has been prescribed as actually practised has been prescribed and actually practised has been helpful to the States. The answer is an emphatic and unequivocal 'no'. There is partisanship and discrimination. The entire show is manned by the Centre. Uneven development, lopsided development and even what is akin to internal colonisation has come into existence as a result of the economic, fiscal and monetary policies of the Central Government. The State's needs and aspirations should be taken into consideration. Development and not party politics should be the guide in this respect. More than anything, the basic arrangement of the distribution of the country's finances between the Union and the States is wrong and does always leave States subservient.

The financial problems and constitutional provisions regarding this cannot be separated from the economic system of the country. The collection of taxes and also distribution among the States, allocation of taxes etc. depend upon the economic system. Financial relations, when isolated from this fundamental problem and considered as merely a problem of relationship between the Centre and States, cannot be solved in a scientific and systematic way. Any way, the basis on which there has been devolution of finances, through sharing of revenue resources between the Centre and States as also through grants-in-aid from the centre has never been automatic and free from interference as would be clear from States' memoranda to successive Finance Commissions as also the *ad hoc* nature of the recommendations of the Finance Commissions which did hardly touch the basic issue of division national finances through a scientific system taking away the lever of finance from the hands of the Centre.

5.2 The observations of the Study Team of the ARC, as quoted, hold good all the more to-day. There are also other problems which the ARC have not mentioned. What with the Finance Commission or the N.D.C., the role of the given on the part of the Centre has been all the more pronounced, with even the Prime Minister threatening to stop financial assistance if a State is not well-behaved by her standard. The important problem is that some States may not have adequate financial resources to exploit all the resources and develop its economy. In such cases for the even development of all regions to the extent possible, the Centre has the responsibility to help those States and this should be done as a necessary things, of course, in the process of the governance of the country as a whole, taking all the resources of the country into account. For this adequate provision should be there, providing for the mutually complementary status of the Centre and States.

In this respect a high power Commission consisting of the representatives of the States and the Centre (both experts and those who have a total view of the society, *i.e.* both specialists and generalists) may be appointed as the Finance Commission/the Planning Commission, as they are constituted today, cannot do this. All aspects of the problems related to Finance and development should be studied thoroughly. The recommendations of these Commissions should be considered and finalised by the NDC which should, however, give adequate reasons for departure from any of them.

Regarding the alternatives, broadly speaking, under the existing system of distribution through divisible pool, (d) and (e) have to be incorporated.

(c) can be outright rejected.

(a) Keeping in view that States are responsible for all the Welfare measures and that they are accountable direct to the people who hold them responsible in the first instance for their weal or woe, major heads of revenue should be reserved from them, allocating to the Centre resources enough to discharge their responsibility in regard to Defence, External Affairs, Communications, Railways (the last two being revenue earning also), International Trade and Commerce as also currency besides co-ordination which should largely be carried through the NDC, Planning Commission, Inter-State Council and similar other bodies whose expenses should be borne jointly by the Centre and States.

Instead of the procedure suggested in (c), it may be the other way round.

Let the tax heads be decided upon without any reference to their being under so-called State or Union List. The responsibility for collecting taxes (however it is termed) within a particular State would belong to the State concerned. After deducting the collection charges, the net collection be divided between States and the Centre generally on the basis of 65 and 25, keeping 10% to be made over either to the Centre in case of urgent requirements for the efficient and proper discharge of its vital functions or for greater development requirements of relatively poor States.

Needless to say, control and benefits of financial institutions should also accrue both to the Centre and States. It is the development needs which should be the determining factor and not the criterion of raising of resources, the Centre providing the matching share, as is the system in the main at present.

5.3 While giving more financial powers to the States in general, provisions can be made to help the poorer States. When we examine the development hitherto, it has been directed for the benefit of the landlords, capitalists, traders and foreign exploiters. It has also led to regional imbalances. Exploitation of the resources, men and material, has always been in this perspective. The basic malady is in the field of the ideology of development, which is geared to the interest of the ruling class. Unless it is changed, the arrangements made whatever they may be, would serve only as adjustments.

If the Centre is made the guardian of the development of the poor States in the present context, it will further subordinate the States and will certainly add to the already strong, dominating role of the Centre.

There may be a system for pooling all the resources of the country and distributing it to the different regions with a view to the exploitation of resources and economic development according to the needs and potentialities of the various regions but this should not lead to the condition of the States as receiver and the Centre as the benevolent giver.

The question has been posed in a peculiar manner. It is the States who are expected to implement welfare measures which may lead to improvement of conditions of people in general, particularly those who are poorer because of an exploitative economic and social system. Nothing has so far been done by the ruling power at the Centre to touch the exploitative system or the basic inequality. Nor has anything worth-while been done to remove regional imbalances. Rather, it has been the other way round. Hence, the Centre, as oriented at present, is hardly a fit instrument to remove regional imbalances. Moreover, it should be borne in mind that it is the basic inequality which is the basic ailment and to expect the protagonists of this basic inequality who have pushed larger and larger segments of people all over the country below the poverty line, to remove it from any party thereof is unrealistic. Hence, the suggestion is totally misconceived and deserves total rejection. The scheme of division of resources, as enumerated in 5.2 would serve the purpose to the extent possible under the existing socio-political structure. The task of removing inequality involves social revolution and is not just a matter of constitutional provisions within the existing socio-political structure. Non-justiciable high-sounding verbiages contained in the Directive Principles of State Policy (Arts 35-51 of the Constitution) were devised merely as an eyewash to hoodwink the people as to the true class character of the Constitution and its makers and cannot and need not be taken seriously as the State System itself is not only incapable but also opposed to implementing any of them, *viz.*, elimination of inequalities in status, facilities and opportunities right to an adequate means of livelihood to citizens, men and women equally, to avoid concentration of wealth, to prevent abuse of tender age of children, to protect childhood and youth against exploitation and against moral and material abandonment or education for all after the age of 14 etc., just to quote a few.

5.4 All the three measures could be used invariably. To the extent possible deficit financing may be avoided. There is vast possibility for raising new revenues from the richer sections. Tax evasion should be effectively prevented. Better control over expenditure has been reduced to only a lip service. Actually, unnecessary expenditure has ever been increasing. The resources of the country are being utilised for non-productive purposes. The present loan melas provide an example. If the suggestion in 5.2 is accepted, the present position in this regard, is bound to change and the question of deficit financing would came in a different manner.

5.5 A little over 60% of the budgetary funds from the Centre to the States in the past 30 years (51-81) came in the form of plan and discretionary assistance and only 40% was transferred on the basis of recommendations by Finance Commissions (statutory grants play less than a central

role). The weightage of statutory grants is, naturally, even smaller when non-budgetary transfers are also taken into account. Tax sharing, as a portion of the total revenue transfer from the Centre to the State, is 40%. A Finance Enquiry Commission may be appointed to go into this question. The criterion for assistance should be development and other non-developmental essential requirements.

5.6 Constitutional provision is necessary for such a fund which should be under an independent statutory authority with the task of implementation on States concerned.

5.7 If the Centre and States are seen to be collectively responsible for ensuring 'freedom of trade, commerce and inter-course in the country', whatever the last one may mean, as it cannot but he, to be effective, the overall scheme suggested in 5.2 should suffice. A complicated devolution procedure tenders to leave greater leverage in the hand of the Centre against States. Entire financial scheme in the Constitution paves its way and hence should be changed basically.

5.8 The suggestion in 5.2 would and can take care of all these aspects. Any proposal that would further increase the Centre's power would be unacceptable in the light of the experience of the Union Government's functioning for more than three decades.

5.9 In this regard, the views of the Administrative Reforms Commission may be studied. Also further enquiry may be necessary. However, the present arrangement is haphazard and overlapping. The organisational status, structure etc. of the Planning Commission should be changed on the basis of the suggestion contained in this regard in 5.2. The precise functions of both the Commissions may be as indicated in 5.9.

5.10 Not at all satisfactory and promoted neither.

5.11 Yes.

So far to what extent economy measures have been sincerely followed and implemented by Central and State Governments? The involvement of both the Centre and States in the process and their complementary functioning for the implementation is a sure guarantee against any irrational practices inherent in the present system.

5.12 Yes, within the existing framework, so long as it cannot be changed.

5.13 Can be agreed to generally. The formula can help States to meet non-Plan obligations.

5.14 As has been asserted in 5.2, all resources should be harassed through the process stated therein, taking care of all the aspects referred to in the questionnaire. As it is, of late, the tendency of the Centre has been to raise resources through such devices as not to make the same a part of the divisible pool. The Corporation Tax resources is responsible for this state of Centre do not form a part of the divisible pool under Arts. 270(4)(a) and 271 of the Constitution. In successive Budgets, while keeping the basic taxes levied under Arts. 269 and 270 unaffected, surcharges are being increased in order to avoid their incorporation in the divisible pool. The amount thus collected and the Centre's own resources out of the divisible pool and from financial institutions including nationalised banks and LIC provide the Centre with sufficient leverage over states who are threatened or tempted, as the case may be, with money bags so dubiously filled. Even in implementing recommendations of the Finance Commission, Centre's discretionary power is wide as Art. 285 requires the President only to cause every recommendation of the Finance Commission together with an Explanatory Memorandum as to the action taken thereon to be laid before each House of Parliament. The 'action' obviously can be full or part implementation or non-implementation as there is nothing in the constitution to require the implementation of 'every recommendation' of the Finance Commission. In this context the inclusion of the emphatic 'every' is rather misleading. Thus the provisions regarding the Finance Commission, even so far as its existing functions are concerned, are highly unsatisfactory. The Union Government's decision to implement recommendations of the Eighth Finance Commission from the next financial year covering four years instead of five sharply illustrated this lacunae.

5.15 Shared in what proportion? What should be the criteria on the basis of which the proportion should be decided? If the present public sector is designed in such a way as to serve the imperialists and the private sector, a better distribution as suggested in the question will mean the escalation of the already existing interests. Of course the concentration of the vast majority of public Sector Undertakings as also of the pivotal among them in the hands of the Centre, makes this question largely academic.

Today it is done in a centralised way so as to benefit the big, monopolistic, bourgeoisie.

5.16 The total recorded budgetary deficits of States is less than that of Centre. However, the phenomenon pointed out does not become clear from the way it has been portrayed.

5.17 Naturally, States' obligation for at least a modicum of welfare measures and paucity of their resources, both developmental, have given rise to this situation.

5.18 It is a fact. However, this should be linked to specified functions and from clearly defined sources.

5.19 The present system of foreign borrowing does not help our economy and subserve foreign monopoly interest. However, the Centre should not change as it does, more from the States than it gives.

5.20 The suggestion of Loan Council for the raising of internal loan is better.

5.21 The gap between states' obligations and resources is responsible for this state of

affairs. It is the reallocation of resources which can remedy this situation.

5.22 Tax-dodging is not a problem peculiar to States. Moreover, elasticity of sources of revenue exploitable by States is practically non-existent in view of the Centre's all-pervasive thrust.

5.23 Facts agree with the observation. If the class character of the Central Government or that of the basic State structure does not change, there is hardly any scope for that.

5.24 It will not be enough to ascertain the view of States in such cases but to act in accordance with the general view.

5.25 If it means that States should be vested with the power to levy them and fix the rates, that is a welcome suggestion.

5.26 The claims of the States are quite justified.

5.27 The increase should be proportionate to increase in passenger-fare earnings. It is related to total financial arrangements in regard to Union territories and cannot be dealt with in isolation.

5.28 The assistance should be on the basis of actual costs of relief and rehabilitation.

The relief and assistance may be under specific heads, for which the money ear-marked should be utilised. It may lead to optimum and systematic utilisation of funds, making allowances for general assistance depending on the magnitude of the calamity.

5.29 With the ultimate residual role (better to say, authority) in-tact, the institutions would hardly help States except as grounds for giving expression to their views.

5.30 It matters very much as to who collects and to whom it is distributed even while agreeing to the last portion.

5.31 Not a periodical assessment but a continuous and comparative (year to year) assessment is essential in respect not only of both State and Central Governments but also of all public institutions. To serve this purpose there may be a statutory agency whose recommendations should have a binding nature. It may be called NEC.

5.32 Today these are carried out only formally. If these can be done properly and if active discussion is carried on these reports (of course it will be a post-mortem of expenditure), this may help operations in future. But today the executive legislative relationship and the role of the legislature remaining as they are, nothing substantial could be achieved out of this. Further the legislative committees being bureaucratic outposts, no serious analysis comes out of this system. Also, legislatures including Parliament have lost much of its effectiveness today.

5.33 Generally support 'evaluation audit'. But 'voucher audit', if conscientiously done, can pinpoint misuses.

5.34 The office hardly accomplished its assigned functions which are carried out dilatorily.

5.35 Of course the reports can be made more comprehensive and more accurate. Or further subdivisions may be made such as developmental, plan. non-plan. establishment, even establishment may be further sub-divided into police.

5.36 Not sufficient. Without a total change in the system, functioning and the attitude towards people's problem, these thing could not be solved properly.

5.37 Theoretically, yes, practically not so nor is there much scope for it in the existing political atmosphere.

5.38 Not really.

5.39 Undoubtedly, the changed procedure suggested will remove the irritant and may help in expenditious implementation. However, it all depends on a trustworthy system, which is not in existence.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The structure and functioning of an agency for making decisions and carrying them out is vitally related to its basic objectives. What has been achieved so far? Was it in the interest of the people? Procedural changes may not be much useful unless the basic objectives themselves are changed. Unless the totality of structural relationship between the Centre and States is changed nothing substantial could be achieved. Certain changes, if brought about, would very well be circumscribed by the Establishment without much difficulty.

6.2 Subject to foregoing observation, on NDC statutorily endorsed with power to formulate plans with greater scope for states to formulate their plans within a national framework is essential.

6.3 No. There should be change in the politics, economics and administration of the Central Government which appoints the Planning Commission. Transfer of power was achieved without a social revolution. National reconstruction and planning was set a foot without administrative revolution. The whole set up was based on a constitution which was more or less the replica of the 1935 Act which was enacted by the colonial matters for a colony. If this is the basis and foundation what could be the nature of the edifice? There may be changes in the procedure, in the structure here and there, or more formal representation may be given to the less privileged in an antiquated social system but the fundamental change can thus take place.

6.4 & 6.5 (iii) for obvious reasons and in the light of experience so far, only an independent and autonomous body can have its own views but in the present circumstances even an autonomous body may not be of much use. Even then it will be a change and such a situation may help to expose

things in a better way. It may bring about a better awareness of things in the 'concerned people' and also in the 'public', if there 'concerned people' are interested in the 'public'. The Planning Commission should function under NDC endowed with statutory power. The views of ARC may also be considered in this connection.

6.6 There should be decentralisation in planning with greater independence for States in formulating their Plans.

6.7 The system acts as a device to pressurise States to fall in line with the Centre.

6.8 Yes. Objective criteria for State Plan and assistance for State Plan should be the needs of the State, potentialities of the State for development and not the politics of the State or not the place of the State in the overall economic interests of the ruling classes at the Centre.

6.9 Unscientific, against the needs and potentialities of various regions and sections of the people. Everything so far was so directed as to serve the vested interests. Even the Special Assistance Schemes fail to subserve the interests of tribal and hill areas which are not at the take off stage and the assistance is utilised more as pay off.

6.10 The process of planning should begin from down below. Co-ordination, supervision guidance, etc., can be made by the Centre, but no imposition. Let the States decide what they want. Of course, the various States, while making their plans, do so not in a democratic manner, do not consult all the necessary agencies. The entire planning machinery, procedure etc., should be suitably changed to make it more responsive to popular demands and requirements.

6.11 Almost a dead letter. No systematic follow up or evaluation is there. Achievement of the financial target considered as most important. Evaluation reports point out certain peripheral mistakes but it never goes into the substantial aspects. The evaluation machinery is never expected to do that. Sometimes evaluation is done in such a way as to foster developments with a view to stabilising what is already achieved.

6.12 & 6.13 Much has already been said and written about this. Through answers to a questionnaire these things could not be analysed. If the Government (both the Central and the State) is in earnest, steps may be taken to initiate a serious discussion on these problems at different levels involving all concerned.

But if a Committee of generalists are appointed to go into the question of how far specialists should be more involved in things, nothing would come out.

Strengthening of planning machinery may enable the State Government to plead more systematically and with more clarity. This can be done by all the States. If statutory grants etc. constitute 60% or more of the Central contribution to the State, how the modified machinery could bring out a change in this?

PART VII

MISCELLANEOUS

Industry

It is interesting to note Industry, Trade and Commerce, Agriculture, Food and Civil Supplies, Education etc. given under the head miscellaneous.

7.1 & 7.2 Yes.

The entire industrial structure in which foreign interests (in collaboration with business interests in India) are involved and included by the Government under the I Schedule. Everything is directed enmasse towards this. There is increasing involvement in different sectors by foreign interests both in the public and private sectors. The very approach of lending practically the entire industrial set up from the Centre is objectionable. The norm should be specific requirements of the common man, taking into account at the same time the industrial potential of a particular State. However, common requirements of all States should make it possible to plan industrial development in a particular State according to its potential. This would enable division of the production of industrial goods among different States according to the potential of each of them represent except however, one thing should be made clear, on the points raised here. How national interests in the true sense of the term can be against the interest of any State (if people, the vast majority of the people and their interests are the main criteria)? When foreign money is invested with a view to utilising the abundant raw materials and cheap labour and when the products are exported to the investing country and when they are imported and sold out here after being reprocessed in the investor country whether such products are pins or washing soap or powder, industries producing such products come in terms of the constitutions under national sphere, 'national interest' etc. Thus at the 1st schedule of the Industrial Act and the attempt at definition of natural interest all point to one thing, viz. many an industry in India is subservient to interests other than those of the people of India.

7.3 In many fields of industry to-day, the Indian raw materials and cheap labour are exploited for foreign investments or foreign investments and Indian private or public investments together, both the sectors serve the interests of the foreign investments and native bourgcoise. The Government is not encouraging independent national investment which undertakes the utilisation of raw materials and labour and the manufacture of finished goods for domestic and foreign consumption. The national bourgeoise is comparatively weak. However, the Government can encourage independent investment for processing raw materials by using domestic technology. An industrial licencing policy conducive to this can be encouraged. There is no reason for denying States the licensing right in this regards.

7.4 Neither the Centre nor the State Governments have any imaginative scheme in this respect. Industries (Small or big, village or cottage) which

use our raw materials, our labour and our capital should be started. Marketing facilities should be provided by the State and Central Governments. There should be co-ordination between the efforts of States and the Centre. There should be co-ordination between big industry (high power technology) medium Industry (inter-mediate technology and small scale industry (local technology).

All these should be integrated into a comprehensive whole and should be related to the agricultural sector and the production therein.

7.5 These institutions are sub-serving foreign interests and the big business. A great share of the capital resources of these institutions are obtained as foreign loans. Naturally the industrial policy is very much influenced by foreign interests.

7.6 Justified in most cases. The decisions need to be taken by the N.D.C. as envisaged by us. When the locational decisions are taken today what weights more is not the interest of the locality or interests of the people or the country in general but the interest of the investors and availability of raw materials and cheap labour.

7.7 & 7.8 Answers to these questions are implied in answers given to other questions. Decisions are taken not on the basis of objective criteria but out of extraneous considerations.

Trade & Commerce

8.1 Today the restrictions on inter-State or Inter-State Trade and Commerce are not conducive to the development of the market within the State or within India as a Whole. These restrictions often help not the consumer, but vested interests. This is also due to the competition among vested interests in various States. Substantial differences in the price of consumer goods and other items remain. The same goods are sold at different prices sometimes in the same city. Inter-State barriers have promoted hoarding and also black marketing. It has prevented the development of 'national market'. Therefore, the problem requires elaborate study. The appointment of an authority to remedy this State of Affairs will be desirable.

Agriculture

9.1 There has been further centralisation.

9.2 In general agreement. While there should be a national framework within which different States should work, this framework should be formulated on the basis of State Plans and not on the basis of Central directive or initiative. The initiative should be with the States in this field.

9.3 Here there is in effect Central control, no real Centre-State majors consultations. Prices of all agricultural produces are practically Centrally determined.

9.4 (a) Price of Coconut, Copra, Coconut Oil, Rubber, tea etc. The Central policy affects the price of these items of Kerala State. (b) Irrigation Projects—finance, foreign exchange, machinery etc. central acceptance is required. Naturally the Centre is in a position to control. (c) The same is the position. (d) There is central control. The recent policy of the Central Government towards giving title deeds to the occupiers of forest land in Kerala, the forestry policy and administration is against the Adivasis/Tribal people and their traditional rights.

9.5 ICAR and NABARD have their deep impace on agricultural research and agricultural finance of the States. The State has to adjust itself to the conditions laid down by these institutions. Actually these institutions are not catering to the needs of the States. Through these institutions the Central Government can direct and supervise the agricultural policy of the States.

Food and Civil Supplies

10.1 & 10.2 The Centre should undertake the responsibility of feeding. the deficit states. Because of the Central Government's policy, dictated by regional politics and regional interests, rice is sold at comparatively cheaper rates in Tamil Nadu or Andhra Pradesh, whereas the price of rice in Kerala is appreciably higher, inspite of rationing. Though integrated policy of rice procurement and distribution should have minimised the disparities in prices and distribution. In spite of persistent demand the centre has failed to provide effective assistance to the setting up of a public distribution system with minimum efficiency and item coverage not to speak all essential commodities for the common man.

Education

11.1 To a great extent this is true. Through various agencies of research, finance etc., this is done in the field of higher, general and professional education. In other stages it is done through CABE and Plan allocations.

11.2 The UGC is very much influencing University administration. If the guidelines or criteria laid down by the UGC are not followed finance from the UGC will not be available. The recent UGC report on teachers, students, appointment of V.C. shows the way in which it is made to work by the Centre against democratic principle and for foisting further Central control.

11.3 Under the existing conditions no amount of discussion will effect a qualitative change unless policy oriented chanegs are conceived first.

11.4 Education should be in the public sector. The so called right of the minorities should be done away with. The same type of education should be given to all from the primary to University levels. Medium of instruction at all levels should be the local language. Minority Institutions should mean Institutions for the minorities in spheres which do not fall within the scope of general education and which may contribute to the distinguishing features of minorities which do not such counter to national integration in any way. Any Institution run by a person or group of persons belonging to a minority

group cannot be allowed to claim the status of a minority Institution. Education as such should, therefore, be entirely in the Public Sector.

11.5 As in other fields serious discussion between the Centre and the States and among experts should take place on these questions and remedies suggested. The difference on language policy still persists as also on the controls financial responsibility for financing primary and secondary education.

Inter-Governmental Co-ordination

12.1 The days of one party regime throughout the Union have gone thus depriving of the extra Governmental/extra-constitutional channels for consultation. No consultation is essential in several fields especially in Financial matters, concurrent jurisdiction, mobilisation of state effort, for the success of national plan, administrative relations etc. An appropriate apparatus is lacking now. Of course there is the National Development Council, Ministers' Conferences, National Integration Council, etc. Art. 263 refers to the need of an Inter-State Council with specific functions. There are already Central Council of Health and Central Council of Local Self Government.

In this connection the report of the Study Team of the ARC and recommendations of the ARC may be considered. The American System referred to in the question may also be studied. The composition and functions of the suggested Inter-State Council require further study. However, it should never be another body where the Centre can dictate to the States. The spirit should be that of co-operation and co-ordination (or Co-operative federalism).

REVOLUTIONARY SOCIALIST PARTY

Kerala State Committee

MEMORANDUM

R.S.P. Kerala State Committee is happy to welcome the Commission which is to review the present position with regard to Centre-State relations. Proper handling of this live problem was long overdue.

There exists a very strong view that the powers of the states are being eroded both as a result of constitutional amendments and extra constitutional measures, economic and administrative centralism consciously adopted by the Indian ruling class and its representative—ruling party at the centre for the last more than three decades. But the Congress-led State Governments did not care to challenge this steadily increasing tendency towards centralism and hegemony of the Centre over the states. It is with the emergence of non-congress Governments in various states that the question assumed new dimensions and greater importance.

Before going into various aspects dealt with in the questionnaire, we would like to state our Party's stand with regard to the present constitutional set up.

We are of the firm opinion that what is wrong with the centre-state relations is only a part of the general congenital ailment that our Constitution has from its very inception. The present Constitution is a legacy of the British Colonial rule and ideas. It is aimed at establishing a capitalists path of development. There is little scope in the provisions of the Constitution for solving the real socio-economic problems of the toiling masses. This is evident from the fact that while the right to property, is made a sacred fundamenal right in our Constitution, nothing is said about the birth right of every civilised man *i.e.*, 'the right to work'. The Constitution was intended, by its framers, to serve and protect the interests of the erstwhile ruling class, the new capitalist class, and the landlords. The ordinary Indian had no say in the making of the Constitution and this fundamental defect pervades through the whole structure and spirit of the Constitution. Provisions governing centre-state relations is no exception to this. So what is genuinely needed is not piecemeal review of different aspects of the Constitution but a through restructuring in its entirety. Such a restructuring must give due weight to the radical transformation of the Indian Society by solving the complex socio-economic problems, nationality questions, regional imbalances, uneven economic growth, growing impoverishment of the ordinary masses, the fast growing ills of capitalist economic developments and the like.

Since the scope and terms of reference of the Commission is limited to that of centre-state relations we do not wish to elaborate our views on general constitutional questions.

Let it be clear at the out-set that we are for a federal system with a unified, healthy and homogenous Union Government and constituent units with co-equal powers. The Union Government must be efficient enough to protect the nation from external agression and for safeguarding the security and integrity of India. By thus we do not mean the hegemony of an omnipotent Central government, always making inroads into the inherent powers of the states. The Indian Union must be one in which both the centre and the states enjoy equal powers and exercising them in their respective fields in a harmonious and mutually agreed manner. If this is not borne in mind fissiparous tendencies with regionalism and communalism will poke their heads threatening the security and integrity of our nation.

Though the Constitution is called a federal one many of its salient features and provisions are befitting only to a unitary one. In a true federation there is voluntary union of the constituent units to form a federal Government. But unfortunately history did not provide this opportunity for us. All the residuary powers shall vest with the units in conventional federations. But all these cardinal features of federalism are conspicuously absent in our Constitution. So to call our Constitution a federal one is a myth. In fact, the constitutional provisions that govern centre-state relations is largely a legacy of the Government of India Act of 1935. That Act had a limited purpose of satisfying the nationalist clamour for self-government by providing meagre autonomy to the

provinces—the central government enjoying omnipotence in the governance of the whole country. This line of approach was generally followed by the framers of the present Constitution also. So our Constitution do not envisage equitable distribution of powers between the centre and the states. Experience has proved that throughout the last 34 years of our Constitutional development the trend was clearly to establish the hegemony of the centre at the expense of the states. This has resulted in regional disparities, uneven economic growth and social discontentment. The fact that India is a Union of peoples with varied aspirations, languages, religions and sentiments was not given proper attention. This gave opportunity to people with ulterior motives to fan up anti-national regional sentiments. Only by taking urgent steps for re-distribution of powers between the Centre and the States and granting more autonomy to the states this national malady can be cured.

Legislative Relations

The view that there is nothing wrong in the scheme of distribution of legislative powers between the union and states, which ensures in normal times a substantial measure of legislative autonomy to the states is wrong. The very article 249 in the Constitution which enables the Union Government to legislate on any subjects included in the state list is a Democles' sword threatening the autonomy of the state in this sphere. The powers under Articles 200 and 201 vested on the Governor of a state to withhold assent to a Bill passed by the State Legislature or to refer for President's consideration virtually cut at the root of autonomy of the states and drastically affects the scheme of distribution of legislative powers. The articles vest powers on an authority, the Governor who is not answerable to the state Legislature, to defeat the very purpose of the legislation. (Even the President of the Nation does not have so much powers). There are instances where legislation proposing basic changes in the socio-economic set up could not be brought into effect as they were either delayed or shelved.

Whenever any legislation is undertaken by the centre on a concurrent subject, it is not only necessary that the states should be consulted before hand but these should also be concurrence of the states. Declarations enabling Parliament to legislate on subjects which are within the exclusive competence of the states on the plea of national or public interest should be avoided as such declarations will naturally lead to usurption of the powers of the state by the Centre. In case, in exceptional circumstances such declarations are made and legislations attempted to by the centre, it should be for a short period and prior consultation in the Inter-State Council should be made a condition precedent.

Role of the Governor

Through the Supreme Court in Dr. Raghukul Tilak's case has opined that the Governor of a state is not subordinate or subservient to the centre and his is an independent constitutional office, the experience of the states during the course of the last thirtyfour years has proved to the contrary. Instead of being close links between the Union and the State, Governors have become agents or stooges of the centre, who will act as ordered by the centre instead of using their own discretion. The Governor appointed by the Union is a partisan who will have no hesitation to topple a duly elected Government in the political interest of the ruling party at the centre. The latest instance is that of Sikkim.

There is no authority as the Governor under the Constitution which is not accountable to the people. The Governor is not answerable to the State Legislature. The convention of consulting the state Governments before a new Governor is named is being given up. Governors are now appointed just like the British rulers, during colonial periods appointed Agents.

Competent and suitable persons are not appointed as Governors. Our experience has been that disgruntled elements in the ruling party at the centre, defeated in elections by the people are often posted as Governors to avoid headache to the High command. They will only dance to the tunes of their masters using their discretionary powers. Our considered view is that the post of Governnor is an anachronism and it has to be aboilshed. If the post is to be continued, the incumbent should be made answerable to the State Legislature.

Administrative Relations

A federal constitution envisages the sovereignty of units within their allotted spheres. The position in India today is that the Centre restricts to a great extent—almost destroys the autonomous functioning of the states in the areas which fall under state subjects in the Constitution. There are various Articles in the Constitution which enable the Government at the Centre to interfere in the Administration of states directly or indirectly. These powers vested in the Central Government are exercised often to dissolve the legislatures and to dismiss the Government of the state which do not toe the line of the ruling party at the centre. The recent instance of dismissal of the Sikkim Government is a fraud on the Constitution. This sort of partisan exercise of unbridled power shall have to be curtailed and constitutional safeguards should be thought of against such biased exercise of power.

As regards the recommendations of the Administrative Reforms Commission on the Arts. 256 and 257, the Inter-State Council consisting of the Prime Minister and the Chief Ministers of the states shall consider the points of conflict between the states and the centre and solve the differences if they fail to arrive at a settlement by mutual discussion ; Article 365 shall be deleted.

The All India services have not fulfilled the expectations of the framers of the Constitution. The Officers belonging to these services are only loyal to the centre and this has often resulted in conflicts between the state and centre. To prevent this, states should be given more control over these services.

Central reserve police or any other armed forces shall not be sent to a State by the centre without the specific request of the state concerned.

The various central agencies like National Saving Organisation, Employees' Provident Fund etc. and their handling of activities relating to subjects in the state and concurrent Lists have encroached upon the autonomy of the states. Formerly the officers who manned the state units of these agencies used to be appointed in consultation with the state. In most cases this practice has been discontinued. Most of the activities of these agencies could be carried out by the states with centres assistance and help.

Broadcasting and other like forms of communication should be included in the concurrent list so that the states should have a say in the administration of AIR & Doordarshan.

Zonal Councils have not fully served the purpose for which they were set up.

Inter-State Council

Opposition political parties and eminent jurists as well as the Administrative Reforms Commission have urged the establishment of an Inter-State Council envisaged under Article 263, to deal with the problems arising among states and between the states and the centre. The council should consist of the Prime Minister and all the Chief Ministers of the states with a permanent Secretariat.

Financial Relations

A review of the working of the mechanism for devolution and examination of details of resources transferred by the centre to the states during the last 34 years will reveal that the scheme has not at all worked well and if at all it worked, it was in favour of the ruling capitalist class and to the detriment of the states. The states needs and aspirations are being ignored by the centre.

In the economic field and in matters of relations between the centre and the states, there is increasing centralisation. Even after acquiring more financial resources making inroads into the states areas of taxation and receiving billions of dollars of foreign loans and increasingly resorting to deficit financing the centre has failed in ensuring balanced development in various regions of the country and to bridge the gap in resources between poorer and richer states. While uniform pattern for development is prescribed in the name of planning, the stage of development in various sectors and the special needs of the state are not considered. This is the result of too much of centralisation in planning process.

The state of Kerala is far advanced in the field of education and health and ahead of many other states in regard to transport facilities. But the state is not provided special assistance by the centre for follow up actions on the plea that the state is already ahead of other states in these sectors and thus the state is being penalised for having acted in accordance with the directive principles in the Constitution. At the same time no additional financial assistance is extended for developmental activities in other sectors. The state's resources to raise its own funds for taking up these works are meagre and exploited to the maximum. While this is the state of affairs in the state, it has no alternative but to agitate against the attempts of the Centre to encroach upon the rights of the state for taxation on the basis exclusively left to them by the constitution.

The Centre shall not make further inroads into the state's limited sphere of taxation. In this context, the Kerala Government is very much concerned with some of the Legislations passed by Parliament in recent years. The amendments to the Central Sales Tax effected some time ago adversely affected the finances of the State. These amendments to legislations, levy of surcharges etc. very seriously cuts into the tax potentials of the state. These changes to the detriment of the state's interest are effected without the concurrence of the states. We are definitely of the view that the Centre shall desist from these measures which are extraconstitutional. As a safeguard to the states from the aggressive encroachment on their rights by the centre and to do social and economic justice to them the Constitution should be amended to make all central taxes including corporation taxes and surcharges and all excise duties shareable with the states and it should be ensured that at least 75% should be distributed among the states.

Economic and Social Planning

In the field of planning the Centre is expected to play a pivotal role. Unfortunately, the Planning Commission, the authority which formulates the plan and the National Development Council which affixes the seal of approval to it have failed in fulfilling the aspirations of the people. The Administrative Reforms Commission has opined that the National Development Council has in the past, often failed to consider in depth the crucial issues raised before it. Controlled by a single party, the council has not discharged its obligation to consult the states or to evolve a satisfactory process of consultation between the centre and the states. Too much of centralisation in the field of planning crippled the initiative of states. The Planning Commission, being a department of the Central Government failed to act 'in close understanding and consultation with ministers of Central Government and the Government of the States'.

The Commission could not discipline the Central Ministries; but the states are obliged to accept its dictates. Central assistance by way of loans and grants are used to patronise some regions which results in uneven growth and regional imbalance. In the case of loans obtained by the Centre from foreign Countries and agencies at lower interest, the Government of India charges higher rates of interest from the states. It may be noted in this connection that major portion of these loans taken by the states are used to repay the previous loans. The principles governing the sanction of loans and grants should be reviewed and clearly laid down to benefit the deserving weaker states, to enable them to cover fiscal gap and to meet special burdens on their financies because of their peculiar circumstances.

The present arrangements for formulation and implementation of plan especially at state level are thoroughly inadequate and efforts should be made

to strengthen the planning macninery at state level also. The Planning Commission should be a statutory body functioning under a restructured National Development Council. The N. D. C. should consist of equal representatives of the Centre as well as of the state. Constitutional provisions should be made defining the functions and responsibilities of the N. D. C. and the Planning Commission. In this connection the recommendations of the Administrative Reforms Commission may be taken into consideration.

SIKKIM SANGRAM PARISHAD

REPLIES

PART I

INTRODUCTORY

1.1 The Constitution of India is neither purely federal nor Unitary. It is a combination of both with greater weightage given for a strong Centre. The object of the framers of the Constitut on has been to build a strong central authority which may resist external aggression and also to check internal disruptive forces that may tend to undermine the nescent state.

1.2 There cannot be two opinions about the need to devolve more powers and responsibilities to the States. However, care has to be taken that these do not conflict with the responsibility to maintain national unity and integrity. It is in this context that the views of the Rajmannar Committee have to be examined. The question of deletion, revision or substantial modification of provision mentioned in the aforesaid Articles need to be studied thoroughly and in greater detail before coming to hasty conclusion.

Regarding appeals to the Supreme Court, it is the highest Court in the country and it has so far been functioning with credit and dignity. Hence its powers should not be disturbed.

1.3 It is true that India is a large and heterogeneous country. This size of the country and the inherent diversities demand devolution of more powers and responsibilities to states so as to enable them to develop in all spheres of activities within the parameters of National Unity.

It may be mentioned that the Administrative Reforms Commission has also recommended that powers should be delegated to the maximum extent to the states for carrying out projects in which the Centre is directly interested or which are carried out by states as agents of the Centre.

1.4 In theory a Federal Constitution envisages that the Central and Regional Governments are independent in their spheres of activities. But reality of the situation has shown that this compartmentalisation is not there. One can cite the federal constitution of the United States of America, Australia and Canada.

1.5 There is no doubt that the Constitution is basically flexible enough to meet the challenge of the changing times. One should bear in mind that no constitution is perfect and indeed can never be perfect. Hence there are amendments to meet new challenges and new situations. What is important is evolution of healthy conventions and procedures. There is, therefore, the need for functional cooperation leading to harmonious Centre-State relationship in accordance with the spirit and intent of the constitution.

1.6 There can be no two opinions on the overriding importance of protecting the independence and ensuring the Unity and Integrity of the country. This was uppermost in the minds of the founding father of the Constitution. Hence there are a number of Articles in the Constitution which have made a strong Centre to discharge this responsibility.

1.7 Obligations of the union and the states need to be carefully reviewed in the light of experience gained in the working of the Articles mentioned in your question. It must however be said that much of the tension in the Centre-State relationship can be avoided if there is trust and confidence between them.

1.8 The Constitution empowers the President to establish an inter-state council if at any time it appears to him that the public interests would be served thereby. One of the functions of the council would be to investigate and discuss subject of common interest between the Union and the States or between two or more states. It would be desirable that such a matter as mentioned in your question should be left for the examination of all aspects to the inter-state council.

PART II

LEGISTATIVE RELATIONS

2.1 No one would question the fact that the Union has been heavily favoured in the distribution of legislative powers, between the Centre and the States. There is therefore demands by some that there has to be a total review of these legislative powers. The concurrent list is cited as an area of occasional friction between the Union and the States. There is also a lurking fear that the Union encroaches upon the state legislative field on the plea of National or public interest. In particular the concurrent list needs to be reviewed. What is required is a liberal approach in giving assent to State legislation.

2.2 It would be desirable that in the interest of the unity and integrity of the country a review is made in the scheme of distribution of subjects mentioned in the three lists of the Seventh Schedule. Also Articles 200 & 201 call for review in view of experiences of some states in the country.

2.3 It is in the interest of ensuring better relations between the Union and the States that the Central Government consults the state governments before hand while undertaking legislation of a subject in the concurrent list. There should be such a provision in the Constitution.

2.4 The Union Government's power to legislate on any subject within the exclusive competence of the states in 'National Interest' or 'public interest' should not be of a perpetual nature. A time limit has to be fixed.

2.5 There are no further suggestions with regard to Union-State relations in the legislative sphere.

PART III

ROLE OF THE GOVERNOR

3.1 The role of the Governor in the context of Centre-State relations needs to be reviewed thoroughly. It is true that some governors have acted with utmost impartiality but there were also some Governors whose actions have not been quite in keeping with the spirit of the Constitution. Hence, there have been instances of the abuse of powers by Governors. Sikkim had a bitter experience of it in May, 1984. Such instances are not conducive to the existance of better Centre-State relations. Hence the case for a review.

3.3 These (a), (b) and (c) deal with matters of vital importance to the State. While making report to the President under Article 356 (I) the Governor has to be very objective and has to act independently. The Governor should appoint only that person as a Chief Minister who commands majority in the Legislative Assembly. There should be no two opinions about it. In a situation where no party commands majority of seats, the Governor should ask the leader of that party which has the largest numbers of members to form the Government. The State Assembly must be convened within a fortnight of the appointment of the Chief Minister.

The words, pleasure of the Governor should mean the ministry remaining in office with sull confidence of the legislative assembly. The pleasure of the Governor should not be allowed to be misused so as to enable the Governor to act according to his likes and dislikes.

Regarding Article 174 (2) the Governor should be guided by the advice of the Chief Minister.

3.4 These Articles give discretionary power to the Governor and unfortunately some of the Governors have not used these powers independently and objectively. There must be a time limit for the Governors and the President to make up their minds under Article 200 and Article 201 respectively.

Ordinarily bills passed by the Legislative Assembly must be given assent to by the Governor.

3.5 The case study conducted under the auspices of the Indian Law Institute is really revealing and disturbing. This process needs to be checked. A time limit should be there within which the process of consideration of and assent to should be completed.

3.6 As mentioned earlier some of the Governors have not acted impartially and fairly in accordance with the spirit of the Constitution. For them the question of establishing healthy conventions does not arise. Indeed thay have gone against the very principles of constitutional democracy. Sikkim is one of the glowing examples of such acts of omission and commission on the part of the Governor in May, 1984.

3.7 The tenure question is not that relevant. The procedure for his removal should be the same as prescribed in the case of the Judge of the Supreme Court/High Court.

3.8 This suggestion cannot be accepted. The Assembly has to be summoned only on the advice of the Chief Minister.

3.9 The procedure postulated in the Constitution of the Federal Republic of Germany is not suitable for us. In a democracy what is important is the quality of a person who holds the high office of the Governor.

3.10 Going by the actions of some of the Governors in dealing with such important matters coming within his perview one is inclined to accept the recommendations of the Administrative Reforms Commission.

PART IV

ADMINISTRATIVE RELATIONS

4.1 It is evident that the provision of these Articles are there to make the Centre strong and powerful so as to deal with situations that may affect the unity and integrity of the country. However, it must also be said that these are sweeping powers and the State are helpless in such situation. Hence it is imperative that these sweeping powers should be used if need be with utmost thought and consideration and after exhausting all other available methods. How about placing such matters before the Inter-State Council for its views ?

4.2 The deletion of Article 365 is not favoured. It is no doubt a consequential enabling clause which provides a sanction. However, it would be advisable that action under this Article is undertaken after receiving the view of the Inter-State Council.

4.3 One would agree with the observation made by the Administrative Reforms Commission. At the same time it would be advisable that the action be taken only after the receipt of the views of the Inter-State Council.

4.4 So long the Chief Minister enjoys majority in the legislative assembly the Governor should not recommend imposition of President's rule. This also holds good in cases where the Chief Minister is prepared to demonstrate his majority by facing the assembly at a short notice. Unfortunately there are cases where the Governor has abused his power and recommended President's rule thereby cutting at the very root of constitutional and democratic norms. Sikkim provides an example where the Chief Minister Shri N. B. Bhandari was dismissed even though he had the majority in the House and was prepared to demonstrate it on the floor of the House even within 24 hours. The Constitution needs to be amended so that there is no such abuse of power under any circumstances.

4.5 In view of the situations as mentioned in the question and in order to deal with them democratically and in the spirit of objectivity it would be advisable that the President refers the matter to the opinion of the Inter-State Council before formulising the opinion.

4.6 The present arrangements may continue as they have been working satisfactorily.

4.7 The need for review of the working of these agencies has been felt as there have been inroads in the domain of the state thereby impeding the pace of development. It has been keenly felt that some of their functionigs should be vested in the State Governments.

4.8 By and large the All India Services have fulfilled the expectations of the Constitution makers. However, it has to be ensured that officers of these services, while serving in the state, must be under the supervision of the concerned State Government.

4.9 As a general policy, concurrence of the State Government must be there before the use of Central force in the State. Only in cases of extreme situation, the Union Government can take *suo motu* decision.

4.10 One would agree with the view that Broadcasting should continue to remain in the Union list but as was suggested the broadcasting and television facilities should be shared between the Union and the States on a fair basis, giving equal importance to the social, economic and cultural ethos of the people of each state. The present situation of heavily loaded news cast in favour of some states must go and equal importance needs to be given to news from other regions of the country as well.

4.11 It will be useful if Zonal Councils meet frequently.

4.12 As things stand today, an Inter-State Council should be established as such a body will be desirable to iron out Inter-State and Union-State differences.

About its functions and composition, it can be worked out later after discussions between the Union and the States.

PART V

FINANCIAL RELATIONS

5.1 By and large the scheme of devolution envisaged by the Constitution-makers has worked well. However, the need for small and backward state like Sikkim and other North-Eastern States has to be considered in proper prospective. While some big States are becoming richer because of their resource mobilisation potential, these backward States sorely lack that potential. Unless the Centre comes to the aid of these States in a big way it will be impossible for them to make progress. Hence, this aspect of the situation has to be borne in mind in the process of devolution.

It will be in the fitness of things that Finance Commission must give greater weightage to backward States in the distribution of financial resources.

5.2 The observation of ARC Study Team on Centre-State Relation would continue to hold good as dependance of States on the Union continues to increase. It is necessary to bring Corporation Tax, Custom Duty and Surcharge on Income Tax into the sharable pool but at the sametime backward States should not be discriminated while sharing. The need for fiscal discipline both by the Centre and the States cannot be over emphasised.

5.3 We fully agree with the above observations and also with the view that regional balance can be reduced by a strong Centre having elastic sources of revenue. It must have discretionary powers to use funds available with it for the development of poorer States.

Only then the Centre can fulfill its obligations and responsibilities as mentioned in the Directive Principles of State Policy. Otherwise, the rich States will become richer and the poor States poorer.

5.4 There is no doubt that richer State shave to contribute to the Central pool through subvention. There is also no doubt that there is absolute need to have better control over expenditure.

Deficite financing has to be resorted to when it is a must in the interest of developing economy.

5.5 Whereas the Finance Commission assesses the resources and requirement of funds on the non-plan side the Planning Commission assess the developmental needs of the states. Both these bodies have to be more objective while assessing the needs of backward and poor States. The growing expectations of the people of backward states have to be given due consideration so that with adequate assistance from both these bodies, these States can accelerate their pace of development to catch up with the rest of the States, It is clear that the pattern of devolution of financial resources has not been equitable.

5.6 What is needed is streamling the process of resource sharing based on equality and justice. Creation of a special Federal Fund does not deserve consideration.

5.7 The existing arrangement does not call for any change.

5.8 It will be difficult to agree to the views expressed in the question. If any tax raising powers are denied to the states, what will be left for the states ? The whole basic structure of political entity will be affected to the detriment of the prerogatives of the state in this sphere. This will mean absolute dependence of the States on the Centre which will be very harmful to the States.

5.9 As things stand today, the roles of Planning Commission and Finance Commission are complementary. No doubt the suggestion for a Permanent Finance Commission to undertake the dual role of fiscal transfers deserves consideration. It is known that some States are not happy with the views of various

Finance Commissions. Also some States have opined that the Planning Commission has not been fair to them. Under the circumstances the constitution of one Body has some merit. In the ultimate analysis it will be beneficial if these two bodies and the states make their assessments objectively and fairly.

5.10 In can be said that the existing arrangements have to some extent helped in narrowing down the disparities. It seems the statutory and discretionary transfers have promoted efficiency and economy in expenditure. There is however always room for more efficiency and economy.

5.11 We are in agreement with the views expressed in the question. Financial discipline is a must. All progressive schemes have to be implemented within the available financial resources. At the same time, it is to be ensured that the pattern of allocation between the Centre and the State has to be in such a way as to give greater assistance to backward states so as to help them to accelerate their pace of development. Care also should be taken that these states do not indulge in financial indiscipline.

5.12 Tax sharing should be such so as not to put small and backward states in a difficult situation. For such states grants-in-aid has an important role.

5.13 We would agree with the principles laid down for grants-in-aid under Article 275. However, it is to be ensured that all aspects of economic and social disparities are taken into account so that there is no scope for any allegation of discrimination. Some of the states particularly small and backward states have problems, which though seem to be regional, have national contents and these have to be taken care of under the principles.

5.14 There is reasonableness in the suggestions that yield from the Special Bearer Bonds Scheme and the revenue from raising administered prices of items should be brought with in the divisible pool of resources. If these were done, the financial resources of the states would have been further augmented to enable them to give more thrust to implement some pressing progressive schemes. Some states are of the view that all revenues raised by the Centre should be shared with the states. Although we would not fully subscribe to this view, we would like to say that interest of states should be uppermost in the minds of the Centre in the sphere of resource sharing.

5.15 There should be equitable and rational criteria in the distribution of savings available in the community. The savings belong to the country as a whole and as such the share of states in the sharing should not be guided only by area, population and resource mobilisation potential. Otherwise small states like Sikkim will be in a terrific disadvantage.

5.16 We are aware of the responsibilities of the state and we are equally aware that the responsibilities are increasing. The Centre should also realise that in a democratic socialist country, the responsibilities of the state are always on the increase as they have to undertake various welfare measures for the well being of the society. Hence this aspects also needs to be considered. Also in times of certain conditions like inflation or say natural calamities it will be difficult for the states to do the job within its financial resources. Consequently deficits do arise but that should not be advanced as an argument for indulging in financial indiscipline resulting to large extent in fiscal imbalance.

5.17 We are in full agreement that a periodical review of the problem of growing indebtedness of the states is absolutely necessary. Perhaps it would be worthwhile to constitute an independent body to look into this matter indepth.

5.18 Sikkim being a small state and its borrowing capacity being negligible we can only suggest that the state should not exceed the limit of sound finance.

5.19 We are of the opinion that on foreign borrowings the Centre should not charge from the state a higher rate of interest than what it pays to the foreign lender. We are also of the opinion that project-tied external aid should be passed on to the states. Indeed it would be worthwhile to make a review of the entire present arrangement.

5.20 In view of the different approaches of various states in this matter it would be desirable to have loan councils, keeping in view the country's condition. There will be no justification to copy loan council as it exits in Australia. The Reserve Bank of India should be given more freedom in its functioning to fully meet its obligations and responsibilities.

5.21 It is true that even after doubling the entitlement of Ways and Means, there is continued existance of large overdrafts. Under exceptional circumstances which cannot be foreseen at the time of budget preparation, the resort to over-draft has to be undertaken to meet those circumstances. One can cite the instance of additional D. A. The Centre therefore has to consider these circumstances. The need for periodic revision of the ways and means limits can thus be stressed. However, it should also be under stood that over-drafts should not go beyond reasonable limit.

5.22 The answer to the question is Yes and No. It may be true in respect to some states that they are not exploiting adequately their own source of revenue. Some others are exploiting to the extent possible. There are also cases where the state possesses the potential for raising resources but the Centre takes its own time in giving clearance to related schemes. Sometimes such schemes are not cleared. Hence despite having the desire to exploit adequately the source of revenue yet they are not in a position to act on it. If it is found that states have not taken recourse to additional resource mobilisation although they have the potential to do so, the Centre through Finance Commission should take action against such states.

5.23 There is tremendous scope for improvement in the performance of public sector undertakings as the public sector has so far not yielded the expected returns on capital-investment.

About substantial leakage in Central taxation, the Central authorities should take adequate precautions to close those leakages.

5.24 It will definitely be a healthy convention if the suggestion is given effect to. In such a situation there will be more mutual trust and confidence between the Centre and the State.

5.25 We agree with the suggestion that Article 269 should be better exploited to augment the resources of the States.

5.26 It is obvious that had the tax continued to operate the revenue on the basis of the greatly increased current passenger fare earnings of Railways would have been much higher. On the basis of equity and justice the grant in lieu of the passenger fare tax should be revised and enhanced.

5.27 The Union Territories come under special category. Hence there are no comments from outside.

5.28 It is a fact that this is one of the areas in which states have been experiencing great difficulty. In our state of Sikkim every year there are national calaimties in the form landslides and hailstorms. Such calamities should be treated as national problem and the Centre must come forward with adequate funds to deal with such situations. The formula suggested by the Seventh Finance Commission seems to be inadequate. It is also necessary that Central officials must visit the areas to ensure that relief assistance is utilised properly and effectively.

5.29 We have no objection to the setting up of National Loan Corporation, National Credit Council and National Economic Council.

5.30 We fully agree that the funds are spent prudently and that the benefits go back largely to the people. At the same time collection of funds and their distribution are also important matters that need consideration.

5.31 (a) We agree that periodical assessment of expenditure of the Union is necessary. Such an exercise will satisfy everyone. We are also in full agreement with the view that additional resources should be found for helping the states, particularly the poorer ones.

(b) What is needed is strict financial discipline. Those states which indulging financial indiscipline despite repeated requests should not be bailed out by the Centre.

(c) We are not in favour of a permanent National Expenditure Commission. We believe that both the Centre and the State have the capacity to discharge their responsibilities to the satisfaction of the people.

5.32 The present system should cotinue.

5.33 It is desirable to have a beginning in evaluation audit.

5.34 We believe that Parliament has conferred sufficient powers and joined adequate duties on the Comptroller and Auditor General to enable him to keep an effective watch on the expenditure of the Union and the States.

5.35 We are satisfied that the reports of the Comptroller and Auditor General are comprehensive and reasonably accurate. At the same time we feel that if need be some powers may be given to him to enlighten the public on the pattern of and trends in public expenditure.

5.36 We have already expressed our views in reply to question 5.35.

5.37 The existing arrangements may continue.

5.38 We are of the view that an expenditure Commission is not needed.

5.39 We fully agree with the view that there should be monitoring of accounts of utilisation after the expenditure has been made. At the same time in some cases there has been considerable delay in the clearance of the plans of action formulated by the states from the ministry concerned. Such undue delay which comes as an irritant must be avoided.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The shortcomings in planning relationship as indicated are more or less valid. We are of the firm opinion that the State Governments must be fully involved in the planning process within the parameter of national priorities to be laid down by the Centre. In this vital sector of planning the Centre and the States have complementary role to play. That the National Development Council should be made more active hardly needs any over emphasis. At the same time full freedom should be given to the states to formulate their own plans suited to their local conditions and ethos.

6.2 We agree with the view that the National Development Council should be set up on a statutory basis. The recommendations of the Planning Commission must get approval of this council. We have expressed our views earlier also that State should be fully involved in the planning process and that fruitful result would come only if there is decentralisation in planning.

6.3 As we believe in decentralisation in Planning, we are not happy with the present composition of the Planning Commission. The states should have full freedom to formulate their own plans within the parameter of national priorities.

6.4 We endorse the view that the Planning Commission should be a high grade advisory body of economists, technologists and management experts. We are also in agreement with the suggestion that the commission should be an independent body free from all pressures of the Union Government.

6.5 It may continue to offer advise in the formulation of Centre & State plans and also in respect of investment.

6.6 It looks reasonable to incorporate national priorities in the State Plans. This would help the state to prepare their own plans according to the requirements keeping in view the national priorities. Thus there is no need for minute scrutiny by the commission of state schemes.

6.7 The main task of the Planning Commission should be confined to plan formulation. The terms of assistance to the state needs to be liberalised. The Planning Commission would be free to advice on resource raising.

6.8 & 6.9 It would be fair if the formulation of plan size is left to individual state after the determination of Central assistance. The present system of determining special central assistance for tribal and Hill Area sub plans is by and large reasonable. More weightage should be given to the present system of allocation of Central assistance in respect to backward states if there has to be balanced regional development.

The criteria evolved by the National Devt. Council for allocating Central plan assistance to the states are by and large reasonable. We are of the view that of the four factors that are taken into account for allocation of Central assistance, backwardness of the state should be given and added consideration. Although the Gadgil formula relates to only small portion of the plan assistance to the states, it can be said in fairness that its subsequent revisions are moving towards equitable distribution.

6.10 We believe that Centrally Sponsored Schemes are necessary particularly to backward and poor states. At the same time it is necessary that the states should be associated in the formulation of such schemes. Only then these schemes can take into account conditions of states and this will help in their effective implementation.

6.11 It is true that there is need to strengthen the system of monitoring and evaluation at both the Union and the State levels. To achieve this it is desirable that the Central Government provides the necessary guidance and the financial assistance to the State Government.

6.12 If planning is to be successful it is absolutely necessary that it is decentralised right up to the village level. We fully agree with the view that decentralised planning would help in introducing a spirit of "Co-operative federalism" in our planning system.

6.13 State Planning Boards have an important advisory role to play in the whole planning and development process in states. Unless there is decentralisation, the State Planning Boards will not be in a position to play its fruitful role.

PART VII

MISCELLANEOUS

7.1 We are in agreement that the extension of the First Schedule to cover a very high proportion of industries in terms of value of their output has gone against the interests of the States. One can imagine the situation in which States are placed if they have to run to the Centre for a licence to start a soap factory. One can understand that in respect of core industries or industries related to defence purposes or where massive investment is needed, the Centre's jurisdiction to issue licences is quite understandable. Unfortunately a large number of consumer items as mentioned in the above question are union subjects. Such Industries should be transferred to the State jurisdiction.

7.2 Within the parameters of national public interest, defence industries and core industries and also such other industries, where investments are beyond the financial capability of the State Government should be included. The Union Government at the same time should have confidence in the States. It is therefore felt that a large number of items in the First Schedule to the (Development and Regulation) Act, 1951 can be shifted to the States jurisdiction.

1. **Metallugrical Industries :**
   - (i) Iron and steel structurals
   - (ii) Iron and steel pipes
   - (iii) Other products of iron and steel
   - (iv) Iron and Steel castings and forgings
2. **Electrical Equipment :**
   - (i) Electrical motors
   - (ii) Electrical fans
   - (iii) Electrical lamps
   - (iv) X-ray equipment
   - (v) Electronic equipment
   - (vi) Household appliances such as electric irons, heaters the like
   - (vii) Storage batteries
   - (viii) Dry cells
3. **Telecommunication :**
   - (i) Radio receivers, including amplifying and public address equipment
   - (ii) Television sets
4. **Transportation :**
   - (i) Motor cycles, scooters and the like
   - (ii) Bicycles
   - (iii) Others such as fork lift trucks and the like
5. **Agricultural Machinery :**
   - (i) Agricultural implements
6. **Miscellaneous, Mechanical and Engineering Industries :**
   - (i) Plastic moulded goods
   - (ii) Hand tools, small tools and the like
   - (iii) Razor blades
   - (iv) Pressure Cookers
   - (v) Cutlery
   - (vi) Steel furniture.
7. **Commercial, Office and Household Equipment :**
   - (i) Typewriters
   - (ii) Calculating machines
   - (iii) Vacuum cleaners
   - (iv) Sewing and knitting machines
   - (v) Hurricane lanterns
8. **Medical and Surgical Appliances :**
   - (i) Surgical instruments sterilisers, incubators and the like

9. Mathematical, Surveying and Drawing Instruments:

(i) Methamatical, surveying and drawing instruments

10. Fertilisers :

(i) Mixed fertilisers

11. Chemicals (other than Fertilisers) :

(i) Paints, varnishes and enamels

12. Paper and pulp including paper products :

(i) Paper for packaging (corrugated paper, craft paper, paper bags, paper containers and the like)

(ii) Pulp-wood pulp, mechanical, chemical, including dissolving pulp.

13. Soaps, Cosmetics and Toilet Preparations :

(i) Soaps

(ii) Cosmetics

(iii) Perfumery

(iv) Toilet preparations

14. Rubber goods :

(i) Tyres and tubes

(ii) Surgical and medical products, including prophylactics

(iii) Footwear

15. Leather, Leather Goods and Pickers :

(i) Leather, Leather goods and pickers

16. Glass :

(i) Hollow ware

(ii) Sheet and plate glass

(iii) Optical glass

(iv) Laboratory ware

(v) Glass wool

(vi) Miscellaneous ware.

17. Timber Products :

(i) Plywood

(ii) Hardboard, including fibre-board, chip board and the like

(iii) Matches

(iv) Miscellaneous (furniture components, bobins, shuttles and the like)

18. Food Processing Industries :

(i) Canned fruits and fruit products

(ii) Milk foods

(iii) Malted foods

(iv) Flour

(v) Other processed foods.

7.3 It would be good if Regional Boards are set up to process the request from the State for the import of Capital goods. These Regional Boards however, have to work within the broad guideline of the Centre. Once projects are cleared, allocation of raw materials or matters relating to capital issues should follow automatically.

7.4 There is need to have appropriate planning before hand for the allocation of raw materials. This aspect needs to be streamlined. As things stand today there is ample scope for improvement by bringing out more coordination between various institutions and greater financial support. There is also the need for decentralising the structure of planning to serve the desired objectives.

7.5 Sikkim is the smallest State in the country and its resource generating capacity is insignificant. State plan are financed from the Centre. Therefore, the implementation of the State plans has to be within the centre's allocation. As there are no Public Sectors Industries in the State worth mentioning the question of securing loans from Industrial Development Bank or Industrial Finance Corporation or other Centrally controlled financial Institutions has not arisen.

7.6 Hardly there are any Public Sector Industries in Sikkim. Therefore thequestion mentioned above has only academic interest so far as this State is concerned.

7.7 So far as Heavy Industries are concerned, Sikkim is out of the picture. As a matter of fact Sikkim wishes very much to have Industries, heavy or medium in public or private sector in the State of exploit its potential. So long such industries are not there, the question is irrelevant.

7.8 It is true that Sikkim has been identified as industrially backward State. But unfortunately the Centre has not come forward to set up industries in the State to remove its backwardness. The State has very limited resources to go in for setting up of industries on its own. This can alone be done with the Centre's assistance which unfortunately is not forthcoming. The result is there are hardly any industrial units worth mentioning. What is more important is development cf infrastructure to attract entrepreneurs from outside. Unless there is investment, either from the public or private it will be very difficult for Sikkim to go in for industrialisation alone.

Trade and Commerce

8.1 The general policy should be that there is no restriction on intra-state trade or commerce. It would be better if there is an authority to look into the matters as enumerated in the question above for better Centre-State relationship in trade and commerce.

Agriculture

9.1 Though agriculture is a State subject, the Centre must play its role of involvement in the development of agriculture particularly in backward State like Sikkim. The present arrangement of supply of fertilisers, pesticides and other agriculture inputs should continue. Also the benefits of centre agricultural research activities continued to be given to the States.

As things stand today the position mentioned in the question has not substantially changed since 1967.

9.2 We do not agree with the recommendation of the National Commission on Agriculture that Centrally and Centrally sponsored being implemented through the State agency form part of the State Sector and that their number should be kept to the minimum. For a backward State like Sikkim whose

resource generating capacity is insignificant the continuance of such centrally sponsored scheme is a must as they play a vital role in the economic development of the State. The only thing needed is that the State Governments should be actively associated in the formulation of such schemes. Also there should be flexibility given to the States for implementation. The Centre should give only broad guidelines to the State Governments.

9.3 We do not see the use of such joint Working Groups as mentioned in the question. Even if they are set up their roles should be confined to giving recommendations only. Till now, we have had good cooperation between the Centre and the State Governments. As already stated the State should be closely associated in the formulation of the scheme and that they must have a say in the flexibility of their approach regarding implementation of Centrally sponsored schemes.

9.4 In view of the vastness of the country, and diverse agro-climatic condition coupled with production cost and productivity level etc. it is not rational to have a uniform support prices or procurement prices for different commodities for the country as a whole. Hence the State should be given better flexibility in fixing farm prices for different areas of the country.

So far as irrigation is concerned, Sikkim does not have irrigation system to the level of attracting the attention of the centre. We have only very minor irrigation system.

So far as credit is concerned, the National Financial Institution must provide credit for the implementation of agricultural programmes in the State. Towards that end, the general guidelines must come from the Centre.

The supply to strategic inputs like fertilisers and pesticides is of vital importance to all States in the country.

The present forestry policy needs to be reviewed. It is imperative to give wide latitude to State Government in the administration of forest within the national guidelines. At present the State Government are required to refer even small matters regarding forestry to the Centre and this delays the implementation of various projects.

9.5 We are in favour of a broad policy guidelines in the working of institutions like the National Bank of Agricultural and Rural Development. Within that broad guidelines this financial institution should be allowed to work in the States. It is suggested that the activities of the ICAR should be more extensive and their fruits of research should reach the farms, along with its guidence.

Food & Civil Supplies

10.1 There is greater scope for improving Centre-States liaison in the areas of procurement, pricing, storage, movement and distribution of food grains as well as other essential commodities. There must be prior consultation with State Governments while formulating the policies regarding these matters.

10.2 Periodical review is a must as it is very useful. The present arrangement of prior approval of the Central Government under the essential Commodities Act needs to be thoroughly reviewed.

Education

11.1 We feel that to say there is unnecessary centralisation and standardisation in the field of education amounts to making a sweeping statement which could have been avoided. Atleast our State has had no experience of Centre interference in the initiative and authority of the State Governments. The proposal to bring Education back to the State list calls for a thorough review.

11.2 The question is not applicable to us as the State does not have any University. Also the only one college has not so far received any financial assistance from the University Grants Commission.

11.3 It is essential that there is discussion and consultation in order to evolve a consensus among the States as well as between the Centre and the State in the field of education. The process of discussion, consultation and persuasion should be a constant factor. It is hoped that the new education policy being announced soon will have the imprint of this process.

11.4 We are of the view that Constitutional guarantee given in respect to denominational educational institutions must go. The relevant Articles must be amended to achieve that end. The question arises what for these constitutional guarantees. These are against the very spirit of our secularism. Such guarantee we feel go against the interest of national integration.

11.5 So far as Sikkim is concerned we are not aware of any instances of conflicts on issues between the Centre and the States so far as education is concerned.

12.1 The time has come when there should be a body or a machinery like the inter-state council to deal with irritations and problems which might arise with regard to Centre-State relations.

The recommendations of such a body or an institution would be of great help in improving inter-governmental relations and coordination.

3. REGISTERED PARTIES

JHARKHAND MUKTI MORCHA

REPLIES TO QUESTIONNAIRE

As desired by your office No. 42/2/84-CCSR (Coord) dated 21-11-85. I, as President of Jharkhand Mukti Morcha am sending the party's views in reply to the questionnaire, which runs as follows :—

1. The problem of Centre-State relation has cropped up due to two peculiar situations that have arisen in the Indian Politics after 1967.

1. Rule of different political Parties, one at the centre and the other at the State sometimes

having opposite and conflicting ideologies and programme.

2. Inability of any single political party to have a clear cut majority either in the State or in the centre and failure to stop the process of defection until the last anti-defection bill of 1985 was padded.

3. Both situations have increased the importance of the position of the President and the Governor and enlarged the scope of their discretionary power calling for a redefinition or clear cut demarcation to eliminate possible misgivings or allegations regarding their arbitariness or even motive. As such situation is likely to continue if not aggrevate not so much due to constitutional bottle necks, but due to accentuating social, Political tensions, certain delimintion of the various authorities involving governing the body polity is called for. It is in that consideration some answers to the questionnaire provided by the learned commission are being given though considering the real maladies be-devilling the body politics of the country even giving birth to this commission are lying else where in the very social structure of the country beyond the purview of the Commission.

PART I

1.1 It is not federal, but unitary not with standing unique features found in other unitary states.

1.2 There should be restructuring of the effectiveness of all the articles and justification but not through any amendment and legislation but initiating a national debate for reaching a concensus.

1.3 Yes, but the decentralisation should not itself be between centre and state, but also between district and districts considering the heterogenoity un-even development and multicultural character of the state itself with specific mention of the hilly and tribal area of Bihar now existing a internal colony of both the State and the Centre

1.4 To our knowledge USSR.

1.5 We nearly agree with the view with addition, that major difficulties would not be removed even by changing the executive procedure or even evolving any so called healthy conventions as they are ingrained in this post colonial social structure and its ill advised capitalist mode of development vitiating the very motivation of the society, with suspicion and acquisitiveness.

1.6 We agree, but constitution has failed in the purpose as all the provisions of the directive principle of the States have been violated or rendered dead letter.

1.7 They warrant review and re-examination.

1.8 We support the power under Article 3 but we want to add that this has not been properly utilised for political consideration of the dominating section to ensure development of the culture, language, identity of the oppressed nationalities as that residing in the area called "Jharkhand, Chhatisgarh, Uttarakhand and others in the country creating tensions between nationalities. A provision should be made in article 3 to review with statutory commission need to form any more states in the country, to ensure proper development and the multicoloured characteristics of the country enshrined in the concept of unity in diversity.

PART II

2.1 There are instances of the centre exceeding its provision given by the legislative powers in practice specially in the subject covered by the concurrent list by thrashing of the New education policy, injecting C.R.P. or C.I.S.F. or B.S.F. over the head of the States, changing Chief Ministers as bonded labours, thrusting governors as great Mughals used to depute their protegies to the provinces.

2.2 The legislative list for the centre in the 7th Schedule should be confirmed only to the following:

1. Defence
2. communication
3. currency
4. Foreign affairs
5. Inter State relation
6. Creation of States etc.

2.3 Yes.

2.4 Except in emergency there should be no power with the centre.

2.5 Nothing special.

PART III

3.1 Constitution has failed to envisage clearly the new role of the Governors different from that in the British times and the Governors failed to envisage their roles provided by the constitution thus becoming biggest centre of controversies embittering centre-state relations as the role of Dharmavira., A.P. Sharma in West Bengal, Jagmohan in Kashmir, as also Shankardayal Sharma in Telegu etc.

3.2 The post of Governor should be abolished as they are burden to the State exchequer.

3.3 Answer is unnecessary in view of the above.

3.4 Same.

3.5 We do not agree as the withholding of the assent was more political than legal, the example being the progressive land Reforms Bill passed by the Bengal Assembly seven years back. There should be provision in the constitution setting the time-limit for giving assent to any state bill by the president and showing reason for not giving assent and giving right to states for moving Supreme Court either against the denial or delay in giving such assent.

3.6 Answer unnecessary.

3.7 Same.

3.8 Whether the ruling party in the state has lost its majority in the legislature would be decided only in the Assembly by vote and not by any other agencies.

3.9 It is a worthy suggestion but requiring further study specially in the condition when assembly would express lack of confidence but at the same time unable to choose any successor commanding majority and also unwilling to recommend dissolution.

3.10 Yes.

PART IV

4.1 As per the paper report the Government of West Bengal has refused to enforce the N. S. Act and some other preventive provision passed by the centre, but no knowledge whether there was a threat invoking article 365. However, there are allegations and indications of putting pressure on the State of West Bengal by creating financial difficulties as financing aid was stopped for Haldia project as per the report.

4.2 The Article should be deleted except in Emergency.

4.3 No answer.

4.4 No, As in Kerala in 1959.

4.5 No opinion but special stress should be given on sub-clause (b) of the Election Commission.

4.6 Election be done by Administration of the State to stop both capturing and machination of the local politics.

4.7 No opinion.

4.8 In addition to the All India services already operating there should be All India Judicial services, All India Medical Services, All India Educational Services, All India Engineering Services and there should be law that in all the services including I.A.S. and I.P.S. cent per cent of the persons selected in each State be posted in other states.

4.9 We oppose.

4.10 We support that Broad-casting should be in the concurrent list.

4.11 No purpose served.

4.12 No opinion.

PART V

5.1 No, as the disparity between developed and under-developed states has increased continuously.

5.2 We support the provision (a) as it will decrease the trend of dependence to the centre, make them more responsible and stand on their own leg with their own planning there should be no question of giver and receiver.

5.3 Instead of making centre stronger to extend justice to the less developed regions of the state there should be clear cut division of resources of the States enforced by the centre for its different regions with particular instances to the backward regions.

5.4 No answer needed in view of the above suggestion.

5.5 No comment.

5.6 No comment

5.7 No comment.

5.8 No comment.

5.9 No efficiency in economy in expenditure and disparities instead of getting narrowed down has increased.

5.10 No non-plan expenditure should be covered.

5.11 Spirit of Article 275 has been clearly violated in practice both with respect to Assam and Tribal Areas.

5.12 No comment, but we oppose the special bearer bonds itself as that rewards the owners of black money, on the contrary the states should be asked to the black money which should be totally spent in the states plan.

5.15 No.

5.16 No.

5.17 Mismanagement, corruption, lack of planning and political will of the states run by political party which is also running the centre.

5.18 No.

5.19 No.

5.21 No Comment.

5.22 Yes, finance commission with the help of Planning Commission should suggest to the states the various options of exploiting their own resources each year.

5.23 Yes, A permanent body should be created by the National Development Council to look into the matter and suggest remedy.

5.24 Yes.

5.25 No comment.

5.26 We support the stand of the states the grant in lieu of passenger's fare tax should be enhanced in proportion to the increase in the collection of Railway fare.

5.27 No comment.

5.28 There should be a committee in Parliament to look into the matter and monitor the operation.

5.29 No comment.

5.30 No comment.

5.31 To support the creation of national expenditure commission.

5.32 No comment.

5.33 No comment.

5.34 & 5.35 The report of the Controller and Auditor General should be given more importance and statutory action on its recommendation should be ensured.

5.36 No comment.

5.37 No comment.

5.38 No comment.

5.39 State Government should be authorised to decide the validity of the expenditure under the approved scheme without the intervention of external agencies.

PART VI

6.1 There should be a clear demarcation of the schemes between the centre and the states and there should be standing committee out of National Development Council to coordinate both if required.

6.2 We support it.

6.3 No, there should be sitting of the planning commission in each state within some specified period to deal with the problem of the state.

6.4 No comment.

6.5 No comment.

6.6 There should be clear demarcation of the area of operation of the Planning Commission.

6.7 No comment.

6.8 No comment.

6.9 The present system of allocation of central assistance has failed in attainment of balanced regional development and serve tribal and hill area of subplans.

6.10 No comment.

6.11 A standing committee of National Development Council should watch the implementation of the plans.

6.12 Yes, we support the concept of decentralisation of plans starting from every Panchayats itself reflecting the will and idea of the people.

6.13 State Planning Board should be strengthened and area of working should be so classified so that it does not affect the effectiveness of the National Plan.

PART VII

7.1 Arbitrary extension of list of industry of public interest and National importance has become counter productive.

7.2 Yes, there should be clear cut definition of National importance.

7.3 No comment.

7.4 No comment.

7.5 No comment.

7.6 States should be taken into confidence before deciding on the location of industry.

7.7 Criticism of genuine and corrective steps should be contemplated by the standing committee of the National Development Council.

7.8 No comment, but industries in backward area should be so designed and managed so that it develops the backward people of the backward area without making colony of the forward people of the forward area in the backward regions.

8.1 No comment.

Agriculture

Future of agriculture in India develops more on completing land reforms than on any division of jurisdiction between state and the centre. Land reforms precisely means land to the tillers and cooperative farming there should be a National Commission on land relations to evaluation and direct the process of reform in the country.

Food, Civil Supplies

Trade of all essentially commodities should be nationalised and the centre and the state should have concurrent power of Nationalising and operating them.

Education

In India, there is no education imparted through mother tongue specially in Jharkhand where education should be imparted through mother tongue and not through Hindi. In India, what to speak of provincial services even in IAS and IPS services politics plays the important role of selection. All sorts of norms have broken and there is chaos and anarchy in educational system.

12.1 No comment.

THE NAGALAND PEOPLE PARTY

MEMORANDUM

INTRODUCTORY

1. Nagaland is one of the smallest states in India, with the present geographical area of 16,579 Sq. Kms. having density of population in the region of 35 persons to a square kilometre, comprising about 20 tribes with varied customs and traditions and dialects. There are about 1,160 odd villages situating in the ill-communicated remote areas. Though there is difference in the needs of the plains and the hills, even as a Hill State, the State of Nagaland can be singled out as very peculi r from other hill states. As a matter of fact, because of its peculiarities, Nagaland was granted the statehood inspite of its size in population and area. The other smaller states attained statehood because of Nagaland. If Nagaland had peculiar socio-economic conditions at the time of granting statehood, those have not disappeared today, rather the conditions have further aggravated with the inception of the statehood, of ten times, it has

been found out that the yardsticks applicable elsewhere in the country could not be applied in Nagaland. Hence, Nagaland should be treated as a class of its own while considering the Centre-State relations.

If the Constitution of India is to be considered as Quasi-federal the composition of Parliament should bear the semblance of federal system. The Constitution as of now does not reflect any semblance of federal system. There are 22 States and a number of Union Territories in India. Even if the Union Territories have to be treated as such, the states should be looked upon as equal partners in some way or the other. Contrary to this, the disparities between the States in respect of representation in Parliament are too much. As against 85 MPs for UP, Nagaland has only one MP in Lok Sabha whose presence has no meaning in the midst of 545 MPs. Even in Rajya Sabha, where all the states should have equal representation, Nagaland has only one MP out of 275 MPs.

The Articles 3 & 4 of the Constitution of India are tantamount to imposition of brute majority decision on the helpless smaller states whose presence in Parliament is insignificant. The States boundaries should be based on the traditional boundaries which existed before the advent of the British and the choice should be given to the people concern to choose where they wish to belong. No States should be allowed to claim the legacy of the British colonialists as territorial jurisdiction as being done by Assam.

The State of Nagaland was created under 16-point Agreement of 1960 in which the new State was to be placed under the care of the External Affairs Ministry. However, Nagaland had been placed under Home Ministry without the knowledge and consent of the Nagas in 1969 nulifying the provision of 16-point Agreement. "2. The Ministry-Incharge : The Nagaland shall be under Ministry of External Affairs, the Government of India." Had the original arrangement continued, perhaps, the conditions of Nagaland could have been altogether different in as much as corruptions could have been of tolerable degree. The 16-point agreement should have been honoured in letter and spirit and the administration should be kept outside the purview of Home Ministry because by making uniform administrative services all the vices have been imported and filled the State in a suffocated manner. There were other nullifications of the 16-point agreement which are also responsible for failure of establishing "good will" in respect of Centre – Nagaland relations.

LEGISLATIVE RELATIONS

2. In keeping with the provisions of Article 371 (A) of the Constitution of India, the State of Nagaland should be given a wide range of legislative powers covering the subjects of the Union list such as (i) power to legislate the rules and procedures to regulate the exploration of mineral resources (ii) power to pass its own election laws best suited to Nagaland conditions (under the prevalent system election expenditure is too much and after the elections the successful candidates merely work to enrich themselves to face future elections); (iii) the principle of repugnancy should not be strictly adhered to in respect of Nagaland.

ROLE OF THE GOVERNOR

3. The institution of the Governor should be abolished since it has been ineffective as the head of the state and at the most an anathema. Should the institution be felt as the necessary evil, it should be made as an elected post. Also, the special power of the Governor under Article 371 (A) of the Constitution of India should be repealed and Nagaland be placed on par with others.

THE ADMINISTRATIVE RELATIONS

4. The administrative relations between the Centre and Nagaland should be reviewed and make it to appear of federal nature. The people of Nagaland should be allowed to manage their own affairs. Too much interferences by the Centre has not helped the State in any way to develop itself.

FINANCIAL RELATIONS

5. Hitherto the State of Nagaland has been solely depending on the central financial assistance, having no resources of its own. Whatever financial assistance that might have been given for the welfare of the people of Nagaland have enabled the class of exploiters to become richer and richer and the exploited masses poorer and poorer. The central aids have simply ruined the Naga people's resolution to be self-reliant. Since everything is business motivated, nothing moves in Nagaland except corruption creating the gulf between the haves and have-nots wider and wider.

ECONOMIC AND SOCIAL PLANNING

6. The State of Nagaland should be allowed to spell out its own plan programmes based on the principle of "cut your clothes according to your size and needs." Right now high targetting and low performance has become regular feature of the State's planned programmes. The State should also be allowed to tap the foreign financial assistances and foreign capital investments. So far, Nagaland has been completely deprived of such things under the pretext of being politically sensitive State. The financial institutions have not created the desired impact in Nagaland as their investments are negligible.

MISCELLANEOUS

7. (a) **Industries** : Industrial activities should be based on the availability of raw materials locally and the issue of licenses should be very liberal. In any case, benami license should not be allowed to be operated. The Centre should come forward to extent all possible help and assistance in setting up of agro-based industries in Nagaland.

(b) **Trade & Commerce** : Freedom of trade and commerce should be granted to the State of Nagaland in respect of imports and exports of goods whereby the State should be able to create business activities and attract markets from outside State so as to enable it to have its own resources.

(c) Agriculture, horticulture, forestry, fishery, livestock husbandry should constitute the mainstay of the people of Nagaland. The Centre should come to the rescue of the State of Nagaland in overcoming

the lack of power resources and communications. The Centre should also help the State to overcome the lack of requisite finance and proper technology, leaving the job of working out the details of programmes with the State.

(d) **Food & Civil Supplies** : The supply of food and civil supplies should be on the basis of actual needs to be determined by possession of permits and cards. Right now the procurements of foodgrains and other civil supplies are being motivated by business considerations.

(e) **Education** : The socio-economic conditions of Nagaland are entirely different and it needs to evolve a system of its own to educate the children of Nagaland. The National Educational policy of no "detention up to class IV" should not be imposed on the State of Nagaland because the education of Naga children begin after the age of five only but not from the cradle. Secondly, the National Educational policy of supplying highly technical and sophisticated medical equipments to the Schools should not be imposed upon the Naga people because that may amount to encouraging of quakes and gambling of human lives. Thirdly, taking Hindi or any other Regional language as compulsory subject has been a stumbling block to the students of Nagaland who go outside the State for higher education. This should be done away with.

REPUBLICAN PARTY OF INDIA (K)

MEMORANDUM

Centre must be strong

(1) Ours is a Federal State. In Federalism the Centre-State relations assume a very great importance. In a country like India which is heterogenous with so many castes, creeds, languages, religions having varied and conflicting interests a strong centre is a must to keep the country fully integrated. To maintain unity in the midst of number of — fissiperous and divergent forces is of paramount importance realising the importance of this aspect the founding fathers of our constitution have made the centre strong. Secondly, ours is a flexible constitution, and therefore can meet any challenge including the centre-state relations — while advocating a strong centre our party does not mean that the states be reduced to the status of Municipalities — Status must also grow strong economically, educationally etc. The present scheme in the constitution avails the states of this opportunity. But much depends on how it is worked out. Dr. Babasaheb Ambedkar, the Chief Architect of the constitution has said that whether a constitution is good or bad depends on how it is implemented.

The party does not approve of the idea that during normal times there should be greater decentralisation and more centralisation at the time of emergency. It is a fallasious idea.

Article 3 of the Constitution does not need any reconsideration

(2) Article 3 of the constitution provides that Parliament may by law (1) form a new state (2) increase the area of any state (3) diminish the area of any state (4) Alter the boundaries and (5) Alter the name of any state. During the past 34 years this provision has worked well. This provision is complete in itself and meet successfully any eventuality.

Legislative Relations

(3) The constitution has provided lot of legislative autonomy to the states. I do not know of any instance where the centre has encroached upon the legislative powers of the state under the cover of national interest.

In respect of any subject in the concurrent list the centre should consult as far as possible the states before hand. The adoption of such a course will not strain the relations between the union and the state.

In the national interest or public interest if Parliament needs legislation on the subject exclusively within the competence of the state it should be temporary and quite limited. A demand is voiced in many quarters that the state be given greater autonomy. This demand is of repeated now-a-days as some other political parties have come to power in many states. They feel that their powers are inadequate. So long as Cong (I) was ruling in most of the states, such a question did arise. Under such circumstances under some pretext to have a legislation on the subjects in IInd list will strain the relations between the centre and the states.

Role of the Governor

(4) In federalism Governor is a close link between the centre and the state. He is certainly. not an agent of the centre nor a dignified servant of the centre. To maintain cordial relations between the centre and the states is of paramount importance in the performance of his duties. His other important duties are:—

(1) Making report to the President suggesting action under article 356(1)

(2) Appointment of Chief Minister under article 164 and

(3) Prerogation or dissolution of house under article 176 (2).

In all such matters he has to act without any bias and without being influenced. But now-a-days it is felt that the Governor is the tool of the centre. This has been displayed in certain states such as A. P. and J. & K. where the Governors action was highly objectionable and most uncalled for. He is there in the state not to serve the interest of the ruling party at the centre but keeping true to his conscience he must act since it is the authority of the centre to appoint the Governor, it is just possible to make use of him to subserve its own purpose at the time of political up-heavals. That is due to human weakness.

Therefore, I suggest that the Governor should be appointed in consultation with the state. I also agree with the suggestion that Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the inter-state Council and approved by the union.

Such guidelines should be placed before both houses of parliament. In this behalf a question of constitutional validity will arise. But it shall serve the purpose of the constitutional provisions. It shall have a pragmatic utility.

Administrative Relations

(5) Article 365 can be retained as a reserve provision although it has never been operated upon.

The Administrative Reforms commission has observed that the issue of direction (under articles 256 and 257) of the centre to a state is an extreme step and should be taken only in cases of absolute necessity where no other means of securing the objective are available. The assumption of Governance by the President under article 356 is a drastic medicine prescribed in the constitution as a last resort which are not to be administered as a daily food. This view is quite correct.

For many years after Independence there was a congress rule throughout. Therefore, the centre did not feel necessary to resort to this remedy even when there were to some extent disturbed conditions in certain states. But now the picture is changed and likely to change to a greater extent under such circumstances the Government at the centre might use recklessly these provisions of the constitution. The fear is that this constitutional provision will then be greatly misused as has been recently experienced in certain states where there was non-congress (I) rule. I, therefore, feel that the Governor while making report under the said articles should exercise utmost restraint and should be free from any influence which might tend to bring about a fall of any state Government.

My party upholds the 44th amendment. The 42nd amendment was brought about by Mrs. Gandhi to suit her own designs and ambitions.

The central agencies such as Agricultural Prices Commission, Central Water Commission, Central Electricity Authority, Director General of Technical Development, Monopolies and Restrictive Trade Practices Commission, Food Corporation of India etc. handle activities relating to subjects enumerated in the state and concurrent lists of seventh schedule to the constitution, it is alleged, are making inroads in the states' autonomy.

The scope of the said central agencies should be so curtailed that the states should feel that there is no more interference with their autonomy. It can also be suggested that the centre should issue suitable guidelines in this behalf to make states feel that their autonomy is not undermined.

To maintain a cordial relation between the centre and the states such an action is imperative. In Federalism the states have surrendered to the centre a certain portion of their sovereignty that does not mean that the states have surrendered every thing. There is a demand for greater autonomy for the states. But I feel whatever autonomy is given to the states may prove to be enough provided the constitution is worked out in letter and spirit.

To locate and use the Central Reserve Police in any state whether on demand or otherwise cannot be construed as an act of central intervention in any state. It is the duty of the centre to see that law and order are protected in every state article 355, therefore, provides for such a measure. In many states, the help of central reserve police was sought for. Therefore, there is nothing wrong in locating such a force in those states.

Broadcasting and television facilities should be shared both by the centre and the states on a fair and reasonable basis as both have got equal need for access to these mass communication media for putting across their views to the people.

Article 263 of the constitution which appears under the caption. "Co-ordination between states" empowers the president to establish an interstate-council, if it appears to him that it would serve the public interests would be served by the establishment thereof. The Administrative Reforms Commission has also recommended the establishment of such a council.

Such a council would definitely be useful in ironing out inter-state and the union-states difference. It will thereby secure better co-operation between the states. This council should have a separate Secretariat.

Financial Relations

(6) The Constitution makers expected that the Revenue gap between the resources and the fiscal needs of the states to discharge their growing responsibilities will be covered by a scheme of Devolution partly by sharing with the states, the proceeds of certain central taxes and duties and partly by grants-in-aid from the union while periodical changes will be made by the President on the recommendations of the finance commission.

But this scheme has not worked well within the past 34 years as has been observed by the study team of Aministrative Reforms Commission. The states have remained, according to the study team, receivers while the union became a giver. Such a opposition should change.

I advocate the following alternatives namely.

(1) All the taxing powers be transferred to the union list to form a shareable pool, respective shares of union and the states as a whole being specified in the constitution itself, the amount and the principles on which the states shares would be distributed amongst the various states be determined by the finance commission.

(2) and that more central taxes such as corporation-tax, customs duty, surcharge on income tax etc., be brought into the shareable pool.

To bring about revolutionary change in the economic life of the people the states are not in a position to do it unless the states get an enhanced share from the divisible pool.

The centre can increase the income by taxation (But it should not be disproportionate to the income of the people) and by having better control over expenditure. I am of opinion that the public funds are

just squandered by the party in power. it is believed that lot of money could be saved for the economic development if the extravagent expenditure by the Government's both at the centre and the states are controlled. It is indeed a fact that our Governments earn like beggers and spend like moghals.

I fully subscribe to the view that who collects the funds and how the collected funds are distributed are not very relevant as all funds flow from the people. What is more important is that the funds are spent prudently and that the benefits go back largely to the people.

I also agree with a view that there is criticism that the expenditure of the union is not being organised in the best interest of the nations growth and instead there are trends for recurrence of in-fructuous, unnecessary and uneconomic expenditure.

There is a demand in several quarters that the expenditure of the union should be scrutinised so such trends may be contained and additional resources found for helping the states.

It is unfortunate that the states which complain of meagre developmental resources are indulging more and more in unnecessary expenditure mainly on a populist nature and not on economic reasons, thereby depleting the already insufficient resources for developmental purposes.

Therefore, there has been a suggestion that there should be a permanent national expenditure commission to assess the nature and quality of expenditure and the need for Revenue resources for both the centre and the states to enable them to discharge their respective obligations reasonably and satisfactorily.

I, therefore feel that the appointment of the national expenditure commission on permanent basis would go a long way in correcting the erring Governments.

The present arrangement with regard to the provision of central assistance in dealing with natural calamities is not satisfatory. It is more arbitrary and biased.This has een the experience by some states where there is congress (I) rule. Secondly, it is again unfortunate that the relief assistance is not properly and fully utilised. To ensure proper utilisation of such assistance a high-level committee should be appointed by the states to check the expenditure. There are reliable reports that the executive machinery misusés such funds.

There is no need of any loans Council as it would not be better institution than the Reserve Bank of India.

Mr. Ashok Chanda, the Chairman of the 3rd Finance Commission has pointed out that the Comptroller and Auditor General of India was not doing all that was possible to keep a check on the accounts of the union and the states.

Therefore, Parliament has passed a law determining the duties and power of the Comptroller and Auditor General. But it is experienced that this has also not enabled him to keep an effective check watch on the expenditure of the union and the states. There was no need of any such enactment as the constitution has vested in him this power. The point is it is to be properly exercised which has not been done due to various reasons. There was no need of any such enactment as the constitution itself has given him this power.

The Comptroller and Auditor General is responsible only to the President and Governor of the State for submission of his reports which are presented to Parliament and the State Legislatures respectively. It is then the Parliament and the state legislatures to exercise such checks that they feel necessary to ensure financial propriety.

But the report of the Comptroller and Auditor General are not comprehensive enough and reasonably accurate to enable them to take firm views in the matter. Therefore, the reports of Comptroller and Auditor General are not enough to ensure the financial propriety.

The Public Accounts Committee of Parliament and of State Legislatures examine the reports of the Comptroller and Auditor General and further probe into issues that they think are important.

In my view a sufficient check to answer the voiced complaint of insufficient expenditure control at the centre and in the states is not sufficient.

The Estimates Committees of Parliament and of the State Legislatures go into the wider aspects of policies and programmes than those covered in the reports of the Comptroller and the Auditor General, and advice the Government on improvements necessary. My view is that in the light of the need for a scrutiny of expenditure of the union and of the states this committee cannot act as a watch dog to give useful Legislative and administrative advise to the administration. The present estimates committee is only a show piece. Its recommendations are not seriously thought over.

A permanent national expenditure commission is essential for assessing the propriety of expenditure of the union and the states. No doubt such constitutional authority is already vested in the Comptroller and Auditor General of India. But that has not been able to achieve the desired result in spite of the public Accounts Committee and estimates committee of Parliament and states.

ECONOMIC AND SOCIAL PLANNING

(7) Economic and social planning, as per the provision in the constitution, recognised a vital role which the centre might play in con sultation with the states in the matter of undertaking planning in a National perspective, to meet National needs, subscribing to National priorities etc. In this planning relations the study teams have noted certain shortcomings. They are—

(1) The plans do not secure the commitment of the states by involving them earnestly in the primary task of determining goals after full and frank consideration of all the basic issues with the states and that the consultation procedures at the meetings of Chief Ministers and the Central Ministers is superficial and hurried.

(2) The Union Ministries tend to the incorporation of the schemes framed by them.

(3) In respect of programmes legitimately falling wholly with inthe jurisdiction of the states, there is lot of interferance of the centre.

These shortcomings should be removed.

That can be done by setting up on a statutory basis a National Development Council consisting of all the Chief Ministers of the states presided over by the Prime Minister and experts in various fields as members. It should have power to discuss and approve the recommendations of the Planning Commission with regard to economic development. When once the development plans are approved by the council the states should be free to implement them in accordance with the approved pattern. Secondly, adequate financial resources should be provided to the states.

The resolution, setting up the Planning Commission, states that the commission would act in close understanding and consultation with the Ministries of the Central Government and the Governments of the States. This resolution has not been effective. And, therefore, the setting up of a National Development Council as has been observed in para above can bring about close understanding and consultation with the State Governments.

Composition of Planning Commission

The Planning Commission should be enlarged to include representatives of all the states and made an independent body, free from all pressures of Union Cabinet which generally reflects the policy of the ruling party at the Centre.

(Sd.)
President.

SOCIALIST UNITY CENTRE OF INDIA

MEMORANDUM

Introduction

1. At the outset we want to state clearly that we do not share the view that the root cause of the malaise that prevades the whole socio-economic-politico-cultural sphere giving rise to widespread starvation, penury, unemployment, illeteracy, perversion of morals and values lies in the particular relations between the Centre and the State or in otherwise if the states enjoy autonomy and freedoms, for which there are now demands, the malaise will be overcome. We are also no believers of the unhistoric and unscientific proposition that progress or retardation in the socio-politico-economic-cultural fields in a country is determined by the constitutional framework or to be specific on the nature of devolution of rights and responsibilities between the centre and the states.

2. We hold on the contrary that the constitution outlining the arrangements of political administration belongs to superstructure which serves a definite economic base. In our country it is the capitalist productive system that constitutes the economic base. And as the Government is nothing but the defender and protector of the dominating class interests of the ruling class, here, the capitalist class, both the Central and State governments do the same. Both of them defend and project the capitalist productive system, the ruling capitalist class and its class objectives.

3. On the basis of concrete historical experiences we are also of the firm opinion that concentration and centralisation of financial-political-administrative powers does not depend on, whether the constitution of a country is federal or unitary in form. It is determined on the other hand by the law of capitalist development. This law of capitalist development gives rise to monopoly finance capital and financial obligarchy in the economic base that gets its reflection in the concentration and centralisation of powers in the bureaucratic administrative system. Also in order to defend and protect the capitalist productive system, the Central government, more particularly, takes the initiative to build up infrastructure conducive to the rapid growth of monopoly capital and in that process has concentrated enormous economic and political powers. That is why the best of federal principles in the constitution of the USA could not arrest the same concentration and centralisation of powers as the unitary form of constitution on convention of the Great Britain provide.

4. What is alarming and needs real attention is the trend of authoritarianism that is distinctly visible in our country also. This authoritarian trend is completely different from autocracy in the classical concept. It is the outcome of a decaying capitalist system at the third intense phase of general crisis, that is, overall crisis, the entire capitalist world has been passing through. It therefore, bears far more dangerous trend of all out fascism, trampling under foot basic democratic concept, norms and values, rights and liberties which were once held as the vary cornerstones of bourgeois democracies. The prime question on the Centre and State relations cannot therefore be as to who will trample under foot the democratic norms and principles, minimum administrative neutrality, relative independence and autonomy of the judiciary and educational institutions— the Centre or the State; nor can it be as to who will fleece the common people by fiscal resources for the benefit of the capitalist class and vested interests—the Centre or the States.

The focal point should therefore be the concrete objectives and goal of social progress, its clear direction and the fundamental democratic principles, norms and values which are to be guarded zealously.

5. From this specific and basic outlook, we hold that the following should be taken up as the most relevant questions in determining the centre-state relations :

(a) neutrality of administration, independence of judiciary and autonomy of the educational institutions, guarantee of civic liberties and democratic rights of the citizens and democratic norm in administration must be guarded whether at the central or in the state levels ;

(b) arbitrariness and discrimination in distribution and transfer of fiscal resources, in controlling the financial institutions as also the financial and economic policies along with the Planning

Commission and the National Development Council by the Centre should be checked effectively ;

(c) all laws that vest absolute powers in the Central authority to subvert democratic process both at the Central and State levels like the ones during the imperialist rule and now being used frequently in the sectarian interest of the ruling party at the Centre as also to reinforce the trend of authoritarianism-fascism should be abolished for bare survival of a democratic policy

(d) the Planning Commission, the National Development Council, Election Commissions, the AIR and Doordarshan must be reconstructed to be broad based and autonomous. Clear objectives of development must be determined democratically. That is to a say, creation of employment opportunities through industrialisation, improvement of infrastructure, modernisation of agriculture and upliftment of rural life, supply of basic amenities of life to people must be made actual targets of development so that the goal and objects set in the chapter of Directive Principles do not remain pious wishes but made real obligations of the governments to the people. If the people of India have given unto themselves the constitution as has been written in it, they cannot remain content with empty declaration of certain rights and principles. They want to see those translated into practice. By 'national development' they cannot accept development and concentration of wealth at the hands of the ruling class on the one hand and the aggravation of their miseries and destitution on the other hand.

(e) The last but of not least importance is to ensure removal of regional disparities and imbalances in the socio-economic progress in order to curb the regional parochial divisive trends. In doing so, every effort is to be made, economic-politcal-social-cultural, to reinforce the process of development of one Indian nationhood that once grew out of the national freedom movement and can only be sustained and furthered in a democratic composite society.

By encouraging intermingling and assimilation of nationalities while ensuring the protection of equal rights and legitimate aspirations especially of the less developed and dominated nationalities this process can be helped.

6. In our opinion actually the whole gamut of the socio-eonomic-political questions is involved and deserves thorough examination in order to have a proper grasping as to why dissatisfactions and resentments are being aired again and again on the Centre-State relations which cannot be anything other than about the functioning relationship of administration between the two although both serviving the same state system and the dominating class. The content may lie in the political rivalries between the different parties in powers as those most vociferous seem to be more concerned about getting more share in financial resources for the state while not demanding forcefully the restoration, preservation and further extension of basic democratic norms and values, in the system of governance and untramplled rights and liberties of the people.

With this note of basic difference in approach and outlook to the whole question, we touch only on the salient points posed in the questionnaire in our following observations.

QUESTIONNAIRF

PART I

INTRODUCTORY

We reiterate that to us the slogan "More power or autonomy of the states with a strong centre" is contradictory in terms and misleading. The fundamental issue is guarding the essence of democratic methods and principles of functioning and here both the Centre and State governments are equally guilty. They are both offenders as regards denying administrative neutrality and fairness, fairness in the electoral process, protection or relative freedom and autonomy of judiciary, educations institutions as also local administrative bodies, freedom of press and civic liberties and democratic rights of the people.

Be that as it may, we are totally opposed to the particular provisions bearing the legacy of the British imperialist rule still being retained in the Constitution. Articles 356, 357 and 365 referred to in the questionnaire vesting special powers in the Centre to remove the elected state governments are simply the reincarnation of similar undemocratic and autocratic provisions of the Government of India Act 1935 against which serious opposition was raised from the national political platform then. These provisions have been repeatedly used from the sectarian parliamentary interest of the ruling party at the centre against parties in opposition forming governments in some states or the Chief Minister not to the liking of the central ruling clique. The recent examples of Pondicherry, Sikkim, Jammu and Kashmir and Andhra Pradesh bear testimony to this truth. The office of the Governor was used on all the occasions to cause defection of MLAs by horse trading. We reserve our comment on the post and role of Governor in Free India, as it comes in a separate chapter of the questionnaire.

Here we observe that like the earlier ones, the articles 254 and 256 make the state governments unnecessarily dependent on the Centre as regards bringing legislations of their own and carry the legacy of the imperialist administrative scheme. It may be worth recalling that these provisions too came in for severe opposition from the national political platform in the thirties. These should be removed.

We are however for retention of articles 348 and 349 making it obligatory to retain English language in court proceedings and enactments of parliament and assemblies. We stand for two-language formula— mothertongue and English in educational system from primary to higher studies as also in all official matters of administration.

As regards the modality in effecting territorial changes or formation of new states from the old ones, we are opposed generally to any further

fragmentation. In our opinion, in a multi-nationality state like ours fragmentation is no answer to the problem of preserving the rights of growth and development of minority nationalities dominated by the major ones. In case minority domination finds expression in public agitation or legitimate democratic mass movement by minority nationality people being dominated, then the decision for the formation of a separate state within the union for them should be decided by a referendum to be conducted by the 'Minorities Commission' which can be formed for that purpose or may be a permanent body as a watch-dog of minority nationality peoples rights and legitimate aspirations free from chauvinistic outlook. The Minorities Commission should be properly constituted with representation from all nationalities and vested with constitutional powers so that its findings and recommendations may be binding on the central and state governments concerned.

PART II

LEGISLATIVE RELATIONS

We are firmly opposed to centre's growing encroachment on the administrative field and power of the state in the name of 'public interest'. State governments cannot be reduced to rubber-stamp of approval of the decisions and actions of those in authority at the Centre.

We are opposed to forming any police, para-military force like the "National Guard" which can be despatched to any State in the name of keeping 'law and order' which is a state subject. Induction of military in administration must be stopped. Similarly we are of the firm opinion that the State bills should not be kept hanging for the President's approval for more than two months. We also hold that if a state bill on any concurrent subject precedes the Centre's bill that is often brought to stall it, the former must get the approval. After the Centre brings an enactment on the same, that shall be forwarded to the State legislature for reconsideration whether in the light of the latter, it deems necessary any change or revision or the bill, it has passed before. In case, a revision, the revised one will be operative in the state.

We also hold that in case of concurrent subjects, any bill that the Centre decides to bring must be circulated in draft form to all the states to elicit the opinion of the state legislatures before being given final shape and placed to parliament. States must be given right to articulate and defend their respective view points to Parliament through printed documents.

We also hold that the Centre shall not have any right to legislate on state subjects whether temporary, or permanent in nature nor subject to 'periodic review'. Although we think it is immaterial whether the centre or state has any particular subject as per the seventh schedule because after all it is the capitalist system that is being served and not the people. Still even from democratic norm we suggest thorough redivision of subjects under the three lists of the Seventh Schedule in view of the changed context. For example, state governments must have effective say in the functioning and investment policy of the financial institutions working within the states like banking and insurance (items 45, 47) as also of all big industries, mines, regulation of labour and safety of mines, regulation and development of Inter-state rivers and river valleys sanctioning of approval for cinematograph film for show (items 52, 54, 55, 56, 60). We have different opinion about use and management of river waters, educational institutions and cultural media including films, given separately. We hold, however, that education must be a state subject though under the general guidance, control and supervision of the National Education Commission, we have suggested hereinafter.

In short, apart from the basic constraints of the productive system and its reflection in the basic outlook of the constitution, no further constraint should be there for the state governments in the form of centre's interference and encroachment.

PART III

ROLE OF GOVERNOR

The post, appointment and role of the Governer in independent India follow the same objective, motive and method as were in British India. The very purpose of gubernatorial post is to be questioned. If it is to prize the superanuated politicians of the ruling party or any bureaucrat as an agent of the ruling party at the Centre, it is obnoxious and should be done away with. If it is to ditto the Central Government or the state government it is a costly cipher and should also be done away with. Naturally, therefore, article 154(1) that vests 'executive power' of the state in the Governor must go. For the legal conotation of the 'executive power' is very wide and may partake of legislative or judicial character. Article 179(1) and (2) regarding the governor's powers to summon, dissolve and prorogue the state assebmly must also go. We are also opposed to dissolution of elected assemblies after the parliamentary poll on the plea of a party having got the majority and that parties opposed to it are in power different state governments.

PART IV

ADMINISTRATIVE RELATIONS

We reiterate our opposition to articles 256, 257 and 356 and demand their removal. In case of riots or cowardly violence going on for more than three months, the state legislatures can be dissolved either by a resolution passed at the legislature or in parliament and election must be held within three months thereafter. To conduct the concerned state's administration during this interim period, the Centre with parliament's approval can appoint a board of administrators not more than five in number, constituted by persons from retired judges of the supreme court or high court, distinguished educationists, economists and retired men of administration having unblemished record. There must be an independent Election Commission, having its separate office and staff which shall be charged with full responsibility of preparing electoral roll to conduction of elections, not dependent either on the Centre or state in any

matter, like finance, peace-keeping force, etc. Stringent punishment should be meted out to anyone found guilty for any corrupt practice in the electroal process. Separate Election Tribunal should be set up for expeditious disposal of all election disputes.

We hold that all the Central bodies like Agricultural Prices Commission, Central Water Commission, as enumerated in Q. 4.7 should be formed by men of eminence of proven independence of opinion and of unimpeacheable character, men reputed in respective fields drawn from the educationists, economists, social scientists, eminent judges and administrators with technical knowledge and background. States' representation of views to those commissions can be effectively done by constitution of State's Council whose decision or recommendation shall be given due consideration and generally accepted by those bodies unless rejected on specific reasons to be notified. In case of divergence of views between those bodies constituted on the basis of consensus and the State Council, the matter is to be referred to the Planning Commission which is to be restructured.

We propose the formations of Inter State and Regional Councils for ironing out of differences, removing irritants and for an integrated development. The Regional Council shall have power to resolve regional disputes put forward recommendations for removing specific problems and difficulties, standardisation of prices of inputes and products as also taxes and duties. Regional coordinated activities for agricultural, industrial and infrastructural development, controlling mobility of labour etc. All these recommendations will go to the Planning Commission vested with the task of policy framing and the National Development Council as the implementing body.

Both the Planning Commission and National Development Council should be autonomous bodies to be appointed by Parliament out of panels considered by the State legislatures also and having representations both from the states and the centre in the consultative committees of both. Priority in planned expenditure to be determined by the Planning Commission on the basis of recommendations of the Regional Councils must be on modernisation of agricultural, industrialisation, infrastructural improvement and creation of gainful employments through those. Particular attention is to be given for development of backward areas or regions and in the states where unemployment problem is most pressing. All appointments are to be given through Employment Exchanges under the administrative control of the National Development Council and all Indian citizens shall have equal right in a fair test.

The specific plan and schemes for state's or regional development subject to the approval of the Planning Commission shall be met by a proportion of 70:30 respectively by the Centre and the State/Region. The plan money should go directly through the Planning Commission and shall go to the National Development Council for execution of the plan or scheme with the help of the Regional Council or State as the case may be. A Regional Development Council with regional representation may also be formed for that purpose. This process will go a long way to stem the pernicious trend of regionalism, remove regional disparities in development as also eliminate misuse of precious resources both by the Centre and State governments. Planning and Development agencies must be freed from corruption of position and powers of political parties ruling at the Centre and States.

It is known to all that the civil services were built up as 'steel frame' by the British imperialist rulers working whether at the centre or states for the brutal, ruthless and savage exploitation, oppression of the people and even to bring cleavage or division among them on communal, parochial, casteist lines. The mental make up cultivated in personnels of these services has been of the ruler and not of a public servant. In the alsence of democratisation the socials, cultural fields during and after the freedom movement the same mental make up along wit hregional, parochial, communal, casteist feelings prevail very much in these services.

The present rulers, both at the Centre and States the main architects of all these communal, casteist and parochial riots etc. as also corruption that has become rampant and a serious national problem are using as the main instrument in the bureaucratic set up. An industrial, bureaucratic military complex has since replaced the civil society that is ruling the roots and bringing all sorts of degradations in the country. Is the Commission prepared to delve delvep into the whole issue of this social malady? So the civil officers, whether state cadres or central cadres when are meant for serving the vested interests and more so under the iron-grip of the present bureaucratic-industrial-military complex and where conformity has become the greatest virtue, can an individual honest officer maintain his honesty and sence of integrity to serve the people's interest in the truest sense of the term ?

We also propose constitution of autonomous bodies like the Central Education Commission, All India River Waters Commission, All India Radio and Doordarshan as also Central Cultural Board for Cinema and other cultural media all to be given freedom and independence of activities. While education must be a state subject although the essence of its content or syllabus must be uniform all over the country, educational and research centres must enjoy autonomy and freedom in academic pursuit and should therefore be guided by an Education Commission constituted with distinguished educationists, men of letters and persons having distinguished record in academic field. The River Commission will take care of total river water resources and distribute those according to actual needs of the states and will be in charge to keep these free from pollution.

We are also for a Press Council elected by the working jouranist and editors. The body will set down a definite code of conduct against yellow journalism and shall have the power to provide remedy against both infringements of this code as also any pressure on and discrimination, against the press by the Government both at Centre and States.

PART V

FINANCIAL RELATIONS

The first thing to be noted is that the same pattern of states' absolute dependence on Centre's assistance by way of transfer of share of taxes as per article 275 and grants-in-aid under article 282 still prevails. The basic conception is still that the centre will monopolise fiscal powers and the states no matter how much they contribute to Centre's tax resources will have to be rest content with whatever comes to it from the centre. In fact, article 282 which was originally meant for centre's special grants to the states in case of an extraordinary situation like natural calamity has superseded the importance of article 275 which makes provision for distribution of resources between the centre and states from the divisible pool. It has become the source of consternation in as much as this discretionery power at the centre has been misused in petty parliamentary rivalry disregarding the actual need of the states.

The States' chief source of resources had till recent time been the share in income taxes. Of late the centre's growing dependence as tax revenues on surcharges excise duties and rise in administered prices deprive the state's having a fare share from the divisible pool. The Finance Commission's recommendations have only left 25 to 27 p.c. of the divisible pool to the states. This has placed the states under heavy debt to the central government—the debt increasing from Rs. 18,785 crores in 1978-79 to Rs. 37,406 crores at the end of 1983-84. Even in the case of having share in income taxes, the states are being deprived unjustly of taxes on union emoluments, interest on recoveries and penalties. They are also being deprived of fiscal earning on the investments in National Savings Certificates etc.

In view of this dismal picture we propose the following re-arrangements in fiscal administration :

(a) Abolition of duplication of taxes.

(b) Taxes like corporation taxes, custom duties, surcharge on income-tax and agricultural income tax should be centrally levied and should be divided on the principle of real need of the states.

(c) States should collect taxes and pay the central quota to be fixed on them and the excess of collection over the quota shall go to the states.

(d) All the planned expenditures and on schemes both by the centre and the states must be cleared by the Planning Commission and the National Development Council shall be charged for their implementation.

(e) All the expenditures to be subject to the scrutiny of national audit machinery.

(f) Grants-in-aid from the Centre or in the alternative Centre standing as guarantor for states borrowings should also be provided to the States taking particular welfare scheme like state trading in essential commodities to distribute those in controlled prices to the common people through public distribution system, etc.

What we want is a national outlook in the matter of fixation of taxes, containment of menacing increase in black money and in public welfare schemes of worth not in populist stances and wasteful expenditures. This re-arrangement we hope may do some justice to the directive principles by bringing to the fore the urgency and importance of well directed pro-people measures, to the extent possible under the present socio-economic system.

Loan Council can be set up with the financial resources both internal and external but must be governed by the autonomous Planning Commission and the loan from it can be obtained only on development scheme of the states, cleared by it.

The idea of a National Economic Council proposed can be taken care of by reconstitution of the National Development Council along with constitution of Inter-States and Regional Councils suggested by us.

We reiterate that for a well-directed socio-economic development stoppage of wasteful expenditure both at the centre and states brooks no delay. We hold the Centre guilty of flittering away precious resources on militarisation of economy at an alarming rate and over subventions and subsidies to the agricultural and industrial capitalists. The subventions and subsidies must be related to procurement of produce and collection of taxes, otherwise they will be doubly benefited by not paying taxes but getting subsidies etc. which is against all canons of fiscal justice and equity.

We are in favour of autonomous bodies like the Planning Commission and the National Development Council to have controlling powers over the expenditure pattern of the governments both at the centre and states.

PART VI

ECONOMIC & SOCIAL PLANNING

Many of the questions have been covered already. We are in favour of (1) integrated national planning implemented through state planning ; (2) the national planning must be directed towards modernisation of agriculture; industrialisation and coping with the menacing problem of unemployment; (3) initiative in drafting the states planning should be with the states to be approved by the Regional council, Planning Commission, Priority being on removing regional imbalances in development, unemployment and best use of natural resources and industrial potentialities in the interest of the common people; (4) the present criteria of allocation of funds for plan expenditures in the states do not take into account the actual needs in view of pressure on employment opportunities due to migration of labour as also the natural benefits accruing to industrial ventures due to proximity of raw materials etc. In point of fact about ten industrialised centres have grown in the Union territory. So a balance needs to be taken between disposal of industrial developments in less developed areas and coping with unemployment problems in industrialised areas. The main question is setting the priorities of development which must include the all-important issues of creating employment opportunities and provision for essential needs for a decent

civilised life. We are therefore for channelising all plan expenditures through Planning Commission, reconstituted on the line suggested above and check on leakage by national audit system. As an element of bonus on efficiency, states successfully implementing the planned expenditures should be encouraged and entrusted with additional projects that may be financed by the Central Fund or Central Loan Council which may be of importance from the object of national planning.

We also hold that equalisation of freight charges and duties on all industrial inputs is a must to remove inequalities in costing of output that stands as a hindrance as also in one of the major irritants of the states.

What we feel is not so much 'cooperative federalism' in wasteful expenditure on populist measures and heaping economic burdens on the common people but centralised planning based on the recommendations of the states implemented through the states under the supervision and control of the National Development Council and National Audit towards well-directed objectives and fulfilment of priorities. Competitive element between the states in discharge of these reponsibilities will remove much of their discontents, tone up administrative efficiencies and make them directly responsible for non-performance etc. and what is more, remove the evil trend of discrimination by the Central authority in administration from narrow political objectives of the party in power at the Centre. Let the political rivalries between the parties in governmental power be directed in concrete achievements of urgent pro-people measures.

PART VII

MISCELLANEOUS

In the matter of industrial development of the country no parochial or discriminatory attitude should be allowed. If setting up of petro-chemical or electronic industries in say, West Bengal, is rejected by the Centre on the ground of it being a border state, can there be any other crudest possible example of a discriminatory treatment solely guided by narrow political outlook of the party in power at the Centre. The question should therefore be where shall lie the authority in matter of planned development ? We reiterate that it must be with the autonomous Planning Commission. The national planned development must come through state plannings approved by the Planning Commission. The states should be offered with major schemes. The question of resources mobilisation being at the hands of the states under the system we have suggested, there cannot be any question of its constraint. The question of under-development of states due to centre's unhelpful attitude will not arise if the revised system of the decentralisation of initiatives at state level to fulfil centralised planning becomes the rule and not the exception. Rather, it will bring more efficiency in tax collection from the rich by the State administration as on the success of it will depend on the individual state's (particularly those industrially developed) claim on undertaking major investment ventures. About the states industrially underdeveloped the centralised industrial planning may be made with the help of the resources either coming through special grants-in-aid or credit from the Central Loan Council as suggested hereinbefore.

PART VIII

OTHER COMMENTS

We hold that agriculture should be developed from a Central Planning taking particular care of removing backwardness in technique of production, disparities in irrigational and marketing facilities and to ensure standardisation in wages and prices of products and the growing needs both for direct consumption by the people as also industrial consumption. Graded agricultural income tax, a big source of tax revenue yet remains untapped dispite the Wanchoo Committee's recommendations which should be introduced and the states should be charged with the responsibility of collecting it as other taxes. The development of agriculture and allied activities should be aimed at removing unevenness, disparities in earnings and generation of gainful employment to rural unemployeds through national planning.

The States must be vested with the power and resource to procure agricultural produces through the State Marketing Societies both for guarantee of reasonable price for the producers as also to provide food and essential items of consumption to the people through public distribution network.

The Educational Institutions must be run under the control and supervision of a National Educational Council, Autonomy in administration of these institutions free from governmental interference whether at the state level or by the centre must be guaranteed. The national educational policy on the basis of uniformity of the content and two language formula—mother tongue and English must be framed up by a National Educational Commission on the basis of suggestions and concensus of all distinguished educationists, political parties, social workers, men of learning etc. The logical bent of mind must be developed and the humanist value contents through compulsory literature study must be inculcated. One Indian nationhood concept should be instilled among diversities of nationality or subnationality cultures and traditions.

We have put our suggestions which are not exhaustive in nature but just indicative; we reiterate our demands to safeguard the essence of democratic norms and values which we hope, is of prime importance in today's perspective to all well-meaning persons and bodies seriously concerned about the future of Indian polity.

(*Sd.*)
General Secretary.

GANDHI KAMARAJ NATIONAL CONGRESS

MEMORANDUM

காந்தி காமராஜ் தேசிய காங்கிரஸ் தலைவர் திரு. குமரிஅனந்தன் 11.10.1984ல் சட்டப் பேரவையில் ஆற்றிய உரை:

மத்திய மாநில உறவுகள் பற்றிய நமது கட்சியின் கருத்தாக இதையே ஏற்றுக் கொள்ள வேண்டுமென்ற வேண்டுகோளுடன் கீழே தரப்பட்டுள்ளது.

மாண்புமிகு மாற்றத் தலைவர் அவர்களே தனி நபர் -தீர்மானமாக மாண்புமிகு உறுப்பினர் உமாநாத் அவர்கள் கொண்டுவந்திருக்கும் தீர்மானத்தின் சாரம், இந்திய நாடு முழுமையாக வளர வேண்டும் என்றும் மாநிலங்கள் வளமாக வாழவேண்டும் என்றும் இப்போது மாநிலங்களுக்கு இருக்கும் அதிகாரங்கள் போதுமானதாக இல்லை. ஆகவே அவைகளை அதிகப்படுத்த வேண்டும் என்றும் அதற்காக இந்திய தலைமை அமைச்சர் அனைத்து முதல் முதலமைச்சர்களையும் யூனியன் பிரதேசங்களை ஆண்டுகொண்டிருப்பவர்களையும் அழைத்துப் பேசவேண்டும் என்பதாகும். அந்த வகையிலேயே அந்த கருத்தை ஆதரித்து காந்தி காமராஜ் தேசிய காங்கிரஸ் சார்பிலே பேசுவதற்கு நான் எழுந்து நிற்கிறேன்.

மக்கள் ஆட்சி வந்து விடுமானால் அதிகார பரவல் ஏற்பட்டு விடும் என்று தான் அரசியல் அமைப்பு சட்டத்தை உருவாக்கியவர்களின் கனவாக இருந்திருக்க முடியும். விடுதலைப் போராட்டத்தில் கலந்து கொண்டவர்கள் கூட சின்னஞ்சிறு கிராமத்தில் இருக்கும் மக்களை தட்டி எழுப்பி இந்த நாட்டை அடிமைத்தனையாக வைத்துக்கொண்டிருக்கின்ற வெள்ளை ஏகாதிபத்தியத்தை வெளியேற்ற பாடுபட்டபோது அதிகாரங்கள் யாரோ ஒருவர் கையில் குவிந்து விடக்கூடாது என்று தான் எண்ணியிருக்கமுடியும். குவிந்து விடவேண்டும் என்று நிச்சயமாக எண்ணியிருக்க மாட்டார்கள். அந்த அடிப்படையில் தான் விடுதலைப் போராட்டத்தில் தங்களுடைய வியர்வைகளையும் கண்ணீரையும் செந்நீரையும் மட்டும் அல்லாமல் தன்னையே தியாகம் செய்து கொள்ளும் நிலையில் காஷ்மீர் முதல் கன்னியா குமரி வரை உள்ள மக்கள் திரண்டு எழுந்தபோது இந்த நாட்டின் அதிகாரம் அத்தனை பேருக்கும் உரியதாக அமையவேண்டும் என்ற முறையில் தான் எண்ணியிருப்பார்கள். ஆனால் இப்போது ஒருவரிடத்தில் குவிந்துவிட்டதால் நான் ஒரு சிக்கல் விளைந்தது என்பதை நாம் பார்த்தோம். மத்திய அரசிடம் இருக்கும் அதிகாரங்களை பிரித்துவிட்டால் தான் ஒரு மாநிலம் செம்மையாக வாழ முடியும் என்ற நினைப்பவர்கள் இரண்டு விதமான கருத்துக்களை பரப்பிக்கொண்டு இருப்பதை பார்க்கிறோம்.

அந்த இரண்டு விதமான கருத்துக்கள் எப்படி பரப்பப்படுகிறது என்று சொன்னால் மாநிலத்திற்கு அதில் அதிகாரங்களை பிரித்துக் கொண்டு விட்டால் மத்திய அரசாங்கம் வலுவாக இருக்க முடியாது என்று சொல்கிறார்கள். பிரித்துக் கொடுத்துவிட்டால் அதைச் சர்வாதிகாரம் என்று சொல்கிறார்கள். இப்படி இரண்டு விதக் கருத்துக்கள் நாட்டிலே உலவுகின்றன. இதை மனதில் கொண்டு தான் பெருந்தலைவர் காமராஜர் அவர்கள் ஒரு முறை மத்திய அரசாங்கத்தின் பிரதம அமைச்சருக்கு ஒரு வேண்டுகோள் விடுத்தார். அதிகாரம் பரவலாக்கப்படவேண்டும் என்று சொல்கிறார்களே அது எந்தெந்த வகையிலே அளிக்கப்பட வேண்டும், எந்தெந்த முறையிலே அளிக்கப்படவேண்டும் என்று விரும்புகிறார்கள் என்பதை பாரத பிரதமர் நேரடியாகத் தெரிந்து கொள்ளவேண்டும் என்பதற்காக மாநிலங்களின் முதலமைச்சர்களையும் யூனியன் பிரதேசங்களை ஆளுகின்றவர்களையும் அழைத்து அவர்களுடைய கருத்துக்களைத் தெரிந்து அதற்கு ஏற்ப ஒரு முடிவுக்கு வருவது நல்லது என்று பெருந்தலைவர் காமராஜர் அவர்கள் குறிப்பிட்டார்கள். உலக மக்களுக்கு

அறிவித்தார்கள். அவர்கள் எந்த வகையில், எந்த அளவிற்கு பாரதப் பிரதமர் அவர்களை மாநில முதலமைச்சர்களை அழைத்துப் பேசவேண்டும் என்று கருத்துக்களைத் தெரிவித்தார்களோ அந்தக் கருத்தின் பிரதிபலிப்பாக இன்றைக்கு இந்தத் தீர்மானம் இருப்பதால், இதனை ஆதரித்து நான் என்னுடைய கருத்தை இந்த அவையிலே தெரிவிக்க விரும்புகிறேன்.

நாம் இன்றைக்கு பின்பற்றி வரும் சில மரபுகளைப் பார்க்கிறபோது அரசியல் அமைப்புச் சட்டத்திலே இருக்கும் சில உஷாராத்துக்களின் உள்ள ஓட்டைகளை வைத்துக்கொண்டு அதிகாரத்தை சிலர் தங்கள் கையிலே எடுத்துக்கொண்டு மக்களை மிரட்டி, பயமுறுத்திக் கொண்டு இருக்கிறார்கள். அதனால் என்ன ஆபத்து ஏற்பட்டது என்பதை நாம் அறிவோம். அண்மையில் கூட சபாநாயகர்கள் எல்லாம் ஒன்று கூடி ஒரு முடிவு எடுத்தார்கள். ஒரு அரசாங்கத்தை நடத்துவதற்கு உரிய பெரும்பான்மை இருவருக்கு இருக்கிறதா இல்லையா என்பதை முடிவு செய்யவேண்டிய இடம் சட்டமன்றம். அந்த உரிமை வேறுயாருக்கும் இருக்கக்கூடாது. ஆனால், மரபு எப்படி இருக்கிறது என்றால் கவர்னராக இருக்கிற ஒருவர் யாருக்கு பெரும்பான்மை இருக்கிறது என்பதற்கு தான் மட்டும் 'சாடிஸ்பை' ஆகிவிட்டால் போதும், அவருக்கு இருக்கிற டிஸ்கிரிஷனரி அதிகாரத்தை வைத்து இவருக்கு பெரும்பான்மை இருக்கிறது, இன்னாருக்கு இல்லை என்று முடிவு எடுத்து விடலாம். அப்படி எடுக்கப்பட்ட முடிவின் காரணமாக ஏற்பட்ட கிளர்ச்சிகள், உள்ளக்குமுறல்கள் ஆகியவற்றை நாம் பார்த்தோம்.

இதிலிருந்து 356 என்று சொல்லுகின்ற அந்தப்பிரிவு எந்த எந்த வகையிலே கத்திபோல் இருந்து கொண்டு சில நேரங்களிலே கருத்தை அறுப்பதும், தேவைப்படுகிற நேரத்திலே காலிலே தைத்த முள்ளை எடுப்பதற்குப் பயன்பட வேண்டிய கத்தி உயிரையே பறிக்கின்ற அளவுக்கு, அறுக்கின்ற தொழிலைச் செய்கின்ற கத்தியாக இருப்பதை இன்றையதினம் நாம் பார்க்கிறோம். இவைகளுக்கு எல்லாம் ஒரு பாதுகாப்பைத் தேடுவது எப்படி என்பதற்காக சர்க்காரியா கமிஷன் என்று ஒன்றைப் போட்டு, ஒட்டுமொத்தத்திலே மத்திய மாநில அரசு உறவுகள் எப்படி இருக்கவேண்டும் என்பதை ஆராய்ச்சி செய்வதற்காகப் போடப்பட்டிருந்தாலும் — அது எந்த நோக்கத்திற்காகப் போடப்பட்டது என்பது பற்றிய விவாதத்திற்கு எல்லாம் நான் போகவில்லை — போடப்பட்டிருக்கிற நேரத்திலே ஒரு நீதிபதியாக இருந்த பெருமகனார் 109 கேள்விகள் அடங்கிய ஒரு பட்டியலை அனுப்புகிறார்; சாதாரணமானவர்களுக்கு அல்ல. ஆளும் பொறுப்பில் இருக்கிற பொறுப்பிலே இருந்து அனுபவப்பட்ட முன்னாள் முதலமைச்சர்களுக்கு அனுப்புகிறார். அப்படிப்பட்டவர்களுக்கெல்லாம் உங்களுடைய கருத்துக்களைச் சொல்லுங்கள் என்று 109 வினாக்கள் அடங்கிய பட்டியலை அனுப்பி வைக்கிறார்.

அனுப்பிவைத்துவிட்டு; பின்னாலே அவர் சொல்கிறார், நாலே நாலு முன்னாள் அமைச்சர்களும் (எஃபிடு அதர்ஸ்) மற்றவர்களில் சிலரும் மட்டுமே கருத்துச் சொல்லியிருக்கிறார்கள்; மற்றவர்கள் எல்லாம் கருத்து கூட சொல்லவில்லை என்று சொல்லுகின்ற அளவுக்கு இருக்கிறது. ஆக, மிகப்பெரியவர்கள் கூட இந்த மிகப்பெரிய பிரச்சனையை அலட்சியமாக எண்ணுகிறார்கள் என்று பார்க்கிறபோது நாமும் அந்த நிலைமைக்குப் போய்விடாமல் இந்த மன்றத்திலே விவாதித்து ஒரு நல்ல முடிவுக்கு வருவதன் மூலம் நாட்டு மக்களுடைய உள்ளங்களிலே இந்த உறவு பற்றிய பரிசீலனையை எழுப்புவதற்கு ஒரு வாய்ப்பினை அமைத்துக் கொடுத்தவர்களாவோம்.

இப்படி பார்க்கும் போது, சின்ன சின்ன காரியங்களிலே கூட மத்திய அரசு தலையிடுவது போன்ற உணர்வு ஒரு மாநில அரசுக்கு வந்தால் இந்திய ஒருமைப்பாடு பற்றி அவர்கள் விருக்குறி எழுப்புவார்கள், உதாரணத்திற்காகச் சொல்லுகிறேன். கூடு சம்பந்தப்பட்டவை இரண்டுக்கும் என்று இருக்கிறது. அதாவது கன்கரண்ட் லிஸ்டில் இருப்பவை வ.

மாநில மத்திய அரசுகளுக்குச் சொந்தமானவை என்று வந்துவிடுகின்ற காரணத்தினாலே, நீலகிரி மாவட்டம் போன்ற இடங்களில் ஒரு குடிதண்ணீர் தொட்டி கட்டுவதற்கு கூட, அதற்கு வந்து எந்தப் பாதை வழியாகக் குழாய் போட்டு கொண்டுவர வேண்டுமோ அல்லது குடிநீர் தொட்டியிலிருந்து பெரிய குழாயில் தண்ணீரைக் கொண்டுவர வேண்டுமோ அந்த இடத்திலே தோண்டுவதற்கு அனுமதி கேட்டு பல மாதங்கள் காத்திருக்க வேண்டியிருக்கிறது மாநில அரசு. ஆக ஒரு குடிநீருக்கு ஏங்கிக்கிடக்கிற மக்கள் ஒரு பக்கம். அந்த காட்டு வழியாக குழாய் வரவேண்டும் என்பதற்காக மத்திய அரசினுடைய அனுமதியைப் பெற மாநில அரசு காத்திருக்கின்ற மறுபக்கம் என்று சொல்லுகிறபோது மக்களுக்கு யார், யார்மீது கோபம் வரும்? அங்கே இருக்கிற விவரம் புரியாதவர்களுக்கு மாநில அரசு மீதும் கோபம் வரும். அப்படியானால் மத்திய அரசும் மாநில அரசும் இதற்கு ஒரு முடிவு காணவேண்டாமா? மக்களுடைய தேவையைப் பூர்த்தி செய்வதற்கு ரெட் டேப்பிசம் என்று சொல்லுகின்ற குறுக்கே கிடக்கிற காகிதக் கோப்புகள் அவர்களுடைய காரியத்தைக் கெடுக்கலாமா? என்பதைப் பற்றி சிந்திக்க வேண்டுமா வேண்டாமா?

இன்னொரு இடத்திலே பார்த்தால், மத்திய அரசிலே இருக்கிற அமைச்சர் ஒருவர் பேசுகிறார். காட்டிலாகா அதிகாரிகள் யாராவது இந்த இந்த வகையிலே நடந்துகொள்ளவில்லை என்றால் நாங்களே நேரடியாக நடவடிக்கை எடுப்போம் என்று பேசியிருக்கிறார். நாங்களே நேரடியாக நடவடிக்கை எடுப்போம் என்று மத்திய அரசு சொன்னால் மாநில அரசின் நிலைமை என்ன? மாநில அரசு 'குளோரிஃபைடு முனிசிபாலிட்டி' மாதிரி இருந்து கொண்டிருப்பதா? அதனுடைய அதிகாரம் என்ன? தன்னுடைய அதிகாரிகளைக் கண்டிப்பதற்கு இன்னொரு அரசாங்கம் முன் வந்தால் அந்த அதிகாரிகள் இந்த மாநில அரசுக்கு கட்டுப்பட்டு உட்பட்டு இருப்பார்களா அல்லது தண்டிக்கும் அதிகாரம் படைத்தவர்களுக்கு பயந்து அவர்கள் என்ன சொல்கிறார்கள் என்று கேட்டுக்கொண்டிருப்பார்களா? ஆக, இதை எல்லாம் பார்க்கும்போது சின்ன சின்ன காரியங்களில் கூட மத்திய அரசு தலையிடுகிறது என்ற ஒரு உணர்வு ஏற்படும்போது மாநில அரசுக்கு ஒரு கொந்தளிப்பு, ஒரு உள்ளக் குமுறல் எழுந்து இதைக் கேட்க வேண்டுமா இல்லையா?

ஒரு மாநில அரசினுடைய எண்ணம் என்ன என்று தெரியாமல் மத்திய அரசு முடிவுகளை எடுக்கிற நேரத்தில் அந்த மாநிலத்து மக்கள், அந்த மாநில மக்களைச் சேர்ந்த பல மக்கள் அவர்கள் எங்கெங்கோ வாழ்ந்துகொண்டிருக்கிறார்கள். எப்படி எப்படி துன்பப்படுகிறார்கள் என்பதற்குச் சான்று கச்சத்தீவு, இலங்கை இந்திய ஒப்பந்தம், ஸ்ரீமாவோ பண்டார நாயக்கர் ஒப்பந்தம் போன்றவை எல்லாம் தமிழ் மக்களுடைய உணர்வு, தமிழ் மாநில மக்களுடைய உணர்வு, தமிழ்நாடு மாநிலத்தில் வாழ்ந்து கொண்டிருக்கிற மக்களுடைய உணர்வு இவைகளை எல்லாம் கணக்கிலே எடுத்துக் கலந்துப்பார்த்துதான் செய்யப்பட்டதா? இந்த முடிவுகளை எப்படி எடுத்தார்கள்? வெளியுறவு என்று ஒன்றை வைத்துக்கொண்டு, மத்திய அரசின் கையிலே அதிகாரம் இருப்பதால், நாமே அந்த முடிவைச் செய்யலாம் என்கின்ற முடிவுக்கு வந்தார்களா?

கச்சத்தீவைப் பிரித்துக் கொடுத்தது இந்த மாநில அரசினுடைய எல்லைக்கு உட்பட்டதாகும். கச்சத்தீவு இராமநாதபுரம் ஜமீனுக்கு உட்பட்டது என்று நமக்கு குறிப்புகள் எல்லாம் சொல்கின்ற நேரத்தில் ஆண்டுகொண்டிருக்கிற அமைச்சரவையை — அது எந்த அமைச்சரவையாக இருந்தாலும் சரி — மக்களால் தேர்ந்தெடுக்கப்பட்டு ஆண்டு கொண்டிருக்கின்ற அமைச்சரவை இருக்கிற நேரத்தில் அந்த அமைச்சரவைக்குத் தெரியாமல் எடுத்துக் கொடுத்த காரணத்தால் மத்திய அரசு தன்னுடைய அதிகாரத்தைப் பயன்படுத்திக்கொண்ட காரணத்தால் இன்றைக்கு நம்முடைய நாட்டு எல்லைக்கே பேராபயம் ஏற்பட்டிருக்கிறது. ஆக வெளியுறவு என்று இருந்தாலும் இப்படிப்பட்ட காரியங்களில் முடிவு எடுக்கின்ற அதிகாரம் மாநில அரசைக் தெரிந்து எடுக்க வேண்டுமேயன்றி, மத்திய அரசு தன் போக்கில் எடுக்கவேண்டியதில்லை. மாநில அரசுக்கு தெரிவிக்க வேண்டிய கடப்பாடு இல்லை என்பதால், 'நோ அப்ஜெக்ஷன்' என்கிற காரணத்திற்காக அதைத் தூக்கிக் கொடுத்ததைப் பிற [illegible] அங்கே

இன்னொருவன் உட்கார்ந்துகொண்டு, படைப்பயிற்சி கொடுத்துக்கொண்டு தமிழனுடைய மார்பை நெருங்கி ஒப்பிரிக்கியை நீட்டிக் கொண்டிருக்கிறான். இப்படிப்பட்ட காரியங்கள் எல்லாம் நடந்து வருகின்றன.

ஆக, மத்திய மாநில அரசு என்று வருகிறபோது மத்திய அரசு சக்தி வாய்ந்ததாக இருக்கவேண்டுமென்றால் கூட இந்த சக்திக்காக வேண்டி ஒக்கப்பூர்வமான புத்தியைக் கொடுப்பது மாநில அரசாக இருக்கிற அளவுக்கு என்ன உறவுகள் இருக்க வேண்டாமா? இந்த உறவுகள் இருந்திருக்குமானால் இந்த குழப்பங்கள் வந்திருக்காது அல்லவா? இன்னின்ன காரியங்களுக்குப் பாதிப்பு படுத்தக்கூடாது என்ற ஒரு உத்தரவாதமாவது அப்போது சேர்த்திருந்தால் இந்த மாநில அரசினுடைய, இந்த மாநில மக்களுடைய உணர்வையாவது அது பிரதிபலிப்பதாக இருக்கும் அல்லவா? இவைகளினால் ஏற்பட்ட குழப்பங்களையெல்லாம் இப்போது அதிலிருந்துப் பார்க்கிற நேரத்தில் மீண்டும் ஒரு முறை இந்த மத்திய மாநில அரசு உறவுகளை, அங்கே சீர்தூக்கிச் சீர்தூக்கிப் பார்க்கவேண்டியிருக்கிறது. திராபைலஸ்லியல் சிலேட்டைப் பற்றி சொல்லுதைப் பார்த்தால், அவர்களுக்கு சகல அதிகாரமும் இருக்கிறது. இங்கே உழுவவன் எங்கே இருக்கிற உழவனாக இருப்பான். பாடுபாடு பாடுபடுவன் இங்கே உள்ள பாட்டாளியாக இருப்பான். அவனுடைய விளை பொருள்களுக்கு விலை நிர்ணயிக்கிற உரிமை, அந்தப் பகுதியில் இருக்கிற மன்றுக்கும், அந்தப் பகுதியில் உள்ள மக்களுக்கும், அந்தப் பகுதியில் உள்ள மக்களுடைய உழைப்புக்கும் ஏற்பவை அல்ல. நெல்லினுடைய விலையை அங்கு இருக்கிறவர்கள் மட்டுமே நிர்ணயிக்கிற போது என்ன ஆபத்து வருகிறது, வெள்ளைக்காரர் காலத்திலே நாம் சொல்வோமே; "ஏறான் மறான் தோட்டத்திலே ஒழுத்தன் போட்டான் வெள்ளரிக்காய், காசு காசுக்கு விற்கச் சொல்லி காகிதம் போட்டான் வெள்ளைக்காரன்" என்று — அதைப் போல் இங்கே இருக்கிற சூழ்நிலைகளை மொத்தத்தில் கணக்கில் கொள்ளாமல் — நம்முடைய உணவுத் துறை அமைச்சர் கூட இன்று பேசுகிறபோது சொன்னார் — இங்கு இருக்கிற விவசாயிகள் உற்பத்தி செய்கின்ற நெல்லுக்கு ரூ.175.5 கொடுக்கவேண்டுமென்று நாங்கள் விரும்பி கேட்டுக்கொண்டிருக்கிறோம். ஆக ஒத்துக்கொள்வார்களா? அல்லது ஒத்துக்கொண்டிருக்கிறார்களா? நெல்லுக்கு எப்படி விலையை நிர்ணயிக்கிறார்கள். சரி.,

நெய்வேலியிலிருந்து ஒரு தகவல் வருகிறது நமக்கு. நெய்வேலி லிக்னைட் கார்ப்பரேஷன் மத்திய அரசாங்கத்தைச் சார்ந்தது. மத்திய அரசாங்கத்தைச் சார்ந்த நாடாளுமன்ற பெருமகனார் சொல்கிறார் ரூ.78கோடி தமிழக அரசாங்கம் மின்சாரத் துறையிலே எங்களுக்கு பாக்கி வைத்திருக்கிறது என்று மின்சாரத்தை நாங்கள் கொடுத்த காரணத்தினால் ரூ.78 கோடி பாக்கி இருக்கிறது என்றும் எப்படி இவ்வளவு பாக்கி வந்தது? 1955-லே நெய்வேலி நிலக்கரி சுரங்கம் தோண்டுகின்ற நேரத்தில் கூட இங்கே தோண்டி எடுக்கின்ற நிலக்கரியை விற்பனை செய்கின்ற அதிலிருந்து வருகின்ற அந்த விற்பனையில் 10 சதவீதத்தை உரிமமாக ராயல்டியாக தமிழ் மண்ணிலே இருந்து வெட்டி எடுக்கின்ற காரணத்தால் தமிழக அரசாங்கத்திற்கு கொடுக்கவேண்டும் என்று சொன்னார்கள். லட்சக்கணக்கான டன்கள் வெட்டி எடுக்கப்பட்டுவிட்டதே. இன்று ஒரு காசு கூட ராயல்டியாக வாங்கவில்லையே, உரிமம் வாங்கவில்லையே ஆகவே பேச்சு வார்த்தைகள் நடந்ததிலே தமிழக அரசுக்கு வரவேண்டிய அந்த உரிமத்தை வாங்காது இருப்பதற்கு என்ன காரணம்? சரி அது கொடுக்காமல் இருந்து விடு, எங்களுக்கு ரூ.78கோடி பாக்கி இருக்கிறதென்று மத்திய அரசாங்கம் சொன்னால் மாநில அரசாங்கத்தின் இந்தியாவின் ஒரு பகுதியாக தானே கருதவேண்டும். சரி என்றென்று வைப்போம். இந்த மின்சாரத்திற்கு இவ்வளவு கட்டணம் வருவதற்கு என்ன காரணம்? தூத்துக்குடி சென்னையில் எண்ணூர் அனல் மின்நிலையங்கள் அதிகமாக செலவிட்டு உற்பத்தி செய்கின்றன என்றால் நிலக்கரி உற்பத்தியாகின்ற இடத்திலே ஒரு டன்னுக்கு ரூ 250 அதைத் தூத்துக்குடிக்கு கொண்டு வர ஆகும் செலவு ரூ 375. டிரான்ஸ்போர்ட்டேஷன் சார்ஜ் ரூ.375 ஆக ஒரு சின்ன வேண்டுகோளை விடுகிறேன். மத்திய அரசாங்கத்திடம் அதிகாரம் இருக்கிற காரணத்தாலே சிமெண்ட் விலை நிர்ணயித்து இந்தியா முழுவதும் சிமெண்டுக்கு விலை ஒரே தான் என்று சொல்லியிருக்கிறீர்கள். மத்திய அரசாங்கத்திடம் அதிகாரம் இருக்கிற காரணத்தாலே இரும்பு விலை நிர்ணயித்து இந்தியா முழுவதும் இரும்பு விலை ஒரே தான் என்று நிர்ணயிக்கிறீர்கள். நான் கேட்கிறேன், நிலக்கரி விலையை நிர்ணயித்து இந்தியா முழுவதும் ஒரே தான் விலை.

என்று சொல்லிவிட்டால், மாநிலத்திற்கு மட்டும் போக்குவரத்து செலவு அதிகம் கொடுக்கவேண்டி வராது அல்லவா? ஆகவே உங்களுக்கு விருப்பமான பொருள்களுக்கு மட்டும் தனி மத்திய அரசாங்கத்தின் விலையை நிர்ணயித்துக்கொண்டு மற்றவைகளுக்கு விருப்பம் போல் விட்டுவிட்டால் ஒரு ஒழுங்காக ஒரு வரன்முறையாக இல்லாமல் போய்க்கொண்டிருக்கிறது.

அதே போல் நான் முன்பு பேசிய பெருமக்கள் இங்கே சுட்டிக்காட்டினார்கள். சுங்க வரியைப் பொறுத்தவரையில், வரியிலே இவ்வளவு என்று மத்திய அரசாங்கம் எடுத்துக் கொள்கிறது ஒரு மாநில அரசாங்கம் மத்திய அரசாங்கத்தினுடைய சார்பிலே அல்லது மத்திய அரசாங்கத்திற்காக வசூலிக்கின்ற வரியிலே 29 சதவீதத்தை வைத்துக்கொண்டு மீதத்தை எல்லாம் கொடுத்துவிடுகிறது. நான் மொத்தமாகச் சொல்கிறேன். மத்திய அரசாங்கத்தின் சார்பிலே வசூலிக்கின்ற வரிகள் அந்த அளவும் வசூலித்து எடுத்துக்கொண்டு மீதியை எல்லாம் மத்திய அரசாங்கத்திற்கு கொடுத்து விடுகிறது. ஒரு வரியிலே 29 சதவீதம். ஆனால் செலவில் மாநில அரசாங்கத்திற்கு 51 விழுக்காடு ஏற்படுகின்றது. வரவிலே 29 சதவீதத்தை மத்திய அரசாங்கம் ஒத்துக்கொள்ள, செலவிலே மட்டும் 51 சதவீதத்தை மாநில அரசாங்கம் ஏற்றுக்கொள்ள வேண்டுமென்று சொல்கிறபோது தேவையான மீதப்பணத்திற்கு மத்திய அரசாங்கத்திடம் கை கட்டி நிற்கவேண்டிய நிலை உருவாகிறது. அப்படி உருவாகுகின்றபோது இங்கேயிருக்கின்ற சிலருக்கு மனம் நோகுகிறது. மனம் நோகுகிறது, மனம் ஏன் நோகுகிறது என்றால் இந்தப் பகுதியிலே இருக்கின்ற மக்களுக்கு நான் தொண்டு செய்யவேண்டும் என்று நினைக்கிறபோது, அந்த நேரத்திலே அந்தப் பக்கமோ கை நீட்டவேண்டிய நிலையிலே இருக்கிறதே என்றும் நினைக்கிறார்கள். இந்த நிலையை மாற்றி அமைப்பது எப்படி என்பதற்கு இந்த மத்திய மாநில உறவுகளை பரிசீலிக்க வேண்டும் என்பதோடு, மாநிலத்திற்கு அதிக அதிகாரம் தேவைப்படுகிறது என்பதையும் நாம் கூற வேண்டும். சில இடங்களிலே நாம் பார்க்கிறோம். திறமையாளர்கள் தண்டிக்கப்படுகிறார்கள். திறமையாக காரியம் நடைபெற்றுக்கொண்டிருக்கிறது என்று சொன்னால், மேலும் மேலும் உனக்குத் தொழில் எதற்கு என்று கேட்கிறார்கள். மேலும் மேலும் தொழில் உனக்கு எதற்கு என்று கேட்கிறபோது, இவருக்கு மனச்சங்கடம் ஏற்படுகிறது. உதாரணமாக சென்னையிலே போட்டோ பிலிம் தொழிற்சாலை இருக்கிறது அதை விரிவாக்கம் செய்யவேண்டும் என்று சொன்னால் எங்களவே அங்கே நோட்டறள் ( ) இருக்கிறது. அனுபவப்பட்டவர்கள் இருக்கிறார்கள். நல்ல சீதோஷ்ண நிலை சென்னையில் இருக்கிறது. அந்தத் தொழிற்சாலையை விஸ்தரிக்கின்றபோது, சில கோடி ரூபாயில் பல கோடி ரூபாய் மதிப்புள்ள மூலதனத்தை அங்கே கொண்டு வந்து விடலாம். உற்பத்தியை அங்கே கொண்டுவந்து விடலாம். ஆனால் அதே நேரத்தில் என்ன செய்கிறார்கள். வேறொரு இடம், பின் தங்கியிருக்கிறது என்ற காரணத்தால், அது அங்கே கொண்டு போகப்படுகிற நேரத்திலே இங்கே திறமை தண்டிக்கப்படுகிறது. ஆற்றல் தண்டிக்கப்படுகிறது. அந்தத் திறமையும் ஆற்றலும் தண்டிக்கப்படுகிற நேரத்தில், மாநிலத்தில் இருப்பவர்கள் என்ன நினைக்கிறார்கள். நம்முடைய திறமைக்குக் கிடைத்த பரிசா இது என்று. மத்திய அரசாங்கம் இப்படிச் செய்யலாமா என்று சொல்கிறபோது ஒரு பெருமூச்சு ஏற்படுகிறது. இந்த பொருமல் ஏற்படாக்கூடாது என்பதற்காகத்தான் பஞ்சாப் போன்ற இடம் இருக்கிறது என்று வையுங்கள், அந்த பஞ்சாபிலே உற்பத்தி அதிகம். மேலும் உற்பத்தி செய்வதற்கு வழிவகை செய்து கொண்டே போகிறோம் என்று வையுங்கள் மேலும் மேலும் வளம் கொழித்துக்கொண்டே போகிறது என்று வையுங்கள். அவர்களும் என்ன நினைக்க வேண்டும் இந்தியாவிலே நானும் ஒரு பகுதி. நான் உற்பத்தி செய்ததை வைத்து என் மக்கள் நன்றாக வாழ்ந்ததற்குப் பிறகு இந்திய திருநாட்டுக்கே பொதுவாக கொடுப்பேன் என்று என்னால் இவ்வளவு தூரத்திற்கு நான் வந்துவிட்டேன். இவ்வளவு செழித்து சிறந்துவிட்டேன். நான் எதற்கு இனிமேல் மத்திய அரசாங்கத்திற்கு கட்டுப்படுவது என்று ஒரு மாநில அரசாங்கம் நினைத்தாலும், இந்திய ஒருமைப்பாட்டுக்கு ஆபத்து அந்நிலையிலே நான் வளர்ந்துவிட்டேன், கட்டுப்படமாட்டேன் என்று எண்ணக்கூடிய அளவுக்கு ஒரு மாநில அரசாங்கம் போய்விட்டால். நாம் இங்கே எந்நாள் வரை முடியாது. போலும் என்ற எண்ணத்திற்குப் போய் இந்திய ஒருமைப்பாட்டுக்கு விரோத

-மான சிந்தனை வந்துவிடக்கூடாது இந்த இரண்டுக்கும் இடையிலே நமக்கு என்ன என்ன அதிகார
ம் தேவை, அந்த அதிகாரத்தை எப்படி பரவலாக்குவதற்கு உள்ள முறையை எப்படி உரு
வாக்குவது என்பதற்காக மாநிலங்களுடைய முதலமைச்சர்களையும் பிரதமர் அழைத்துப் பேசி
இந்த இரண்டையும் பேலன்ஸ் செய்கின்ற வகையில் இந்திய ஒருமைப்பாட்டுக்கு உத்தரவாதமே இல்லா
மல் அந்தந்த வளர்ச்சிக்கு தடையே இல்லாமல் அங்கங்கள், நன்றாக இருந்தால் தான் தங்க
திகர் உடம்பு நன்றாக இருக்குமென்பதை மறந்துவிடாமல்
ஒரு அங்கஹீனர் ஆகாது
ஏற்ப வளர்ச்சி பெற்று அதற்கு ஏற்ப வலிவோடு இருந்தால் தான் உடம்பு
வலிவோடு இருப்பதைப் போல இருந்தால் தான் உடம்பு வலிவோடு இருப்பதைப் போல

மாநிலங்கள் செழுமையாகவும் செழிப்பாகவும், வளமாகவும் வலிவாகவும் இருந்தால்
தான் மத்திய அரசு பலமாக இருக்க முடியும் என்ற சொல்லுகிற அந்த ரீதியில்
அடிப்படையிலே, இந்த உறவை நிர்ணயிப்பதற்காக எல்லா மாநிலங்களுடைய
முதலமைச்சர்களுடைய, யூனியன் பிரதேசங்களை ஆள்கின்றவர்களை அழைத்து,
பாரதப் பிரதம மந்திரி பிரதமர் அவர்கள் பேசவேண்டும் என்று வலியுறுத்துகின்ற
இந்தத் தீர்மானத்தை ஆதரித்து வலியுறுத்தி காந்தி காமராஜ் தேசிய காங்கிரஸ்
சார்பிலே என் கருத்தை முடித்து அமர்கிறேன்.

4. OTHER PARTIES/GROUPS

ACTION OF COMMITTEE OF NORTH-EAST REGIONAL PARTIES' CONFERENCE

MEMORANDUM

RESOLUTIONS

1. The Constitution of India should immediately be amended to make it truly federal.
2. All other subject and except Defence, Currency, Foreign Affairs communications should remain with the States.
3. The Concurrent List of the Constitution should be deleted.
4. All resources accruing from all areas of the country should go to the respective States.

A commission should be appointed to assess the requirements of the Centre and fix the quantum of contribution to the centre by each State according to their capacity.

5. The President and the Governors should have no power to appoint or dismiss a ministry save in accordance with the will expressed by the Legislature.
6. Each State will have equal representation in Rajya Sabha and powers and functions of the Rajya Sabha should be increased.

ASOM JATIYABADI DOL

MEMORANDUM

The arrangement made under the constitution for distribution of power between the Centre and the States is improper and inconsistent with a true federal polity. Excessive and unfettered power has been given to the Centre over the States; so much so that the States, the federating partners, have now come to be treated as more vessals of the centre. Whatever little autonomy the States were left with has also been eroded through misuse of constitutional provisions by those in authority in the centre. The consequence is that the states are now unable to manage their own affairs without the centre's aid and approval, Developmental works and economic growth have suffered; feelings of ill-treatment, neglect and insecurity have led to aggravation of social tension. No wonder that all this has, over the years, given rise to increased conflicts, strains and stresses between the centre and the states. The need, under the circumstances, for a review of the centre-State relationships has long been overdue.

It is, therefore, highly welcome that the centre has not set up a Commission headed by Justice R.S. Sarkaria to make an in-depth study of the centre-state relations and to make recommendations for their improvement. The move has naturally aroused great expectations among different sections of the public; it is believed that the Commission's recommendations would be instrumental in bringing about a healthy and harmonious relationship between the centre and the States.

The Asom Jatiyabadi Dol, a regional Political Party based in Assam, has its own views and suggestions on the issue in question and, therefore, submit this memorandum to the Commission.

The Dol is of the opinion that to improve and ensure a better and healthy centre-state relationship adqeuate measures must be taken to remove the present sense of helplessness and consequent antagonism of the State against the centre. The States must be provided with more autonomy. They must be given more powers and resources to enable them to manage their own affairs and develop in accordance with the social, economic, linguistic and cultural needs of their perople. Provisions also must be made to secure the states against centre's undue pressure, interference and threat of dismissal of their governments. The fears and anxieties of the smaller racial and linguistic groups inhabiting the states concerning their identity and distinctiveness must also be allayed.

Although the Asom Jatiyabadi Dol firmly believes that nothing short of a 'total autonomy' could succour the states like Assam from the poor and pitiable plights they are now placed in, and thus establish a healthy, harmonious and satisfactory relationship between the centre and the states, It is well aware of the limitations of this commission. The Dol understands that to give 'total autonomy' to the states would require complete overhauling of several of the provisions of the Constitution. The whole concept of the centre-State relationship would then undergo a major change. Unfortunately no such major change can be expected from the recommendations of this Commission. The Dol, therefore, thinks it wise to refrain from submitting any suggestions dealing with 'total autonomy' of the states, and reserves the same for the future, to be taken up with a appropriate forum and in a appropriate time. As of now, it confines its suggestions to the possibilities of the present occassion, with the hope that the excercise of the Commission would at least lead the States one step nearer to fuller autonomy and help in lessening the present conflict and tension between the centre and the states.

Views and Suggestions

As hinted above, devolution of more powers and more autonomy to the states is imperative for any improvement in the centre-state relationships. This can only be done through amendments of the Constitution by way of additions, alterations, substitutions and repeals. The Asom Jatiyabadi Dol suggestes that :

1. Atricles 5 to 11 and other relevent provisions of the constitution should be suitably amended to establish a system of Dual Citizenship. Under this system a person shall be a citizen of the State in which he resides, and also a citizen of the country i.e. India. Provisions should be incorporated

empowering a state to grant some specific political and economic rights to its citizens which would be denied altogether or granted on difficult terms to non-resident of that state. This would help protect the historically recognised linguistic and racial minorities like the indegenous people of Assam and of the north eastern region from political, economic and cultural exploitation of the more dominant and adventurous groups and races of other states and countries. This would also remove the rears and anxities of these minorities as to their indentity and existence.

2. Article 81 which deals with the composition of the House of the People (Lok Sbbha) should be suitably amended to give better representation to the smaller states, if they are to feel themselves as equal federating partners of the union. At present, out of 525 members contributed by the states, as many as 360 (68·6%) are from the six bigger states, 120 members (22·9%) are fron five medium sized states, the other ten smaller states contribute only 55 members (8·5%). Such a lop sided scheme of representation can never promote smooth centre-state relationships. Therefore, to narrow down the gap between the bigger states and the smaller states the maximum and minimum number of members that a state can contribute to the House of the people should be laid down. The Dol suggests that no state shall be represented by more that 50 members and no state shall be represented by less than 10 members.

Similarly, the maximum number of members from an union territory shall be 10 and the minimum number 5.

3. Article 80 which deals with the composition of State (Rajya Sabha) should, for the same reasons stated above, be amended to ensure that every state is represented therein equally.

4. Articles 3 which empowers the centre to form a new State, to increase and diminish the area of a State, to alter the boundary or the names of a state without the concerned state's concurrence, and thus enables the centre to directly infringe nto the preserves of the states, should be suitably amended to ensure that the area and name of a State cannot be altered or changed without the express concurrence and approval of the State legislature concerned.

5. Article 249 which empowers the centre to legislate on subjects contained in the State List in the 'national interest', also enables the centre to directly encroach upon the autonomy of the state and, therefore, should be deleted.

6. Article 347 which gives power to the centre to change the official language of a state without the concurrence of the concerned state should, for the foregoing reasons, also be amended to ensure that the official language of a State cannot be changed without the express concurrence and approval of the state legislature concerned.

7. Article 153 which deals with the appointment of Governor of a State should be amended. The method of appointment of the head of the State Executive by the Union Executive is repugnant to the federal system. Experience has shown that nominated Governors connot be free from pulls and pressures of politics. Governors also have much to do with the present strife and tension between the centre and the states.

The Article should be redrafted to provide that the Governor, in the manner of the President, be elected by the State Legislature. Provisions should also be made to ensure that the Governor has no more powers than envisaged for the President of India under Article 78.

8. Articles 200 and 201 which empower the Governor of a state to withhold assent to Bills Passed by the State legislature and reserved the Bills for consideration of the President, should be amended to make it obligatory for a Governor to assent to a Bill passed by the State Legislature for any of the subjects contained in the State List, However, the Governor may refer a Bill which has been passed and subsequently reconsidered by the legislature to the High Court having jurisdiction if in his opinion such a Bill is against the provision of the Constitution. This would ensure supremacy of the State in the matters of its own domain.

9. Article 356 and 357 which empower the President to issue proclamation for dissolution of the State governments and the state legislature or both on the ground that "the government of the state cannot be carried on in accordance with the provisions of his constitution" should be deleted. As in the case of the centre, provision should be made, in the event of a failure of constitutional machinery in any state, for holding election and forming a new government. This would be in conformity with the federal prinicple.

10. Article 360 which empowers the President to make a proclamation on the ground that the Financial Stability or credit of India or any part of the territory thereof is threatened and enables the centre to give directions to any state to observe cannons of financial propriety, is an interference in the autonomy of the state and therefore should be deleted.

11. Article 248 which gives exclusive power in the centre to make any law with respect to any matter not enumerated in the concurrent of State List in inconsistent with the principle of federation. To provide more autonomy and more power to the States this Article should be amended to the effect that the legislature of a State shall have exclusive power to make any law with respect to any matter not enumerated in the union or concurrent Lists. That is to say, the residuary powers should be vested in the states.

Accordingly Entry 97 of the Union List should be transferred to the State List.

12. Law and order should be made the exclusive domain of the state and no interference from the centre should be allowed. Suitable provisions should be made to ensure that the Central Reserve Police and other police forces of the centre cannot operate in the states.

13. Much conflicts and strife between the centre and states do arise and have arisen in the region of finance. The distribution of resources between the centre and the states as provided in the constitution has resulted in the latter getting for less than their due. The machinations of the centre, over the years, in matters relating to income tax, excise etc. have also adversely affected the states. The method of inter-state allocation of tax resources and grant-in-aid has not helped in any way to rectify the regional imbalances in resources, nor has it been adequate to enable the states to fully discharge their responsibilities. Again non-statutory or discretionary grants and loans, too, have been used not for correcting regional imbalance but for discrimination on political grounds. These discretionary grants and loans have alslo enabled the centre to infringe into and take control of spheres, in which, under the constitution, the initiative and control should remain entirely with the states. It is of utmost necessity, therefore, that there should be adjustment and reallocation of financial resources between the centre and the states and between the states themselves.

The Articles relating to the distribution of revenues should be suitably amended.

(i) to provide for 314 of the entire revenue collected by the centre from all sources for allocation to different states.

(ii) to entrust the Finance Commission with the task of derermining the principle and the proportion for allocation of th s $\frac{3}{4}$ of the entire central revenue betweem the states.

(iii) to make the Planning Commission a statutory body free from the control of the Central Executive, and

(iv) to make the National Development Council also a statutory body in which both the centre and the states will have representation.

14. Article 289(2) and (3) which empowers the centre to tax property and income of the States in certain cases should be deleted, as it is also an encroachment upon the autonomy of the states.

15. Article 302 which empowers the centre to put restriction on trade and commerce and intervene within a state should be deleted on the same ground as above.

16. As things stand now, the state has virtually no say in certain assets belonging to it. Relevant entries of the Seventh Schedule should be suitably reformulated to empower the state to prevent wastage of assets (like the case of petroleum gas in Assam), and to determine the royalty on all mining/wasting assets.

In view of the assumption of power in several states by parties different from the one ruling in the centre, the problem of centre-state relationships has acquired a proportion of considerable magnitude. While the above changes in the constitution would certainly go a long way in improving that relationships, what is also required is a centain amount of tolerance and a high standard of political behaviour on the part of those in power in the centre. The Asom Jatiyabadi Dol sincerely hopes that, apart from constitutional changes, the Commission would also give stress on this moral aspect of the problem.

BHARATIYA JANATA YUVA MORCHA

Goa, Daman, Diu

MEMORANDUM

Let us first take the opportunity to welcome the Commission set up under your august chairmanship to this beautiful land of Goa and sincerely hope that this visit of yours shall pave the way for better Centre-State Relationship.

We acknowledge the fact that the purview of your Commission is limited to Centre-State relationship; however in the best interests of Centre-State relationship it is of paramount importance that Goa is given the status of fullfledged state.

It may be recalled that our late Prime Minister Pandit Jawaharlal Nehru had assured Goans that the distinct identity of Goans shall be preserved within the Constitutional framework of India. Today the stage has reached wherein Goa should be granted statehood and by the inception of your Commission the process of Statehood has been accelerated.

Economy

As per the latest studies Statehood to Goa is an economically viable solution. If granted the statehood Goa shall be one of the states that shall be drawing proportionately lesser Central assistance compared to many of the existing states. With abundant mineral resources its, export potential, growing tourism and natural fisheries, Goa has an absolutely strong economic base. Our Industrial potential can be further increased if the powers regarding various industrial policy decisions are vested with local authorities which may be done on the attainment of statehood. Thus granting of statehood can accelerate the pace of industrialisation in Goa. Thus making it more economically viable and lessening burden to the Centre.

Educational Field

In the educational field the process of having Goa University has already begun, with about 25 colleges including all important professional colleges being affiliated to the same. However in order to have an agricultural varsity a technological institute the powers conferred on a Union Territory are insufficient. As such statehood can grant us sufficient powers to have all these institutes on Goan soil.

Social and Cultural Field

Our distinct identity has to be preserved and it shall add glittering colour to the entire necklace of Indian states if and only when Goa shall be granted statehood. As such a strong recommendation for the same in view of better relationship with the centre shall be of much assistance.

Language

The spoken language of Goan masses is Konkani. Due to foreign repression Konkani could never get its due and honourable place in Goa. Yet, after independence, Konkani has progressed a lot and its phenomenal progress has at last culminated into its recognition by the Sahitya Academy in 1975. Konkani has a distinct history and is widely spoken throughout South India. With a great historical background the language rightly boasts of earliest grammer and printing press amongst all other Indian languages. Thus statehood on linguistic basis can be decided in case of Goa by giving Konkani its Official status and acknowledging it as the sole official language of this territory.

Daman and Diu

The future of these two overlying pockets of Goa may be independently decided as its association with Goa is purely accidental and the territories cannot be administered from Goa which is miles apart from these places. All in all we feel Goans during old colonial regime were treated as third rate citizens and had therefore high expectations after attaining freedom but unfortunately we are yet to be treated as first rate citizens. This has given rise to despair and frustration against the Centre which may be washed off by granting fullfledged statehood and thus pave the way for better Centre State relationship.

Awaiting judicious right and prompt recommendations.

DEMOCRATIC SOCIALIST PARTY

MEMORANDUM

"We are in the midst of new movement for the conquest of self-government. It finds its main impulse in the attempt to disperse the sovereign power because it is realised that where administration organisation is made responsible to the actual association of men, there is greater chance not merely of efficiency but of freedom also". (Harold J. Laski—The Foundations of Sovereignty—p. 243).

Part I of the Constitution of India deals with the Union and its Territories. Article I describes name and territory of the Union, as India, that is, Bharat shall be Union of States. jurists, political scientists, political parties and the judges of the Supreme Court of India are of the unanimous view that India is a 'Federation of States'.

The most important requirement of a federal constitution is the distribution of the legislative power between the Union and the States. The Union and States should be independent of each other in their respective spheres. Both the Union and States derive their powers from the same source, that is, the Constitution. The well-known authority on constitutional law Mr. K. C. Wheare defines the Federal principles as : "the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent". Mr. A. V. Dicey, the well-known authority in his treatise 'Law of the Constitution' defines the essence of developed federalism as, "the supremacy of the Constitution—the distribution among bodies with limited and coordinate authority of the different powers and government—the authority of the courts to act as interpreters of the constitution". He further stated, "the distribution of powers as an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the national government and the separate States. The powers given to the nation form in effect to many limitations upon the authority of the separate states, and as it is not intended that the central government should have the opportunity of encroaching upon the rights retained by the States, its sphere of action necessarily becomes the object of rigorous definition." Federalism postulates the distribution of governmental authority legislative, financial, executive and judicial between the union government and the State Governments.

The subject of Union-State relations has now acquired vital importance and has become crucial to the preservation of Unity and Integrity of India within the framework of the Constitution. The integrity and sovereignty of India must, however, emerge from a conscious effort towards harmonisation of the distincet liguistic, ethnic and cultural groups that inhabit our great country. Unity must mean harmony. It must reflect the totality of the multi-facet personality of India. Parliamentary democracy with a federal base can alone provide such a meaningful structure. The struggle for freedom from colonial bondage united them. That golden thread of unity created by freedom struggle still runs throughout the length nad breadth of India.

For the last two decades the States were making demand for greater powers, for making "States Autonomy" (the basic foundation of federalism) real, meaningful, purposeful and effective. Since the Congress Party was in power at the Union and the States, though there were muffled voices about federalism within the Congress Party, the State Governments were practicallly silenced. And as a result of party discipline, the State Governments had to carry out whatever the Union Government decided for them—including the abrupt and unceremonious change of Chief Ministers and the imposition of President's Rule even in Congress ruled States, (including the dissolution of elected legislatures). Then Janata Party came to power. It dismissed State Governments of the Congress Party and dissolved the State Legislatures. The Congress Party and Congress leaders suddenly realised that our Constitution is a federal one. But when the Congress Party was voted to powers in January 1980, the principle of federalism were given a go by and the Congress Government at the Centre repeated the performance of the Janata Party by dismissing several State Governments and dissolving the elected State legislatures.

The monopoly of the power of Congress Party has come to an end. Different political parties and regional parties are in office in different States and at the Union. This is most likely to be the future pattern of Indian Polity. Hence the relations between the Union and State have now assumed unprecedented significance and importance. Unless this aspect of the problem is properly understood in terms of

Indian reality and political sociology of changing political panorama of Indian life the forces of Unity and Integrity cannot be strengthened.

As soon as a demand is raised for a review of Union and State relations, some people, inspired or otherwise, become hysterical and argue that any review would affect national intergrity and unity.

It is relevant to point out that not long after commencement of the Constitution, the States Reorganisation Commission, had occasion to go into some of these questions. The report of the Commission was submitted in 1955; and some of the discussions in the report, more than a quarter of a century ago, indicated that the present inadequacies could be partly visualised by perceptive observers even in those days. Paragraphs 181 and 182 at page 52 of the Report read as follows :

181. "It is no doubt true that all the States of the Indian union are now dependent in varying degrees on central aid for development expenditure. However, we must not lose sight of the fact that excessive dependence on the Centre detracts from the federal principles since a real division of political power is not possible without an adequate separation of financial powers and resources. The balance of federal Union is bound to be disturbed if there are amongst its constituent units poor relations or mendicants, particularly if they are inclined to be extravagant". "If a federal system with any real independence in the State is to continue", says Sir Jhon Lathan, formerly Chief Justice of the Australian High Court, "the States must have financial resources under their own control reasonably adequate to their responsibilities".

182. "We are conscious of the fact that, with the growing need for administrative cooperation between the Central and State Governments. partial dependence of the State Governments, upon payments from the Centre, and the fact that the Central Govt. by use of the system of conditional grants, frequently promotes development in matters which are constitutionally assigned to the States, the concept of federalism is now everywhere undergoing a change. How much importance is to be attached to the Inter-State cooperation rather than to the strictly constitutional aspects of federalism will depend on the needs and circumstances of the time and the context in which this problem is being discussed."

There is no doubt that the time and circumstances have radically changed. Even in 1967 when the unfolding of events had not reached a critical stage, the study team of the Administrative Reforms Commission, on Union-States relationship headed by M.C. Setalvad, made observations about the anamalous relationship between the Union and States. In the introduction to the Report the Study Team pointed out :

"It is well to recognise that the politicol facts of the Indian scene have played a major role in the development of attitudes. Where a single party has control over affairs at the Centre as well as in the States an alternative and extra-constitutional channel become available for the operation of Centre-State relationship. In practice this channel has been very active during Congress Party rule and has governed the tenor of Centre-State relationships. The political network connecting central and State leadership was used amply to resolve conflict and case tension or even to postpone consideration of incovenient issues. In the process the Constitution was not violated, at least not deliberately or demonstrably, but often by passed. Besides, political rather than administrative considerations determined decisions and the Centre's relationship on the personality of its political leaders and their equation with the central leadership. Constitutional provisions went into disuse and disputes were settled in the Party rather than aired through open constitutional machinery."

The Study Team had only discussed the problem partially. The terms of reference confined the Team to administrative relationships. The political reality was much more disturbing. Ten years before this study was made a communist government had been returned to power in Kerala in a general election. It disturbed the complacency of the Union Government to such an extent that the basic federal character of the Indian Polity was lost sight of. A short-Shrift through improper use of the Union Government's powers partially restored the sway of the Congress Party in Kerala. While the approach to States ruled by the Congress party in certain cases were extra-constitutional as pointed out by the Setalvad Study Team, approach to States ruled by the opposition also unfortunately became extra constitutional in certain matters. The Union Government under the Constitution enjoys enormous powers to control the functioning of the State governments. Partisan and manipulative exercise of the administrative, legislative and financial powers given under the Constitution could always enable the Union Government to destabilise any State administration. Such instances were not rare. But there was no guarantee under the Constitution to prevent such manipulative exercise of power. State were completely helpless, if as a result of divergence in political views the Union decided to use the levers of power to undermine the effectiveness of such State governments. In the long run the national integration becomes the victims of such partisan approach. This situation warrant appropriate changes in the Constitution so that the constitutional structure itself provided for a healthy inter-play of political forces in a system which is bound henceforward to be multi-party in character.

Setalvad Study Team recognised the need for adjustments more than 15 years ago when the problem had not assumed such disturbing proportions. In its introduction to the Report the Team commented :

"From the constitutional angle the situation was abnormal. As a result of bypassing normal constitutional processes a habit of settling issues through extra-constitutional means grew and sufficient experience and a proper climate for settling them through the regular process were not developed. The emergence of non-Congress governments in the States accordingly forced the problem to the forefront for the earlier devices are no longer available."

The study team further mentioned

"In a few years as this experience is assimilated difficulties presented by its sheer unprecedentedness should be gradually solved by proper adjustments in response from the body politic."

The political response in subsequent years did not reveal any intent to allow the federal machinery to adopt itself to the changing political situation. The compulsions of socio-economic planning against the background of alarming population growth, growing demand for employment, absence of social security measures in the face of continuous price rise, have further complicated the position. The complete control exercised by the Union Government over all aspects of economic activities, gives it a primacy & status, which is not consistent with their responsibilities given to the State governments under the Constitution. It is this imbalance which needs to be redressed if sustained socio-economic growth is to be ensured.

Shri B. N. Rao, Constitutional Adviser to the Constituent Assembly in the introduction to the first edition of the book in Constitutional Precedents (Second Series) wrote :—

"The Weimar Constitution of Germany is representative of the numerous European Constitutions that cropped up soon after the First World War and contains various instructive provisions. Acclaimed at the time as one of the best efforts at Constitution making it failed to fulfil any of the great expectations of its framers. Instead, it has served to be at once a lesson and a warning that the success of a Constitution depend, not upon the excellence of the written instrument, but upon whether it is suited to the genius of the people for whom it is made."

Some of the intellectuals have expressed apprehensions that if there is to be a further devolution of powers from the Union to the States, Union might become weak and if the reactionary forces in the States get hold of power the Union would feel helpless to deal with such a situation. These apprehensions felt by these very sincere scholars is based on a false presumption that the Union is likely to be more progressive than the State governments. It may be some of the regional parties which are now emerging can be reactionary but not all. In fact some of them are more a protest movements rather than political instruments. With all the enormous powers the Union wield under the Constitution if a reactionary party captures power at the Centre then the very Constitution can be used as Hitler used Weimar Constitution. The strength of the democratic institutions lies in the consciousness of the democratic forces. The capitalist path of development now being followed by the Congress (I) in total violation of and utter disregard to the objectives stated in the Preamble and Directive Principles of Constitution at the Union level–concerntration of economic power, growth of monopoly setting into motion the forces of anti-growth and stagnation, startling economic disparties, unemployment, uneven economic development (all results of capitalist path of development) are the real disintegrative forces of Indian polity resulting in uneven economic development of various regions and creating a colonial economic relationship between one part or region or State with other parts of India. To protect and strengthen the unity of Indian political forces have to be generated to revesre this economic process and initiate necessary corrective steps. In that context the States would certainly play an important role. Hence a review of Union and State relations is called for.

Only harmony between the Union and the States, based on the foundations of principles of federalism would further lead to a greater unity while preserving the dignity and freedom of action within a given sphere of the States. There cannot be a strong India without well developed and strong States. With respective spheres of authority clearly marked out, strong States would add strength to the Union and weak States would only weaken the Nation.

In the words of Prof. Sawyer : "The sub-continent of India was another area which by reason of size, population, regional (including linguistic) differences and communication problems presented an obvious federal situation."

The 1935 Govt. of India Act, which came into force in 1937, provided certain basic features of federalism. The Constituent Assembly in framing the Constitution of India, followed to a large extent, some of the basic features of the 1935 Act. Thus Indian Constitution was meant to be a federal one. But in the working of the Constitution of India some of the unitary features have emerged dominantly as a result of one-party rule.

The present position is as was stated by Shri Rajamanner's Committee :

"Though the Constitution set up a federal system, it must be admitted that there are several Provisions which are inconsistent with the principles of federalism. There are unitary trends and in the allocation of powers, there is a strong bias and tilting of the scales in favour of the Centre. In a federation, the national and the State government exist on the basis of equality and neither has the power to make inroads on the definite authority and the functions of the other unilaterally. In India, however, the national government is vested with powers on certain occasions to invade the legislative and executive domain of the State. There is a theme of subordination running right through the Constitution. There is a large scope for the Centre to intrude into the State affairs and thus affect the autonomy of the States. There are certain provisions in the Constitution, which appear to confer on the Union Government supervisory power over the States even in well-defined and specified matters which are exclusively in the State field."

Hence the need for review Union-State relations has become imperative and the appointment of Sarkaria Commission is itself an unambiguous recognition of the need for such a review.

But the way the Commission is constituted and the terms of reference are formulated without consultation with the States, would certainly make one feel that the Union Government is not keen about a purposeful review of Union and State relations but this Commission is meant to act as a

diversion as the British Royal Commissions. The motives of the Central Government do not seem to be honourable.

The relations between the Union and States can be broadly classified as follows :

(1) The Legislative, (2) the Administrative, and (3) the Financial Relations. It is beyond dispute that the subjects such as defence, foreign relations, currency, economic planning, banking, insurance, oil fields and minerals, exports and imports should be exclusively under the control of the Union Governments. A committee must go through all the three lists *i.e.* Central, State and concurrent list and make a proper rearrangement.

Article 370 : All attempts to amend this Article should be prevented. Special status of Jammu and Kashmir should not be disturbed.

Legislative Relations

Article 31-C and the Directive Principles of the Constitution

Under Article 31 C the Parliament can pass law to give effect to the policy of the State for securing all or any of the Directive Principles laid down in Part IV of the Constitution. If there is a declaration that the law is meant for implementing such policy, such a law will be valid notwithstanding any abridgement of Article 14 or 19. If a legislature of a State seeks to pass any law for the purpose of implementing Directive Principles of Constitution, in terms of Article 31 such law has to be reserved for the consideration of the President and his assent. Until the law receives the assent of the President it cannot come into force. This is an anomalous situation. The State legislatures should have same privilege and power as the Parliament in this regard. Consideration and assent of the President should not be required. Article 31 C should be suitably amended to enable the State legislature to make laws for implementation of the Directive Principles of Constitution without delay.

Entry No. 97 Union List

1. **Article 248—Residuary Powers :** The residuary legislative power is vested in the Parliament, and the State legislatures cannot exercise residuary powers, which they could under Section 104 of the Government of India Act 1935. The American and the Australian constitutions provide for the exercise of residuary powers by the States. It will be in the interest of the smooth functioning of the Indian polity, having a regard to the unity in diversity, if the residuary powers are allowed to be exercised by the States.

Except in times of war and national peril the residuary powers of legislation conferred by Article 248 and residuary power of taxation conferred by Entry No. 97 of the Union List should be vested in the State Legislatures. Hence Article 249 should be accordingly amended.

Directions which can be given in pursuance of the executive powers of the Union to the States should be given only in consultation with the Inter-State Council under Article 256.

Article 249 : Parliament to make laws in respect of matter specifically included in the State List :

Article 249 can be invoked with the aid of the resolution passed by the Council of States by two-third majority that it is necessary or expedient that the Parliament should make laws. This is in total violation of the basic principles of federalism. The Union can easily invade the jurisdiction of the State, if the political party ruling at the Centre can command two-third majority in the Council of States. Hence this Article should be deleted.

Article 252 : If two or more State legislatures desire that the Parliament should make law relating to the subjects in List two, the Parliament can pass law regarding subjects in List No. 2 and the Parliament alone will have the power to amend but not the State Legislature to which it applies.

The State Legislature which had passed a resolution enabling the Parliament to make laws should have the power to either amend or to repeal. Hence Article 252 should be suitably amended.

Article 200 : Under this Article the Governor can reserve the Bill passed by the legislature of the State for the consideration of the President and the Governor shall not assent to any Bill and is bound to reserve for the consideration of the President if that Bill in his opinion, if it becomes law, derogate from the powers of the High Court as to danger its position which that Court by the Constitution is designed to fill. Except the Bills of that nature that affect the powers of the High Court, the Governor should not have the discretion to reserve the Bill for the consideration of the President. The Article 200 should be suitably amended. Under Article 200 no time limit is prescribed for Presidential consideration. Any Bill can be put in cold storage. As the President is bound to act under Article 74 on the advice of Council of Ministers and since he has no options at all the legislative powers of the State can be easily interferred with by the use of Presidential veto. In other words both in theory and practice the legislative process of the State legislature in certain respects are subordinate to the supremacy and subject to political convictions or prejudices of the Union Executive. Most Governors owe their loyalties to the ruling party at the Centre as most of them are party men or obliged to the Party in several ways. They are always chosen mainly to watch the political developments or even to manipulate developments some time. Hence it is very difficult to accept that the Governor's act on the advice of Council of Ministers of the State. There had been occasions when even some Congress ministers in States used to feel exasperated at the indifference of the Centre, regarding bills passed by their respective legislatures and used to remark 'save us' from Delhi socialism'. These bills mainly dealt with welfare measures which were far more progressive than the legislation initiated by the Union Government. When a State legislature passes a bill it need not be sent for the assent of the President. If there is any violation of Constitution judiciary can deal with the matter, instead of allowing a political judgement of political prejudices to prevail. Hence this article should be amended. Speaker's certificate that the Bill had been passed should be enough for the law to come into force

or the Governor should act on the advice of the Council of Ministers as the President does under Article 74.

Emergency

If the President is satisfied that grave emergency exists and the security of the country or any part there of is threatened by war or external aggression or internal disturbances he may declare emergency by proclaimation. Thus there are two types of emergency (a) External, (b) Internal. While the Union Government should have the power to declare external emergency, the provisions regarding internal emergency are to be formulated in the light of the experience of emergency in 1975.

Financial emergency under Article 360 should be promulgated only after the matter is placed before the Inter-State Council.

Article 360 has not been invoked so far. Financial instability can be the result of mismanagement of economy by the Union Government and in such a case of emergency the States pay the penalty. This is an anmolous position regarding the financial emergency. Hence placing the proposal for financial emergency before the Inter-State Council is aboslutely necessary.

President's Rule

Article 356 and 357—The President on the receipt of the report from the Governor of the State, or otherwise when he is satisfied that the situation has arisen in the State, in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution can invoke Article 356 and 357, dismiss the State Government and even dissolve the legislature (optional) and assume all powers to himself.

It is the Government at the Union level that assumes all powers. And it is the Union Govt. that decides whether to impose President's Rule or not. In actual practice the governors are told by the Home Ministry when they should write the reports and how they should write the report. The governors are helpless in these matters, as they continue to be governors at the 'pleasure of the President (this only means the pleasure of the Prime Minister). Under Article 356 as it stand, even the governor's report is not necessary, it is only the satisfaction of the President that is necessary; in other words it is the subjective satisfaction of the Prime Minister who heads the Council of Ministers. It is both a tragedy and a force that the State Governments and State Legislatures owe their existence to the pleasure or the whims of the Prime Minister.

It may be of interest to know that historically the President's Rule was imposed for the first time (after Constitution came into force) an 21st June 1951 in Punjb. Even since that day till today the President's Rule was clamped about 67 times in 21 States, excluding the Union Territories. In the scheme of the Constitution the Council of States and the President are the custodians of the intrests of the States. But since the President has to act on the advice of the Council of Ministers under Article 74, the President is reduced to a ruber stamp and in effect it is the Prime Minister and the Council of Ministers who take decisions.

If the President's Rule becomes inescapable it should be imposed only with the approval of both the Houses of Parliament and in consultation with the Inter-State Council. And the elections should be held within 3 months from the date of imposition of President's Rule. The existing government should be allowed to function as a care-taker government.

If the violence and internal disturbances are of such magnitude that fair and free elections could not be held, the President's Rule can be prolonged with the approval of both Houses of Parliament. The Inter-State Council should be invariably consulted. The law should be sutitably ammended.

Article 365 is no less obnoxious. If any State Govt. fails to comply with or give effect to any direction given in exercise of executive power (by the executive), Article 365 would enable the President to invoke Article 365 and impose President's Rule. Here again it is only the judgement of the political executive and not the result of determination by the judiciary. Hypothetically if the directions given by the Union Executive are themselves obnoxious or violate rule of law, is a State Govt. still bound to carry out the directions? Except at the time of war, at other times any direction issued should satisfy the test of public interest and a State Govt. cannot be compelled to carry out the directions given by the Union Executive which can even be 'malafide' sometimes. This Article itself was incorporated eleven days before the Constitution was finally adopted by the constituent Assembly. This is obviously an after thought. This article should be deleted.

Finance

The primary sources of public income are—(1) taxes, (2) Domestic Borowings, (3) Economic surpluses generated by Public sector undertaking. Certain revenues are collected exclusively by Union Govt. These are transferred to or shared with the States. The Fince Commission set up under Article 210, advises the President in the matter in which these revenues should be shared. But however, a susbstantial part of the financing by the Govt. of India is done under the enabling provisions of of Article 275. The Finance Commission has no say in this matter.

During the last 30 years, more tha 60% of the budgetary funds from the Union to the States were in the form of Plan and discretionary assistance and only 40% of funds were transferred in pursuance of the recommendations of the Finance Commission-appointed from time to time. These funds constis tuting 60% of transfer were either directly or indirectly within the jurisdiction and puryiew of the Planning Commission.

The central taxes which the States are entitled to share together accounted for about 55% of the taxes raised by the Union and out of these 55% the States' share was about 45%. The non-statutory grants (Plan and discretionary) were to be decided on the year to year basis when the annual plans were

finalised. Thus it is the Planning Commission which has no statutory authroity that decided the major share of the funds transferred to States and not the Finance Commission which is a statutory body. The Govt. of India can play havoc with the State Govts. by utilising discretionary grants. This has political overtones. Therefore the National Development Council every year should formulate general principles for distribution of grants-in-aid and the deficits in the State budgests must be made good by the Govt. of India, by distributing these grants in an appropriate manner. And such deficits that arise in the State budgets, as a result of developmental programmes which are part of the planning to generate productive wealth and approved by the National Development Council and Planning Commission, should be treated as deficit in the centra budget of the Govt. of India. Such developmenta programmes should be given recognition in the Con stitution. The Constitution should be suitably amended for this purpose. According to Prof. Wheare, one of the essential requirments of federalism is that Union and State must each have under its independent control financial resources sufficient to perform its exclusive functions. The financial position must be adequate as well as elastic according to the division of financial resources and the tax structure. The resources for raising funds available to the States are practically inelastic and comparatively very inadequate. In the context of developmental plans and efforts to reduce uneven development and disparities the States are in need of increasing resources. The Union Govt. apart from the resources available as per provisions of the Constitution has the facility of foreign aid and recourse to deficit financing. These two avenues are denied to the States. If the States have to depend totally on Union Govt. for financial resources, the federal state would end up as a unitary state. This is the danger inherent in the situation. There should be a complete review of all matters relating to the fundamental issue, that is the division of national financial resources between the Union and the States in order to maintain and protect the federal nature of the Indian polity and the financial strength of States' finances. For example it may be mentioned that customs duties, export duties and corporation taxes should be included in the divisible pool. Regarding profits earned by Govt. of India on sale of commodities such as petroleum, coal etc. relating to which the Govt. of India has exclusive trading rights and right to fix prices, what are called administered prices, the States should have a share and the Finance Commissio. can prescribe the principles of sharing.

Corporation Taxes

Clause 6 of Article 366—Corporation Tax means any tax on income so far as tax is payable by companies. In pith and substance Corporation Tax is a tax on income but this is not included in the divisible pool. Thus Corporation Tax should also be treated on the same footing as income tax. Customs and export duties should also be compulsorily distribued between the Union and States. Tax on capital values of assets of individuals and companies should be within the divisible pool.

Article 272 should be amended to make the division compulsory. As the sharing of basic excise duties between the Union and the States as it stands today is discretionary and not mandatory. The additional duties and excise on goods of special importance (Act 1957) authorise the Parliament to impose certain duties and excise on specified goods namely sugar, tobacco, cotton fabrics, rayon, artificial and woollen fabrics produced or manufactured in India and these goods were declared to be of special importance in Inter-State trade and commerce for the purpose of Central Sales Act 1956. While it is true that the Govt. of India has assigned these additional duties to the States the rider in the Act that the State would preclude from getting any part of the proceeds of the additional duties from the Govt. of India if any State imposes a tax on the sale of these goods. This rider prevents the States to impose sales tax on a number of commodities or they should lose the benefit of additional duties of excise.

Under statutory devolution of resources not less than 50% of tax revenues of the Central Govt. should be transferred to the States. In 1982-83 budget such statutory devolution is only 25%. That is why to achieve this purpose the above changes are suggested.

The surcharge on excise duties and income tax should also be shared.

Grants

There are two types of grants (a) grants-in-aid which are statutory grants under Article 273 and 275, (b) non-statutory or discretionary grants.

Article 282 : empowers the Union or State to make any grant for any purpose when it falls outside the area of legislative authority. All grants for plan schemes to considerable extent are discretionary under Article 282. These discretionary grants have overwhelmingly outstripped the statutory grants recommended by the Finance Commission and they have reduced the position of States to that of supplicants for central assistance. Discretionary grants will today range between 71·3% to 88%. These discretionary grants naturally fluctuate depending upon the Centre's financial position. Therefore, the position of the State becomes nebulous and since dependence on the Centre becomes more pronounced in a federal structure while different parties may come to power in different States it would be better an independent body like the Finance Commission lays down the principle even with regard to the discretionary grants without allowing discretionary grants to be used for political manipulations.

Redistribution of Entries in the different lists lincluded in the Seventh Schedule

8. (i) Entry nos. 82 to 92A of the Union List enumerates the taxes that can be levied by the Union Government. Some of these taxes should be justifiably within the Union List. For instance, taxes on income (excluding agricultural income), customs and export duties. Duties of excise on manufactured goods, corporation tax, taxes on transactions in stock exchanges and future markets, Rates of stamp duty on various commercial transactions as enumerated in Entry 91. Such taxes when imposed affects the overall economy. Therefore, they are basically Union functions.

(ii) There is, however, no justification for including the following taxes within the Union List.

(a) Taxes on capital value of land and building in rural and urban areas (Entry No. 86).

(b) Estate duty in respect of land and buildings in rural and urban areas (Entry No. 87).

(c) Duties in respect of succession to property (Entry No. 88).

(d) Terminal taxes on goods and passengers carried by railway, sea or air (Entry No. 89).

(e) Taxes on the sale or purchase of newspapers and on advertisements published therein (Entry No. 92).

(f) Taxes on sales or purchase of goods other than newspapers (Entry No. 92-A).

(iii)(a) Planning, development and administration in respect of urban and rural areas is a State function. Any duties or taxes in respect of land and buildings in the urban and rural areas should normally be levied and collected by the State. There is absolutely no rationale in including these items in the Union List.

(b) Terminal taxes are imposed for the benefit of the local bodies. Every Metropolitan authority has to bear additional civic responsibilities whenever large number of people arrive or large quantities of goods are delivered within their jurisdiction. The strain on civic facilities on account of continuous flow of men and materials justify imposition of taxes which can compensate the local bodies for the extra effort they have to make on this account. While taxes on freights, and passengers can be levied by the Union Govts. terminal taxes should in all fairness be levied by the State Governments and should be collected by the Union Government.

(c) It is not clear why sale or purchase of newspapers should be put in a special category and brought within the Union List. Tax on sales or purchase of any goods should be within the State List (Entry No. 92).

(d) Entry No. 92A introduced under the Constitution (Sixth Amendment) Act, 1956, was an ill-conceived measure. Through a reference to 'Inter-State trade or commerce' an attempt was made to deprive the States of its rightful claims.

Distribution of Revenue between the Union and the States

9. (i) There is no justification for levy of duties by the Union when the Duties are collected and appropriated by the States. Under Article 268, the States are discharging this function at present. The proceeds are very small. Furthermore, no State will impose duties which will be a disincentive to location of industries in the State. Having regard to this, Entry No. 84 in the Union list and Article 268 should be amended so as to empower the States to levy duties enumerated in Article 268.

(ii) Article 269 should be amended. Taxes and duties, as pointed out in para 8 (ii) above, because of their very nature, should rightly belong to the State List. This will call for modification of Entry Nos. 86, 87, 88, 89 and 92 and transfer of the items mentioned in para 8 (ii) to the State List. Entry No. 92A should be deleted.

(iii) Article 270 should be amended so that "taxes on income" include corporation tax. Substantial amounts are realised by way of Corporation Tax and this amount has been kept out of the divisible pool without any justification whatsoever.

(iv) Parliament has been empowered under Article 271 to increase any of the duties or taxes referred to in Article 270 by a surcharge for purposes of the Union. A surcharge is normally imposed to meet a special situation. Normally occasion for such an imposition should not arise. Since imposition of such a surcharge may affect the financial interests of the States, approval of the Inter-State Council should be necessary in such cases. This will call for amendment of Article 270.

(v) The States' share of Union Duties of Excise should not be less than 50 percent of the proceeds. Article 272 should be appropriately amended.

(vi) Article 274 provides for prior recommendation of the President in respect of bills affecting taxation in which States are interested. Since the President gives recommendations only on the advice of the Union Council of Ministers, he has no special role to play in this regard. This Article therefore requires amendment. The recommendation referred to in Article 274 should hence forward be obtained from the Inter-State Council. The money bills which propose to vary any tax or duties in which the States are interested should require concurrence of the Inter-State Council. Article 274 and 109 should be appropriately amended.

(vii) The ceiling provided in Article 276(2) should be deleted.

Central Sales Tax

There are many defects in Central Sales Tax Act 1956, preventing State legislatures from imposing sales tax on commodities, which are declared by the central laws as commodities of special importance for inter-State trade and commerce.

(viii) Sales tax should be exclusively a State subject. This is the only elastic source of revenue for the States and curtailment of this power by earlier amendments to the Constitution deprived the States of substantial revenues. Article 286 should be amended. The restrictions on the States jurisdiction through Constitution (Sixth Amendment) Act, 1956 should be done away with. Articles 286(2) and 286(3) should be deleted. In case of any Inter-State dispute in this respect, the Inter-State Council should discuss the matter and settle the issue. The States can also enter into either bilateral or multilateral agreement with each other to sort out administrative problems arising out of this matter.

(ix) Article 287 should be suitably amended. It is not clear why Railways which consume substantial quantity of electricity should be exempted from payment of taxes on electricity. While Govt. of India offices may be exempted from payment of such taxes,

but there is hardly any justification to exempt commercial operation of the Union Government from payment, payment of electricity duty. This is another instance where the bias against the States are so obvious. While the Union enjoys all the exemptions as enumerated in Chapter I of Part XII of the Constitution, the privilege extended to the States under Article 289(1) is withdrawn in the next clause namely Article 289(2).

(x) For calculation of net proceeds of taxes in the divisible pool, cost of collection should be determined and certified by Comptroller Auditor General, subject however to a ceiling to be determined annually by the Union Government in consultation with the States. This is essential to prevent wastage of resources through massive expenditure on administration.

(xi) In an emergency the State Governments should have the authority to obtain ways and means advance from the R.B.I. subject to future adjustments. "Emergency" will mean natural calamities and internal disorders.

(xii) Borrowing by States require approval of the Union Government. The principles and quantum of such borrowing including the share of the States should be decided by the Union Government in consultation with the State Governments. The policy of the Union Government in this regard should be placed before the Inter-State Council every year. Final decision should be taken by the Union Government having due regard to the views of the State Governments as expressed in the Inter-State Council.

Inter State and Intra State Trade

Article 322 empowers the Parliament to impose restrictions on trade and commerce not only relating to inter-state trade but also intra-state trade in public interest. There is no point in empowering Parliament to impose restrictions on intra-state trade. It is an exclusive sphere of the States. Trade and Commerce are in Entry No. 26 of the State List but it is subject to Entry No. 33 of the concurrent list. Entry No. 33 of the Concurrent list is as follows :

Trade and commerce in, and the production, supply and distribution of :

(a) the products in any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) Foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates; and

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute.

While there may be force in the contention that production, supply and distribution of certain products of an industry which may be of vital interest connected to defence or integrated planning may be under the jurisdiction of the centre it is not necessary to subject the power of the State legislature to that of Parliament relating to trade and commerce in general. Therefore Entry No. 33 of the Concurrent List will have to be suitably modified.

Clause B of Articles 304 uses the expression reasonable restrictions relating to the power of the legislature of a State whereas Article 302 uses only the expression 'restriction' without being qualified by the word 'reasonable'. In article 302 restriction must be qualified by the word 'reasonable'.

Under Article 304 no bill or amendment for the purpose of imposing reasonable restrictions on the freedom of trade and commerce by the legislature can be introduced without the previous sanction of the President. Such previous sanction may be necessary in relation to inter-state trade but it would not be necessary when the State legislature has to deal with intra-state trade. If the restrictions imposed by the State Legislature are not reasonable and not in public interest the High Court or the Supreme Court are empowered to strike down the law. The previous sanction of the President cannot render invalid law valid. Hence the proviso to Article 304 should be committed.

Article 307 contemplates the appointment of an authority for carrying out the purposes of Article 301, 302, 303 and 304. It is similar to inter-state Commission in the USA. It would be desirable to appoint such a commission to deal with such cases in the course of inter-state commerce rather than leaving it to the political executive of the Union.

Public Financial Institutions

Public financial institutions such as IDBI, IFCI, U.T.I., L.I.C. and the banks have played a vital role in the economic development of India 'growth of concentration of economic power, growth of monopoly—private sector itself. The financial foundations of private sector within the framework of mixed economy are based on the financial institutions over which only Union Govt. has a control and the States Govts. have no say at all. To make only the case of IDBI as on 30th June, 1981 outstanding with IBDI's borrowing from the national industrial credit (long term operations fund) were of the order of Rs. 1333 crores. The commulative amount of assistance sanctioned and disbursed since the inception of IDBI stood at Rs. 7088 crores and Rs. 4730 crores respectively as at the end of 1980-81. The amount outstanding as at the end of June 1981 was Rs. 3214 crores. Having regard to the enormity of the role of these financial institutions they must be brought under the control of National Development Council and the investment pattern has to be decided by the National Development Council from time to time consistent with the objectives laid down in the Preamble of the Constitution. Any project set up (after necessary approval) in the public sector either by the Central Govt. or the State Govt. should not suffer for want of finance and the public finance institutions' primary investment must be in the public sector and not in the private sector. State Development Corporations should not be forced or abetted to act as agencies to private sector.

Inter-State Council

Article 263:. Under Article 263 the President can establish an Inter-State Council for the purpose of coordination between the States. So far the President has not established such a council. No doubt the 5 Zonal Councils came into existence as the result of States Re-organisation Act. But they have become practically non-functional. It is high time, for the purpose of coordination between the States, an inter-State Council, under Article 263 should be immediately established. Apparently Article 263 as it is worded does not contemplate the disputes between the Union and the States to be brought before the council. Inter-State Council should have the power to discuss if the disputes arise between the Union and the States Article 263 should be suitably amended.

While redistribution of powers to raise resources with a view to enable the States to meet their obligations is essential, regular dialogue between the Union and the States, on a plane of equality, is no less important. Coordination between the States was conceived in the Constitution. Article 263 provided an appropriate machinery. But in exercise of the powers under Article 263 the President has already constituted the Central Council of Health, the Central Council of Local Self Government and the Central Council of Indian Medicine. Number of other advisory bodies have also been set up. Dr. D.D. Basu in his introduction to the Constitution of India pointed out that, "In fact, the primary object of an Inter-State Council being coordination and federal cohesion, this object has been lost sight of, while creating fragmentary bodies to deal with specified matters relying on the statutory interpretation that the singular 'a' before the word 'Council' includes a plural. A number of Councils designed on the present pattern can hardly serve any purpose. Before Council meetings are held voluminious papers explaining the Union Government's policies are furnished to the State Governments. There is no scope for any genuine participation by the States in such meetings. The States accept whatever they are told. In any case, any dissent by any State does not affect the decision of the Government of India in any way.'

Under a reorganised system, discussion on most of these routine matters can be held at the official level. Only important policy matters of national importance having direct bearing on financial and administrative co-ordination should be discussed in the Inter-State Council. And there should be only one Council presided over by the Prime Minister with all the State Chief Ministers as Members. It would be necessary to amend Article 263 to give the Inter-State Council the powers to ensure coordination between the States as well as between the Union and the States. A Council consisting of all the Chief Ministers and presided over by the Prime Minister will be an effective body capable of dealing with all intricate issues in the field of coordination. Such decisions cannot be left to either the nominees of the Chief Minister or the nominees of the Prime Minister. If for any reason, whatsoever, the Prime Minister is unable to preside over the meetings of the Inter-State Council the senior-most Chief Minister should preside over the meeting. The question of either the Union Home Minister or the Union Finance Minister presiding over such meetings in the absence of the Prime Minister should not arise. Union Ministers and Ministers of State Governments may, as and when necessary, attend the meetings of the Inter-State Council to assist the Prime Minister and the State Chief Ministers. In such meetings as far as possible decisions should be taken by consensus. However, in case of any difference of opinion, recommendation of the Inter-State Council, when adopted by a majority or two-third members present and voting, should be acceptable to both Union and the States.

Another important aspect is the selection of the Secretary-General of the Council and other supporting officials. The post of Secretary-General should be held by a person nominated by turn by the States. Other Officials should be nominated according to an agreed formula, by the State Governments and the Union Government. This arrangement will ensure independent functioning of the Secretariat which is absolutely essential.

Recommendations of Shri Rajmannar's Committee

1. Every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be placed before the Council, and its comments and recommendations, thereon should be placed before Parliament at the time of introduction of the Bill.

2. It should be definitely provided that before the Union Government takes any decision of national importance or any decision which would affect one or more States, the Inter-State Council should be consulted.

Exceptions may be made probably in regard to subjects like defence and foreign relations. But even in such matters the decision of the Central Government should be placed before the Inter-State Council subsequently without any avoidable delay.

3. If the Inter-State Council is to be really effective its recommendations should be made ordinarily binding on both the Centre and the States.

If for any reason, any recommendation of the Inter-State Council is rejected by the Central Govt. such recommendation together with reasons for its rejection should be laid before Parliament and the State Legislatures.

National Development Council

The National Development Council should be given Constitutional status entrusted with broad functions in relation to planning and development, economic coordination to achieve the objectives mentioned in the Preamble to the Constitution and Principles stated in the Directive Principles of the Constitution.

Planning Commission

The Planning Commission has been created by an executive order and is being currently used more as a political instrument of the Government than as an expert body charged with the responsibilities of planning, economic development and socio-economic

changes in the broad framework of objectives laid down by the Preamble to the Constitution. Hence the Planning Commission should become a statutory body created by the Parliament. It should consist of experts and act as an advisory body to National Development Council. It should have the freedom to plan, to supervise implementation of plans, to advise as well as to criticise without any inhibition. So far the plan development has resulted in economic growth in certain directions. It has taken the path of capitalist development and not social planning partaking the character of socialist planning.

Associate State Planning Bodies

The law should provide for creation of Associate State Planning Bodies for formulating and implementing in a purposeful manner State Plans and development projects. There should be purposeful coordination between Central Planning Commission and Associate State Planning Bodies. The Associate State Planning Bodies must function as Planning Commissions with in the sphere of the States.

Full Statehood for Delhi, Pondicherry & Goa

It is time that full-Statehood is conferred on Delhi, Pondicherry and Goa.

The Nominated Members to Rajya Sabha

Though the constitution makers had laudable objective in providing for nomination to Rajya Sabha of certain categories of persons. The provision of the constitution had been abused and misused quite often. The principle of nomination should be given up and there should be no nominated members.

Devolution of Power within a State

While the demand that the power from the Centre should be devolved further to the States, the power should not get concentrated at the level of States. Within a State, there should be a devolution of Power to various bodies like Z.P., Panchayat Samities and article 40 of the directive principles of State policy which enjoins a duty on the State to organised village Panchayats and endow them with such power and authority as would be necessary to enable them to function as units of Self- Government should become a reality.

Under Article 244-A the Parliament can form an autonomous State within the State of Assam

This article should be suitably amended for enabling the creation of autonomous regions within the given State providing democratic institutions consistent with the character and composition of that particular State.

Entry No. 31 of the Union List

A.I.R. and T.V. are slowly ceasing to be National Institutions and are being transformed into political instruments of ruling parties. They should be converted into autonomous Corporations directly responsible to inter-state Council.

Entry No. 7 and Entry No. 52 of the Union List

Entry No. 7 must be restricted to cover such industries and industrial production that are directly related to defence or prosecution of war.

Taking advantage of Entry No. 52 which reads as follows : "*Industries the control of which by the Union is declared by Parliament to be Law to be expedient in the public interest*. The Centre is trying to control all kinds of industries including small scale industries. Hence industries development regulations and policy must be reviewed from time to time by National Development Council and the Law should be accordingly amended and the same principle must be made applicable to the regulation of mines and mineral development under Entry No. 54.

Economic planning and economic coordination and the core sector of industry should remain the responsibility of Union. The Planning Commission with respect to medium and small scale industries which do not need foreign aid or foreign collaboration and are totally based on indigenous technology, allocate capabilities to each State. Within the limits of allocation of capacities, the States should have the power to issue letters of intent and licences in conformity with national/industrial policy and Directive Principles of the Constitution.

Acquisition and Requisition of property

Entry No. 42 of the Concurrent List

Deals with acquisition and requisition of property for the purpose of the State. The power of the State to acquire or requisition property must be unambiguous. Therefore, the power to acquire property for the purpose of the State should be in the State List. This assumes importance in the context of the take-over of sick industries apart from other properties by the States. Now the sick industry has become a happy hunting ground to derive benefits of merger and deductions in Income-tax. At present, even if the State Govt. wants to take over, it has to face enormous difficulties hence amendment of Article 31 (c) also is called for.

IAS and IPS : All India Services like IAS and IPS officers are posted in the States but they remain under the supervision and disciplinary control of the Union Government. It is forcibly contended that when different political parties come to power in States and the Centre, the Central Govt. attempts to use the IAS and IPS officers and advise them to non-cooperate and some time to subvert State Govts. and bring these Govts. to disrepute. While there is considerable truth regarding the attempts made by the ruling party at the Centre to use these Officers and also that some of them succumb to the pressures and temptations, all officers cannot be treated to belong to the same category. Some of them are persons of conviction, high integrity and character. But for some such officers belonging to IAS and IPS there would not have been even a semblance of administration in State like Bihar. Hence a balance must be struck regarding their position in State administration. *It is undoubtedly true they must remain under the supervision and disciplinary control of the State Govt. primarily but they must have reasonable protection from harassment and insecurity from some unscrupulous political heads of the Govt. and various ministries. There are good governments and there are not a few bad governments too. Hence while these officers must be primarily under the control of the State Govt., there must be administrative tribunals*

to deal with disciplinary matters and security of service. The Tribunals should also have power to suo moto enquire into misconduct of officers.

The Administrative Tribunals must be constituted with the judges of high courts and they should be nominated by a judicial committee consisting of the Chief Justic of India and two senior judges of the Supreme Court. These Tribunals can have their benches in some important places in India. The officers must have a right to appeal to the Supreme Court against the order of the Tribunal. The same procedures and principles should be made applicable to the officers and employees appointed by the State Governments.

Judiciary

The common man in India has still faith in the Judiciary, inspite of the gradual clogging of the system. The courts on their part are trying to inspire confidence in the people by exploring new vistas of sociological jurisprudence like public interest causes. Unstinted faith in and abiding commitment to the objectives stated in the Preamble of the Constitution should become the ethos of judicial conscience.

Without independent judiciary and faith of the people in judicial institutions, the very democratic structure and federalism cannot survive.

In a federal structure created by the Constitution providing for distribution of powers between the Union Executive and the Parliament on one hand and State Legislatures and State Executives on the other the Supreme Court has to act not merely as the interpreter and the guardian of the Constitution but also as a tribunal for the determination of disputes between the States and the Union and among the States. Under the Constitution Supreme Court is vested with jurisdiction to deal with these matters under Article 131. With multiplicity of political parties coming to power the judiciary has a vital role in maintaining the stability of the federal structure. Hence no political party should be allowed to have an opportunity to subvert judicial institutions.

Under Article 124 every judge of the Supreme Court is appointed by the President after consultations with such judges of the Supreme Court and High Court in the States as the President may deem necessary and in the case of appointment of judges other than the Chief Justice the President is bound to consult the Chief Justice of India. The President under Article 74 is bound to act on the advice of the Council of Ministers. He has no discretion in the matter. Hence the Law Ministry, the Home Ministry and the Prime Minister are generally concerned in the appointment of judges and ultimately it is the Prime Minister who decides. Thus the judges' appointments are made by the Executive. With the multiplicity of different political parties coming into power in the States and the Centre the appointment of judges must be above controversy. Therefore, it is suggested that Article 74 should be amended suitably that the Council of Ministers will not be concerned with the appointment of judges and they cannot render any advice under Article 74 and the President need not act on their advice.

With regard to the appointment of judges of the Supreme Court since already the Supreme Court is in existence and is functioning there should be a judicial committee consisting the Chief Justice and all the other judges. There should also be a judicial Council of the Council of States. This judicial committee should make recommendations in consultation with this Judicial Council regarding the appointment of judges to the Supreme Court to the President. If they desire they may have the benefit of consultations with Chief Justices of High Courts. In case of appointment of the Chief Justice the senior most judge of the Supreme Court unless he is medically disqualified must be appointed. In all matters the advice given by the judicial committee to the President must be binding on the President, the President shall act on their advice as he does now under Article 74. If the President choses he may also consult the Government. In case of appointment of High Court judges the judicial Committee of the Supreme Court shall consult the Chief Justice of the High Court concerned or any other Chief Justice or judges as they may deem necessary. The President may consult the State Government but he shall act on the advice of the Judicial Committee of the Supreme Court.

Regarding the transfer of judges, the Judicial Committee of the Supreme Court should be the final authority. While transfer in certain cases cannot be disputed, that matter has to be left to the Judicial Committee of the Supreme Court. This appears to be the only way how the judiciary can be made totally independent of the political executive and how different political parties with their socio-economic philosophy coming into power in the State and the political party ruling at the Centre treating some of the State Governments with utter hostility can have confidence in the federal system thus strengthening the forces of national unity and national integration. There are attempts now to denigrate and to destroy the sacred institutions created by the Constitution. It is ultimately the quality, integrity and the stature of men who fill these posts that matters. Their appointment should not give scope for suspicion or controversy.

Under Article 143(1), the President can refer certain matters to the Supreme Court for their opinion. It has been recommended by Shri Rajmannar's Committee that a provision on the lines of Article 143(1) may be made empowering the Governor to refer the quesion of law or of public importance to the High Court. In a number of States in the American Union, it is constitutionally provided for this purpose. A provision may be made for such reference to the High Court by the State Government.

Election Commission

Under Article 324(2) the President appoints the Chief Election Commissioner and other Election Commissioners. When any other Election Commissioner is appointed, Chief Election Commissioner acts as the Chairman of the Election Commission. As the President is to act on the advice of Council of Ministers under Article 74, in practice for all purposes it is the political executive that appoints the Chief Election Commissioner and other Election Commissioners if any.

Sanctity of democratic processes and confidence in democratic institutions depend to a large extent on the independence and supremacy, strength of character and democratic conscience of the Chief Election Commissioner and other Election Commissioners if any. If they acts as agents of political executive of the ruling party at the Centre, democratic processes would be subverted and democratic institutions would be destroyed.

In the context of political pluralism if there should be harmony between the Centre and States with different political parties in power, the Election Commission should not only be independent but also its conduct should be beyond suspicion. For achieving this purpose, the Chief Election Commissioner should not be appointed by the political executive.

The Supreme Court should select a person who is qualified to be appointed as a judge of the Supreme Court, for the post of Chief Election Commissioner and either judges of High Court or persons qualified to be appointed as the judges of High Courts for the posts of Election Commissioners. The President should act on the advice of the Supreme Court as he does under Article 74 under the advice of the Council of Ministers.

The Election Commission should consist of at least three commissioners, i.e. Chief Election Commissioner and two Election Commissioners. The Election Commission in consultation with the Chief Justice of the respective State High Court should appoint the Regional Election Commissioners for every State.

RESOLUTION OF THE SRINAGAR CONVENTION OF OPPOSITION PARTIES

On Centre-State Relations

(5—7 October 1983)

Following is the full text of the statement adopted by the meeting of oppoistion parties at Srinagar from October 5 to 7 and released to the press by Jammu and Kashmir Chief Minister Dr. Faroo- Abdullah on October 8:

1. The nation to-day is in the grip of a crisis and the future of our polity is imperilled. The cherished democratic values of our freedom struggle are under assault, and the assertive trend of centralisation of power leading to authoritarianism has resulted in disturbing signs of alienation in some parts of the country. This dangerous drift has to be halted.

2. The integrity and sovereignty of India must emerge from a conscious effort towards harmonisation of the distinct linguistic, ethnic and cultural entities which constitute our great nation. The golden thread of unity created by the freedom struggle still runs throughout the length and breadth of the country; we must ensure that this thread is strengthened in the times to come.

3. We believe that the constitution, whatever its limitations, is a document of great relevance to the democratic advance of our people and it has to undergo changes keeping in step with the experiences and demands of people. It is in this context that this meeting of various political parties, representative of a very wide spectrum of national opinion, has approached the question of restructuring the union-states relations in its political, economic, legal and constitutional aspects. The meeting believes the appointment of the Sarkaria Commission, though welcome, is an inadequate response to the requirements of the situation.

4. We are deeply aware of the external threats to the nation's security. We are also conscious of a situation of turmoil in many sensitive areas. As a nation, we have, however, deep inner reservoirs of strength to meet such threats and we have no doubt that the people would zealously guard and preserve the priceless treasures of freedom and sovereignty. It is against this background that we consider it altogether relevant to solve expeditiously the problems of centre-states relations, so that there could be faster and more evenly balanced economic progress for our people. This would also further strengthen the forces of national unity and process of national integration.

Political and Administrative Aspects

5. Although our constitution was meant to be a federal one, its unitry features have increasingly come to overshadow its federal features. Over the years, becaues of the persistence of one-party rule both at the centre as well as in the states, the powers vested in the states have been greatly eroded.

6. All this has given rise to many tensions and disputes between the centre and the states. It is important to restore and strengthen the autonomy of the states and to strike a proper balance between the powers of the centre and those of the states, so that the character of our multi-religious, multi-lingual and multi-cultural country is preserved.

7. To this end, it is necessary to curtail the arbitrary powers of the centre with respect to the states. The dismissal of elected state governments, the dissolution of state assemblies and peremptory decisions to hold or not to hold elections must stop.

8. The institution of governors has been misused for the purposes referred to above. The record proves beyond a shadow of doubt that, in most cases, the governors have used their office to serve the interests of the ruling party at the centre. It is unlikely that they would have acted thus except at the instance of the leaders of the ruling party. The clear intent of the framers of the constitution and indeed, its letter and spirit have been violated in all significant respects.

These are : the appointment of the governor in consultation with, and with the consent of, the state's Chief Minister, the calibre and stature of the governors; the security of tenure to which a governor is entitled; the imposition of President's rule and the governor's right and duty freely to discharge his functions without being instructed or dictated by the centre, especially in regard to the appointment of the Chief Minister and the dissolution of the legislature. The position of the governor, we feel, should be in no way different from that of the President. We

suggest that the governor should be appointed by the Present on the basis of a panel forwarded by the state government concerned.

9. In this context, we also feel that articles 356 and 357 which enable the President to dissolve the state government or assembly should be suitably amended. In case of a constitutional breakdown, provision should be made for holding elections within six months and for installing a new government. If, however, elections cannot be held due to such violence as disrupts the normal life making it impossible for a fair and free election, the President will consult the inter-state council as proposed in article 263. Following that, he will place the opinion of the inter-state council before Parliament for decision for the imposition of President's rule for a period not execding six months, or otherwise.

10. We are also of the opinion that the following provisions of the constitution have to be either amended or deleted.

(a) **Articles 200 and 201.**—The state legislature must be supreme in the sphere of legislation on matters pertaining to the state list and no interference by the centre or the governor should be allowed on any ground, except in the case of bills which affect the powers of the high court.

(b) **Article 248 and entry No. 97 in the union list**— Article 248 and entry 97 in the union list empower the union with the residuary powers concerning all matters. Such residuary powers, we feel, should rest with states.

(c) **Article 249.**—Article 249, which empowers the centre to legislate on a subject in the state list under the plea of national interest should be omitted.

(d) **Article 252.**—Article 252, which empowers the union to legislate on the request of the two or more states to pass laws on subjects mentioned in the state list, should also be reviewed and amended.

(e) **Article 263.**—Under article 263, the President can establish an inter-state council. It must be made mandatory for the President to constitute such an inter-state council consisting of the prime minister and the chief ministers of all states. The council will deal with all disputes between the states and the union and with any other matter of national importance.

(f) **Article 360.**—Article 360, which empowers the President to interfere in a state administration on the ground of a threat to financial stabillity, should be deleted.

(g) **Article 365.**—Article 365, which empowers the President to dismiss the state government for not implementing the directions of the centre, should be so amended as to prevent its misuse.

(h) **Article 370.**—The special constitutional status of the state of Jammu and Kashmir under article 370 should be preserved and protected in letter and spirit.

(i) A number of other articles in the constitution deal with the power and functions of the governor vis-a-vis his council of ministers and the union government. These articles too should be reviewed.

11. It is also for consideration whether the three lists under schedule seven should not be reviewed in the light of our experiences over the past three decades.

12. The officers of the existing all-India services, when they serve in the states, must be under the supervision and disciplinary control of the state government. If any appeal is to be lodged against any disciplinary action taken by the state government, the appeal should be referred to administrative tribunals set up for the purpose. The tribunals must be independent of both the state and the union governments.

13. The judiciary at all levels must be free from political interference. The judges of the supreme court should constitute themselves into a judicial council and make recommendations regarding the appointment of judges of the supreme court and appointment and transfer of judges of high courts. Before making their recommendations, they should consult the state governments, the union government and the chief justices and judges of the high courts. The advice of the judicial council of the supreme court should be binding on the President.

14. The impartiality and credibility of the election commission is an imperative necessity for free and fair elections. The election commission should consist of three members to be appointed by the President on the recommendations of the judicial council proposed in paragraph 13.

15. Law and order is a state subject, and the prerogative of the state in the matter must be fully respected. There could be occasions when induction of central police forces may have to be considered. In all such cases, prior concurrence of the state governments must be taken. The meeting is firmly of the view that the disturbed areas act should not be extended to any state without the prior approval of the state government concerned.

16. As the nation knows, the radio and television are being increasingly misused by the ruling party at the centre. In a democratic society, the people have the right to know the doings and misdoings of those whom they have elected. They have also the right to know and understand details of various opinions regarding government policies. A statutory central communications council should be set up. Its membership should include ministers of central and state governments, leaders of political parties and experts. This council should oversee the functioning of the radio, television and other government-managed media. Similar councils should also be established at the state level.

Economic and Financial Aspects

17. This meeting is of the view that the present economic imbalances and deprivation and backwardness of many states are the consequence of the over-centralisation of economic powers and resources. Structural and other factors have inhibited rapid and balanced growth of states and regions.

The present high centralised pattern of economic and financial administration has resulted in a system where priorities are imposed from above and bear diminishing relevance to the aspirations of the people. The supervision and management of projects too have suffered adversely as a result. Given the overwhelming concentration of resources in its hands, the centre has often been discriminatory in its allocation of resources as between region and region and state and state.

18. Currently, as much as 70 per cent of the total resources raised in the public domain is retained by the union government, and only 30 per cent is available to the 22 state governments. This kind of lop-sided distribution of finanacial resources is without parallel for a federal polity. The more elastic sources of tax revenue are reserved for the centre. The states are not allowed any share of the proceeds of the corporation tax, which these days exceed those from the income tax. The centre refuses to share with the states the yield from the surcharge on income tax.

Articles 268 and 269 indicate certain areas of resource-raising which belong to the jurisdiction of the centre, but the resources thus raised are supposed to be placed with the states; these articles have, however, barely been taken advantage of. The centre has, on the country, encroached on the state's share of sales taxation through the scheme of additional duties of excise.

A number of other arrangements, such as fixing a ceiling on the rate of sales taxation for goods 'declared' to be of national importance, or prohibiting the states from imposing sales tax on exportable goods, have deprived the states of their due share of revenue. The reluctance of the centre to pay the states appropriate royalty for the exploitation of their mineral wealth is a further source of erosion of resources for the states.

19. It is also necessary to mention the pernicious effect of the recently adopted practice of the union government to collect additional revenue by raising the administered prices of commodities such as petroleum products, coal, iron and steel, cement, aluminium, etc, instead of adjusting the rates of excise duties. The states have been deprived of thousands of crores of rupees on account of this practice, Several other instances can be cited about how central taxes have been adjusted in a manner such as to affect the interests of the states.

20. Another example of the states being deprived of their legitimate share of national resources is illustrated by the case of public borrowings from the market. In the 1950s as much as two-thirds of the yield from market borrowings used to be allocated to the states, and only one-third was retained by the centre. In contrast, the centre now retains as much as 90 per cent, leaving just 10 per cent for the states.

21. While the union government can take recourse to created money of unlimited quantum, the overdraft which the state governments are occasionally forced to take from the Reserve Bank of India is subjected to severe limits and conditions, and carries a heavy burden of interest. Similarly, the states have no control over the destination, or terms and conditions, of advances made by the commercial banks, which currently amount to nearly Rs. 40,000 crore. Such is also the case with the investments of public financial institutions.

22. This meeting demands that the following changes in the financial arrangements between the centre and the states be immediately brought about :

(a) The proceeds of the corporation tax and the surcharge on income tax be made shareable with the states ;

(b) The provisions of articles 268 and 269 be fully taken advantage of;

(c) The scheme of additional duties of excise be abolished;

(d) 40 per cent of the yield from every increase in administered prices be passed on to the states;

(e) A review be made of the principles guiding decisions as regards "declared" goods;

(f) The royalty payable to the states for their mineral resources be determined on an ad valorem basis in consultation with the states ;

(g) The union government's policy with respect to created money and overdrafts be reviewed after taking due account of the point of view of the states ;

(h) The state governments be allowed representation, on a rotational basis, on the central and local boards of directors of the Reserve Bank of India, and they be permitted to open commercial banks to serve the interests of the people ; and

(i) An institutional forum be set up for consultation between the union and state governments on fiscal issues which are of mutual concern.

23. The role of economic coordination and planning to solve the complex and diverse problems facing our nation can hardly be over-emphasised. Unfortunately, both the national development council, intended as the highest policy-making body on social and economic issues, and the planning commission, which is an instrument to implement the council's directions, have functioned in a manner entirely vitiating their original role.

Neither the council nor the commission has any constitutional or statutory basis. The council's meetings have been reduced to a ritual; little scope exists at these meetings for any substantive discussion on the grave issues facing the nation. The planning commission has similarly been made an appendage of the union government and has failed to reflect, or respond to, the needs of the people at the grassroots.

The meeting is of the view that both the national development council and the planning commission be reorganised after effecting necessary constitutional and statutory changes to ensure proper representation of the states on these bodies; the commission's relationship to the council should be clearly defined.. The composition and functions of the commission should be such as to make it a nodal agency between the centre and the states.

24. The present authority of the planning commission and the union ministry of finance to offer discretionary grants to the states must be drastically curtailed. Such discretionary transfers now account for more than 70 per cent of the total transfers to the states, and constitute a major source of arbitrary behaviour on the part of the centre. All financial transfers should belong to the jurisdiction of the finance commission. The president should consult the states on the composition and terms of reference of this commission.

25. In deciding the inter se allocation of the aggregate transfers to the states, the first charge must be a minimum earmarking of funds for the relatively backward areas. The finance commission must, in addition, take into account the incidence of poverty and the proportion of harijan and tribal populations while determining the distribution of resources between the states.

26. Under the existing arrangements. 70 per cent of the central plan assistance to the states comes in the form of loans. This meeting demands that all such assistance should be treated as grants, and liabilities incurred by the states on this account should be written off. It further suggests that a national debt commission be set up to review the other outstanding debts of the state governments and suggest measures to phase them out; this commission should also be empowered to review the union government's debts.

27. The meeting recommends that a national expenditure commission be set up, on a permanent basis, to advise and counsel the union and state governments on the pattern of their respective expenditures and the scope for economising on them. The relationships between this commission and the planning and finance commissions should be carefully laid down.

28. It is to be understood that the devolution of resources from the centre to the states has to be further carried forward within each state to the territorial councils, the zilla parishads and other local and village bodies so that the interests of the masses can be truly served.

29. The provisions and working of the industrial (development and regulation) act, this meeting is of the opinion, must be subjected to a through review.

30. The centre's power to regulate inter-state trade should also be similarly reviewed. For example, the present absurdity whereby foodgrains can be transported by private trade from one state to another while a state government agency cannot do so without the center's approval must be brought to an end.

31. We would also urge that the union government be persuaded to assume the responsibility for ensuring the supply of 15 to 20 major foodgrains, industrial raw materials and essential commodities all over the country at a uniform price. The concept of national unity looses much of its lustre if essential articlses are not equally accessible in all states, or if some of them are available at uniform prices all over the country while others are not. The centre should seek the cooperation of the states so that these deficiencies are corrected.

On Toppling Games

The era of one-party rule at the centre and in the states has ended. The political scenario has undergone a transformation with different political parties holding the reigns of administration in a number of states. But the Congress-I refuses to see the realities of the situation and is not reconciled to loss of power. Overt and covert efforts are afoot to destabilise non-Congress-I government's in various states.

This meeting notes with deep concern that the ruling party at the centre is resorting to undemocratic and corrupt means to topple duly elected governments in utter disregard of the people's will. This meeting warns that any such attempt to topple popularly elected governments will be firmly resisted by all those who hold our secular, democratic and federal parliamentary system dear to their hearts, and pledges to mobilise public opinion on a nation-wide basis.

On Punjab Situation

This meeting reiterates its deep concern at the deterioration in Punjab situation that continues to cause anxiety to the entire country.

It is indeed tragic and heart-rending that violence has continued unabated. The administration has miserably failed to perform its primary responsibility of providing security of life and property to peaceloving people of Punjab. Large number of innocent lives have been lost causing immense suffering to their families and relatives.

The opposition parties and many leading persons had repeatedly pointed out total collapse of administration in that state and had urged early settlement of issues, but narrow party interests were assigned precedence over vital national interests. We representing our respective parties and coming from all parts of India, strongly condemn all acts of violence and appeal to all political activists to firmly assert against such acts and activities.

We appeal to people of the Punjab to take active steps for speedy restoration of traditional peace and amity amongst the Hindus and Sikhas who are so closely bound together by kinship, common language and heritage.

The Punjab have proved of Hindu-Sikh unity and of dedicated service to the nation. This must be sustained at all costs.

At Vijayawada and Delhi, the opposition parties had concluded that delay in resolving the Punjab issue was hazardous for the state and the country. The Delhi meeting had worked out a consensus formula for the solution of the problem and had communicated to the government their willingness to cooperate in finding a resonable solution.

We once again call upon the government of India to take effective and immediate steps to resolve the longstanding problems of the state thus ensuring return of normalcy, peace and amity.

DEMOCRATIC SOCIALIST PARTY

State Unit—Himachal Pradesh

MEMORANDUM

I on behalf of my party (Democratic Socialist party) submit to the Hon'ble Commission the party views in the matter of Central State Relations :—

1. Our Party stands for a strong Centre and greater autonomy, financial as well as Administrative to the States. Harmonious functioning of Centre and States in the matter of Legislative, Financial, Administrative and such other inter connected matters to demonstrate Indian Government a Union/Federal Government in the real sense as enshrined in the Constitution.

2. The whole scheme of allocation of funds required to be reviewed, giving more financial powers to the States to run their affairs smoothly, State share in Income Tax Receipt, Customs and other Corporate taxes, be properly enhanced.

3. Special Federal Fund for the/to assist the backward and Hilly States be created to being them at par with the Developed States.

4. A "Permanent Commission" be set up to assess the losses caused by natural calamities such as flood, draught, hail storm etc. and to place adequate funds at the disposal of the Commission for distribution in the affected areas of the States.

The meeting reiterates its faith that longstanding problems of Punjab need immediate and urgent solution.

5. Article 356 be amended suitably to restrain the Governor as an Agent of the Central Government conspiring to wreck the State Governments run by the Opposition Parties.

6. The test of the majority of any party be made on the floor of the House and not by and explicit or implicit whims of the Governors at Raj Bhawan, so that dignity of the Office of the Governor be maintained and issue should not be a subject of ridicule.

7. Legislation to check the horse trading amongst the Elected representatives be done away with by passing an Anti-Defection Legislation, because this defection has eroded the very vital of the Parliamentary system of our Democracy.

8. To mobilise State resources, the State Governments should be allowed to give powers to set up Industrial Units, medium and Heavy Industries for which raw material is already available in the States. At present for all such matters licences will have to be taken from the Centre. It has generally been seen that such licences are not issued on equitable basis but on political consideration and as such the States having rich natural resources are still languishing in backwardness, unemployment and poverty.

9. The spirit of the Constitution of India is a Federal system of democracy but in practice it is being led to Unitary Type of system to achieve political and other ends of the ruling party.

In the end I request the Hon'ble Commission that the present system which is prevailing is ruining the democracy and the masses are gradually loosing their faith in this system. The Hon'ble Commission should find ways and means to make such recommendation that our Democracy should function in the real sense of the term and our Federal structure of Democracy be maintained in its true spirit.

Thanking you,

(Sd/-)

President

GOMANT LOK POKX

MEMORANDUM

Our Party, Gomant Lok Pokx, which contested the last Assembly and Parliamentary elections and got a sizeable number of votes, wish to place before you our views on granting Statehood for Goa for your consideration. At the outset we wish to state that the Statehood for Goa is long overdue and discussion on whether Goa should or should not be granted statehood is uncalled for in the present circumstances. People of Goa are peaceful by nature. This has probably been their drawback and the reason for not getting this demand met even after 25 years of Goa's liberation.

Briefly our reasons why Goa should have been granted Statehood are given below :

Historical Reasons

1. Goa, unlike the rest of India which was ruled by the British, was ruled by the Portuguese for over 450 years. Goa was liberated as late as 1961. Due to historical reasons, Goa has acquired uniqueness in all respects which has to be maintained. Goa is a homogeneous and well knit society and inspite of three main religions, the Christians, Hindus and Muslims have lived harmoniously for centuries. Pandit Jawaharlal Nehru, the first Prime Minister of India, recognised this unique aspect of the Goan society. He gave a solemn assurance to the people of Goa prior to and after Liberation that the uniqueness of Goa should and would be preserved, to the extent that Goans would be allowed to decide their own future. This view has been reiterated by all the other Prime Ministers who have followed him.

Opinion Poll

2. The Maharashtrawadi Gomantak Party, the first party which ruled Goa, influenced by political leaders from Maharashtra started canvassing for the merger of Goa with Maharashtra. All other political parties were vehemently opposed to this view. There was a heated debate over this issue which led to the holding of the first ever Opinion Poll in India in 1967 to decide whether Goa should be merged into

Maharashtra or not. The people of Goa, cutting across Party and religious lines, overwhelmingly voted against the merger of Goa into Maharashtra and Daman & Diu into Gujarat. This verdict of the people of Goa is binding on the Government of India.

Language of Goa

3. The only language understood and spoken by all sections of Goan society is Konkani, their mother tongue. Konkani is recognised as a full fledged language by the Sahitya Academy. The ruling Congress (I) Party has also unanimously passed a resolution to make Konkani the sole official language of Goa. It may be noted that no political party, including the Maharashtrawadi Gomantak Party denies the fact that Konkani is the only language spoken and understood by all sections of the Goan society, whether they are Hindus, Christians or Muslims. This fact is further confirmed by the usage of Konkani as the language of communication by the people coming from other states of India and who are settled in Goa. Other languages like English, Marathi and Portuguese are understood and spoken by some people as these languages are taught in schools but none of these languages are spoken or understood by all the people. All states have in the past been formed on linguistics basis. If linguistic considerations have been the criteria for the formation of States in India, then Goa has a strong case on that ground.

Statehood : Unanimous demand of all political parties

4. In the past the Maharashtrawadi Gomantak Party desired the merger of Goa with Maharashtra. The same Party has not only changed its stand after the Opinion Poll but is now forcefully demanding statehood for Goa. All other political parties, both regional and national, including the ruling Congress (I) Party, are unanimous on the demand of statehood for Goa. The people of Goa are solidly behind this aspiration and their view is unanimous. On three earlier occasions, the Goa Assembly passed resolutions to seek statehood for Goa. The Central Government has totally ignored these resolutions on grounds which if applied to the majority of the States in India, would disqualify them of their status. This attitude has created a feeling amongst the Goans that they are second class citizens not worthy of equal status with the other citizens of India.

Demand for Statehood : Economically Feasible

5. The demand for statehood for Goa is an economically feasible proposition. In spite of Goa being an Union Territory, the per capita grant-in-aid received by Goa is much lower than several other States, namely, Himachal Pradesh, Jammu & Kashmir, Manipur, Meghalaya, Sikkim and Tripura. The total grant-in-aid received by Goa is also the lowest. Besides, the Government of India is collecting about Rs. 150 crores annually as revenues by way of Central levies and duties. This system of collecting huge revenues without sharing the same in a proportionate manner is unjust. The Sarkaria Commission is requested to look into this aspect objectively and recommend just distribution of revenues between the Centre and the States.

Other Reasons

6. There are states, namely Sikkim and Nagaland, which have a smaller population than Goa. Manipur and Meghalaya have a population comparable to that of Goa.

The per capita income of Goa is second highest after Delhi. The literacy rate is also as high as 57%.

The Government of Goa has already placed before you the financial feasibility statement for statehood and we do not wish to repeat it.

Gomant Lok Pokx wishes to state that both Konkani and Statehood are very dear to the aspirations of the people of Goa. Any delay in granting statehood and giving Konkani its rightful place may only lead to mass discontent and instability in this area. The Party calls upon the Sarkaria Commission to consider all the aspects of this issue and recommend the grant of statehood for Goa, Daman & Diu. Gomant Lok Pokx also calls upon the Commission to devise a fair and equitable system for the distribution of revenues between the Centre and States.

INDIAN NATIONAL CONGRESS PARTY

Kerala Unit

MEMORANDUM

Respected Sir,

With all humility we would like to represent before this Commission that during the last Thirty four years of the functioning of our Republic the values and basic principles underlying our constitution have been eroded to a great extent. Our dignity and public justice have been subverted by forces having vested interests. Our States have been reduced to a second class native States we had during the British Raj.

It is high time to re-write the constitutional provisions regarding union and state relationships and also to re-align the relationship between Union and States. Of course we require a strong union for which strong states are highly necessary. This idea is not cherished by certain quarters because of their vested interests especially the political party which is ruling in centre. The framers of our constitution envisaged great ideas and long cherished desires, taking into consideration the teaming millions of our people who are even now below the subsistence level. Democracy from 1950 onwards with a Cabinet system of Government in India under West Minister model proved futile to solve the aspirations of our people at large.

India was never a united country at any time till 1950 as certain politicians and intellectual heralds. The divergent views, culture, languages, personal laws, the way of living etc., are evident for the same. Unity in diversity is a good slogan and its realisation is yet to come.

We have twenty two states which constitutes the union and our constitution provides for a cooperative federation of States with a bias in favour of a Union. The autonomy of states in this regard assumes

important considerations. The States are not merely subservient units of the union. Hence we demand that necessary constitutional changes are to be made forthwith for a cordial relationship with the states and the union.

Article 356 of the constitution is to be amended or taken away from the statute book because it gives undue power to the union Government to dissolve any ministry in a State as and when they intent under the guise of some false allegations. If it is not possible reasonable device should be inserted in the Constitution in order to prevent the mis-use of that provision. It is to be remembered in this connection that this power has been used and President's rule has been imposed on the States more than 70 times.

All the appointments to the important and big posts of this country touching the interests of the union and state relationship should be consulted with States and the consensus of the opinion should get prevailed.

The Governors should not be the Chancellors of the Universities. The State Government's recommendations to the appointment of vice-Chancellors should be carried out at any rate for which some instrument of direction should be provided.

The exhorbitant powers now vested with the Union Government should be de-centralised. The Union List should be amended and distributed accordingly to ensure such changes mentioned above. Developments require more involvement on the parts of the State Governments and sense of participation in developmental process assumes paramount consideration. States should not be the executants of the centres writs alone.

The State autonomy must not be met as a concession given by the centre. Salutary approach of the centre to this aspect is highly necessary.

Any authoritarian approach by the Union Government will hamper the unity of India. Costitutional morality and sense of justice are to be the guiding principles in dealing with the matters of the States.

The Industries and Commerce should remain state subjects and should be dealt with by States with wide powers. The Industries Development and Regulation Act of 1951 should be re-drafted and fare distribution to States should be given. At present 93% of the organised industry is under the control of the Union. It is highly necessary, the States should get their legitimate share over industries and commerce. Since India is an under-developed country this important aspect warrants serious attention of the Union Government.

Over centralisation is one of the main reasons for the poor economic development. Our economic growth is very poor. The average per capita income of the Indian citizen is too low. India is not a poor country, but with poor people.

The Governor should be appointed always with the consultation of the State Governments or in the alternative with the consultation of a high power body, specially constituted for this purpose, and the Governor should not be a subordinate or a subservient of the Government of India. It is also to be seen that a Governor should not be eligible for a second term of office as Governor or any other office under the Government. Provision should also be made to see that the Governor should not be removed except for proved misbehaviour after enquiry of the Supreme Court. The arbitrary denial of the assent of the State bills by the President should be changed. The indiscriminate use of this power should be checked by some machinery by providing guidelines.

Today there are two types of grants made by the Centre to the States. Grants-in-aid as recommended by the Finance Commission and the discretionary grants recommended by the Planning Commission, that is to say only 30% as per the recommendation of the Finance Commission and 70% with the advise of the Planning Commission. This is quite unjustifiable and grant should be divided to States by constitutional authorities like Finance Commission and not extra constitutional authorities such as Planning Commission.

At present the distribution of Taxes and Revenues between States and the Union is very unfair. The States are not getting the Corporation tax, as a result of the changes made by the Finance Act of 1959. This should be changed.

50% of the Central Excise duty should be transferred to the State. For the last three years the Centre stopped raising rates of Excise on items like Petroleum, Iron, Steel Aluminium, Coal etc. but only raised the prices. The entire benefits out of this increase goes to the Centre and the Central Govt. acquired more than six thousand five hundred crores in this regard and the States were deprived of not getting its share. As per the 7th Finance Commission report Rs. 2,600 crores would have come to the States. This anomoly is to be looked into with all seriousness it warrants.

The formation of an inter-State council under Article 263 is overdue. This should be done immediately.

Excise duties should also be made divisible between the Union and the States, on the same footing as Income Tax.

The State must be given a larger shares as tax revenue collected by the Centre instead of discretionary loan.

There should be some device for active cooperation among the States and their respective problems should be sorted out and settled then and there itself.

The survival of our Democracy depends upon constitutional morality. This vexed problem cannot be solved with Statute books alone. This important matter requires the benevolence, charity and the conscience and the values with the men who are in power at the Centre and their Chieftains in States.

THE KERALA CONGRESS (MANI GROUP)

MEMORANDUM

1. The Kerala Congress , presents its compliments to the Commission on Centre-State relations and offers the following suggestions on certain matters concerning Centre-State Relations.

2. Before we enter the subject, we wish to appraise the Commission that Kerala Congress stands for *democratic socialism.*

3. With this end in view we have chosen to suggest changes or modifications to some aspects of the existing administrative, legislative and financial relations between the Centre and the States.

4. The Kerala Congress is of the view that the changes and measures suggested in Centre State relations should be such as to protect the independence of the country and safeguard its unity and integrity. It is also of the view that the scheme and framework of the Constitution is basically sound. But with regard to the working of certain provisions of the Constitition, a better legislatives, administrative and financial relations between the Centre and States can be brought about by suitable amendments to the relevant Articles or introducing additional provisions.

5. The Constitution distributes the powers between the Union and the States. The powers of the Union and the States have been enumerated in three exhaustive Lists and residue is left with the Union. In order to give more federal character to the Constitution, the residuary powers should be given to States. In addition there is large scope for the Union Government to constitutionally intrude into the States' sphere and modify the independent functioning of the State Governments. This has to be checked and controlled by suitable Constitutional provisions.

6. The Union Government appoints the Governors. They hold office during the pleasure of the President. Therefore the Governor in effect becomes an agent of the Central Government. Although he has discretionery powers they are seen exercised to comply with the directions given by the Central Government. Therefore we suggest that suitable Constitutional provisions should be made to enable the Governor to discharge his duties without fear or favour. The Governor of a State should be appointed only with the approval of the Chief Minister.

7. There should be some restrictions on the executive powers of the Union, so that the initiative and the constitutional responsibilities of the States are not hindered.

8. Article 365 seems to confer sweeping powers to the Centre to take over the administration of the States for non-compliance with any direction given in exercise of the executive powers of the Centre. Such a situation can be brought about, if in any dispute between the Centre and the State, the State fails to toe the line of the Centre, The better solution will be to settle differences by bilateral discussions in an Inter-State Council. which can be formed under Article 263. This Council should have statutory powers, to make specific recommendations on matters under dispute, binding on the parties to the disputes. The composition, functions and powers of the Council can be determined by the Centre and the States.

9. The Planning Commission is now only a creature of the Union executive. It should be made a statutory body under the Constitution.

10. In order to put a stop to the misuse of the relevant provisions, Article 356 should be so amended as to exclude the subjective satisfaction of the Governor that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. However, the failure of the elected legislature can be a ground for imposition of President's rule in State.

11. The legislative independence of the States is also limited, as enactments of vital importance are to be reserved for the consideration of the President. The President can veto the legislative measures if found not to the taste of the Centre. Therefore in matters referred to in List Two of Seventh Schedule, the State should have absolute powers to enact legislation. It is enough that such legislation need be reserved to the Governor for assent.

12. Regarding industries, the Centre assumed control, reversing the earlier trend towards decentralisation. At present over 90% of the organised industries have been brought under the control of the Centre. Applications for licences for large industries had to pass through multiple check-points on a long journey towards clearance. The present policy has resulted in economic concentration in certain areas to the detriments of industrially backward States. It is our view that States should have complete freedom to establish industries without being subjected to the restrictive controls exercised by the Union.

13. Finance is an important aspect in Centre-State relations. The financial autonomy of the Centre and the States is vital to the preservation of the federal principle. Except sales tax, all other elastic resources of revenue are retained by the Centre. The State Governments should have independent and adequate sources of revenue for their proper functioning.

14. If one looks at the flow of resources from the Centre to the State only 40% of the resources are as a result of the Award of the Finance Commission. The rest is received from the Centre as in the form of plan assistance and discretionary grants or loans. This shows the economic dependence of the State on the Centre and the State's difficulties to raise sufficient resources to maintain certain standards of administration and perform fiscal functions in their sphere. It is well recognised that revenue sources of State Governments granted by the State List is insufficient to meet their financial requirements. Most of the State Governments are on heavy overdrafts to make both ends meet. It is better to have a division of financial powers between the Centre and States within their own spheres.

15. In financial adjustments between Centre and States through sharing of taxes, grants-in-aid and loans, it is important to device certain measures which would ensure adequate resources to the State Governments. *For this purpose under the devolution of taxes all major items should be made available. The grant component of Central assistance should be enhanced and the loan component reduced, or totally eliminated.*

16. Keeping in view the financial requirements of the State Governments and the need for development, fresh guidelines will have to be evolved for the distribution of market borrowings between the Centre and the States. The present ad-hoc allocations are largely in favour of the Central Government.

An independent body like a Loan Council can evolve a better formula for market borrowings. States which earn foreigh exchange through export of man power and cash crops, deserves special consideration in the allocation of the share of market borrowings.

17. Another problem faced by the State Government is the rising prices of commodities, over which they have no control except to operate the public distribution system. Public distribution mechanism can only help, provided the commodities are available at reasonable prices from withing the country or outside. Often the prices of the commodities, essential or otherwise, are on the high side, due to inflationary pressures. With rise in price of commodities cost of living index will also rise, compelling the State Governments to provide additional D.A. to their employees. Whenever the Central Government compensates its employees with additional D.A. the same should be given to State Governments employees also. The resources of the States are eroded as a result of granting Additional D.A. For example, from 1980 onwards the Kerala Government had given Rs. 474 Crores as Additional D.A. to its employees. This is a serious drain on the State's resources which should engage the attention of the Commission. The State's commitments on this account should be fully compensated by the Centre.

18. We earnestly hope that the Commission on Centre-State relations will give serious consideration to our suggestions and that its recommendation will bring about a better socio-economic equilibrium in the country as a whole.

KHASI HILLS AUTONOMOUS DISTRICT COUNCIL

MEMORANDUM

Memorandum submitted to the Sarkaria Commission by the Executive Committee, Khasi Hills Autonomous District Council, Shillong on the occasion of its visit to Shillong from 29th September, 1985 to 2nd October, 1985.

Respected Sir,

I, on behalf of the Executive Committee, Khasi Hills Autonomous District Council, Shillong hereby express our thankfulness for having been invited to have a discussion with the Commission in regard to the existing arrangements between the Union and the States in regard to the powers, functions and responsibilities in all spheres.

In this connection, the relationship between the Union and the States is hidebound that any solution to the warranting changes of the existing arrangements will not be complete without taking into consideration the problems faced by the District Councils in this North-eastern region.

With due respect, we take this opportunity to submit to the Commission this memorandum representing a few among the various problems of this Autonomous District Council in running the administration. We believe that the learned Commission is not unaware of the circumstances, aims and objects in the creation and existence of the District Councils during the composite Province/State of Assam in the 1948—50s.

In so far as the Khasi Hills District is concerned, the erstwhile Khasi States plus other area constitute this Autonomous District comprising the Districts of East and West Khasi Hills. The Khasi States which have in the past been maintaining their own freedom by virtue of their Treaties and Sanads in signing the Instrument of Accession sometime in 1948 while the Constitution of India was in the making, does not mean cession/merger of their territories to the Indian Union and for that matter to any State. To be more clear, we would invite your kind reference to Paragraphs 112, 113 and 114 of the White Paper on Indian States of the Government of India Ministry of States wherein it has been specifically emphasized that the Khasi Hills States along with the other tribal district of Assam known as Jaintia Hills District have been constituted into a separate Autonomous District of Assam known as the United Khasi and Jaintia Hills District under the provision of the Sixth Schedule to the Constitution of India as comoborated in the judgement of the Hon'ble Supreme Court of India in the case No. C.A. 394 of 1960—T. Cajee, Chief Executive Member (Appellant) versus U Jormanick Syiem and another (Respondent). The founding fathers of the Constitution of India, with due regard to the distinctive characteristics of the culture and way of life of the tribal people of this upland Region thought it proper to provide a special provision in the Constitution of India, giving them ample opportunity to grow in their own roots and according to their genius and culture. Thus the District Councils did not just come out from nowhere but emerging from the Constitution of India itself and are not even statutory bodies just as those now coming up in Manipur and Tripura.

According to the Sixth Schedule to the Constitution of India, the District Councils are autonomous bodies or in other words, miniature State having all the requisites of a Government, consisting of the executive, judiciary and legislature. I feel, therefore, that there should not be only Union and State relation but also Union, State and Autonomous District Council relation.

The Executive Committee, Khasi Hills Autonomous District Council in submitting this memorandum to the Commission does not have the least intention of maligning against the State Government of Maghalaya, but only to project the ethnical, cultural, traditional, etc. problems we are facing in this part of the North-East region. Since its very inception, this District Council has all along been trying its level best to maintain the form and scheme of administration as contamplated under the provisions of the Sixth Schedule to the Constitution of India. But due to the limited resources of this Council, we are financially handicapped, apart from other factors, to keep the wheels of administration running smoothly. The District Council being a constitutional body, we have every right to think and expect that the Government cannot just look and see the Council flounder and sink.

With due regard to the impact of the long pending and unsettled boundary dispute between the Khasi Hills Autonomous District Council, the State Government of Meghalaya on the one side and the State of Assam on the other side on the administrative jurisdiction of this District Council over the areas encroached by Assam and the resultant hardship affecting the destiny of the people of this State and especially the indegenous tribal people over whom this Council is having administrative jurisdiction, the Executive Committee submitted a memorandum on the 25th February 1985 to the Governor of Meghalaya for a an expeditious settlement of this vital issue. It is highly appreciable that the Government has taken initial necessary steps in this matter. In this connection, however, it is claimed that this Council be involved to safeguard its constitutional rights, and also for the socio-economic welfare of the people of this District. The stand of this District Council in this regard is that it does not accept the boundary description as lastly notified in 1876 and its interpretation from time to time is wrong and unacceptable as the said Notification does not include vast areas originally belong to the Khasi States.

The Khasi Hills District comprises all the areas formerly known as the Khasi States plus other areas as defined in Paragraph 20 of the Sixth Schedule to the Constitution of India, excluding any areas for the time being comprise, within the Cantonment and Muncipality of Shillong, but including any areas of the Khasi States bifurcated and attached to Kamrup District by the British Regime for administrative convenience.

Sometime in 1982 a Commission under paragraph 14 of the Sixth Schedule to the Constitution of India was constituted under the Chairmanship of Sri. S. K. Dutta, retired Chief Justice of Gauhati High Court to enquire into the affairs of the District Councils and to suggest ways and means for their betterment. This Council through its memorandum dated 11th July 1984 furnished the necessary information regarding its executive functions, legislative measures, etc. relating to the matters as provided under the provisions of the Sixth Schedule to the Constitution of India, in addition to other difficulties econountered by it in the course of administration. It is understood that the Commission has completed its work and submitted its Report, a few months back, but for the non-receipt of the Report, we are in the dark as to the findings of the Commission. Since the Report deals exlusively with the affairs of the District Councils, the same should have been made available to this and other District Councils.

Over and above that has been stated, this Council has to face problems and hurdles that many of the laws framed by the District Council, namely, 1. The Khasi Hills Autonomous District Council (Cattle and other animals Taxation) Regulation, 1982, 2. The Khasi Hills Autonomous District Council (Khasi Social Custom of Lineage) Act, 1980, 3. The Khasi Hills Autonomous District Council (Inheritance of Self Acquired Property) Act, 1980 and 4. The Khasi Hills Autonomous District Council (Primary Education) Regulation, 1980 are lying pending for a considerable period of time with the Government for Governor's Approval/Assent as the case may be without adducing any reason thereof. We believe that the Commission is not unaware that the power/s of the Council has already been curtalied by the amendment of the Sixth Schedule under the Assam Reorganisation (Meghalaya) Act, 1969 and the North Eastern Areas (Reorganisation) Act, 1971 reducing the autonomy of the Council and giving ample opportunity to the State Government to encroach upon the domain of the District Council. For example, this Council as already mentioned above has made law on the inheritance of Self Acquired Property, but regardless of this fact, the Government has presented a Bill entitled "The Khasi-Jaintia Succession to Self Acquired Property (Special Provision) Bill 1984 in the June 1984 Assembly Session without consulting the District Council concerned and without giving any information of the fate of the Council's Bills.

It will not be out of place to mention that the Khasis have quite a distinct culture, different land tenure and a democratic way of governance and that the Chiefs of the Khasi States are not territorial sovereigns. This goes to explain why there was no Instrument of Merger, but if the District Council is made subordinate of the State Authority as is envisaged in para 12-A of the Sixth Schedule, then it is afraid that the main root of being a Khasi is gone. Secondly, if in a matter of succession the State having a mixture of different stocks will make law for a Khasi, then where is the freedom to govern according to our own culture and genius ?

Since long time back the need for amending the Sixth Schedule has been keenly felt to strengthen the administration of the District Councils and as such, a conference of all the Chairman and the Chief Executive Members of the District Councils of the North Eastern Region was held at Shillong on 29th Jan., 1981. After threadbare discussion of the pros and cons of the Sixth Schedule as it is, the conference have drawn up a set of proposed amendments of the said Schedule which they feel would adequately strengthen the administration in the Autonomous Areas, a copy of which is enclosed herewith for favour of perusal and consideration.

In conclusion, we are constrained to state that there is a lack of harmony in so far as the relationship is concerned between the District Councils with the State Government and the Union.

We, therefore, crave indulgence to reiterate for the amendment of the Sixth Schedule as felt needed by the concerned District Councils and that the administration of the Council should be unfettered and without undue interference from any unconcerned quarter so as to being a close relationship between the District Council and the Governor; and that the boundary of the Khasi Hills District should be defined and clearly demarcated to avoid choatic condition in the administration because as it is at present, the Khasi community has the feeling that they are being suppressed and are

discontent of the state of affairs since the last decade which is aggravating and may cause disturbances at any time.

We, therefore, look up to your goodself to go deep into the matters as brought out in this memorandum in their true perspective and try to understand the rights, sentiments and special character of the "Khasis" to bring about peace, harmony orderliness of the country and ultimately to foster and cement the unity and integrity of our country, India.

We wish the Commission the best of health and success.

Sd/-

Chief Executive Member

Proposed Amendmens to the Sixth Schedule to the Constitution of India

ARTICLE	AMENDMENTS
SIXTH SCHEDULE	
Para 1	Para 1—In sub-para (2) of Para 1 insert the words "In consultation with the District Council concerned" in between words "the Governor may" and "by public notification".
Para 2	Para 2(1)—(i) In the fourth line of sub-para (1) of para 2 insert the following words "on" the recommendation of the District Council concerned" in between the words "by the Governor" and "and the rest"; (ii) Add the following proviso to the sub-para (1) of Para 2. "Provided that no person who is not a scheduled tribe of any autonomous district of the state of Assam or Meghalaya or Mizoram as specified in Part I, II & III of the Table appended to para 20 as the case may be, shall be eligible for election to the District Council".
Para 3	Para 3—The whole of para 3 shall be deleted and the following substituted : "Powers of the District Council or Regional Councils in respect of land, minerals and other relating to town or village administration, social and customary practices". (1) Control of all lands within the Autonomous District shall vest in the District Council or Regional Council as the case may be, and the District Council or Regional Council shall have power to make laws in respect thereof and with particular reference to :— (a) the allotment, transfer, occupation or use, or the setting apart/and registration of land for the purpose of agriculture or grazing, or for the preservation of forests or for residential or non-agricultural purposes likely to promote the interests of the inhabitants of any village or town : Provided that nothing in such law shall prevent the compulsory acqusition of any land, whether occupied or unoccupied, for public purposes by the Government of Meghalaya, Assam or Mizoram in accordance with the law for the time being in force authorising such acquisition : Provided further that the consent of the District Council or Regional Council concerned has previously been obtained by the Government of Meghalaya, Mizoram or Assam for such compulsory acquisition; (b) the control or management of any forest ; (c) the regulation of the practice of Jhum or other forms of shifting cultivation ; (d) the establishment of village or town committees or councils and their powers ; (e) any other matter relating to village or town administration, including village or town police and public health and sanitation ; (f) the appointment or succession of Chiefs or Headmen and their powers and functions ; (g) inheritance of property including allotment, transfer, registration occupation, use or ownership of property consequent upon the marriage of a tribal to a nontribal; (h) marriage and divorce ; (i) social customs and usages including customary law and practice ; (j) fishery ; (k) (i) markets and fairs ; (ii) establishment or construction of shops or stalls. (2) The District Council shall also have power to make laws with respect to :— (a) the use of any canal or water-course ; (b) read transport and ropeways ; (c) trade ; (d) the manufacture, sale or prohibition of liquor ; (e) registration of documents ; (f) court fees and stamps ; (g) protection of wild-animals and birds ; (h) elephant mahals ; (i) the acquisition of land. (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

ARTICLE	AMENDMENTS
Para 6	Para 6—Delete the word "Previous" occurring in the fourth line of subpara (1) of para 6 in between the words "with the" and "approval".
Para 8	Para 8—(1) At the end of Paragraph 8 (1) and after the word "generally" insert the words "until such time as the District Councils have not framed their own laws". (2) In paragraph 8 insert the following as (c) of sub-paragraph (3) ; "(c) tax, royalties, cess, duties and fees on minor minerals and on produces from forests other than reserved forests and fees on other subjects within the legislative and administrative power of the District Council". (3) In paragraph 8(4), insert the word "Law" in place of the word "regulations" wherever it occurs.
Para 9	Para 9—Add a new sub-para (3) to para 9 as follows :— (3) "Notwithstanding anything contained in sub-paras (1) and (2) of this paragraph, the annual share of the royalties payable to the District Council concerned shall be made over to that District Council within a period not beyond one year from the date they accrue".
Para 10	Para 10—In the last line of the second proviso to sub-para (2) of para 10, delete the words "the time of the making of such regulations" and substitute the same by the words "the inception of the District Council".
Para 12	Para 12—Delete paras 12A & 12B and add the words "Meghalaya and Mizoram" after the word "Assam" wherever occur in para 12.
Para 20	Para 20—Delete para 20(2), including the proviso, and substitute it with the following :— "The Khasi Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding so much of the areas comprising the Jaintia Hills Autonomous District, constituted under notification No. TAD/R/50/64, dated 23/11/64, read with notification No. DCA 31/72/11, dated 14-6-1973". (*Explanation* : The words "Mizoram" and "State" in relation to the Union Territory of Mizoram whenever used in these proposed amendments shall refer to the Union Territory of Mizoram and the word "Governor" shall refer to the "Administrator" of the said Union Territory).

(B. WANNIANG)

C.E.M. & Chairman of the Conference.

MALAYALEE DESHEEYA MUNNANI

REPLIES TO THE QUESTIONNAIRE

We are happy that the Government of India even though belatedly, has taken cognisance of the problem of centre-state relations. But the Commission has recorded the poor response it received from the present and former Chief Ministers for its request to send their memoranda on the Subject. This fact reveals that ruling parties are not public-conscious enough to assist the Commission by expressing their views on such an important question facing the country. The terms of reference stated in the notification of the Ministry of Home affairs (No. IV/11017/1/83-C.S.R. dated the 9th June 1983) says "In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and frame work of the constitution which the founding fathers have so sedulouly designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people".

In this context we are of the opinion that if the Government feel that there should not be any change in the constitution of India for the restructuring of the centre-state relations the Commission's exercise will be futile. The above-quoted part of the terms of reference creates a doubt that the Government does not want any changes in the constitution for improving the present sorry state of centre-state relations. Since the constitution itself provides for changes, we take an optimistic view that the commission will recommend for necessary changes in the constitution if it deems it necessary for a scientific rational restructuring of centre-state relation consistent with the aspirations of the states and its people.

Indian constitution has to be changed into federal one. The following changes we suggest :

(1) The Governors of the states should be elected by the people of the states directly on the basis of adult franchise.

(2) The President of India should be elected by the electoral college consisting of only members of the state legislature.

(3) All the states should have equal number of representatives in the Rajya Sabha.

(4) Number of Rajya Sabha members should be more than Lok Sabha members. This change can be effected by reducing the number of Lok Sabha members or increasing the number of Rajya Sabha members.

(5) Whenever the Rajya Sabha rejects a bill passed by the Lok Sabha a combined session of both the houses should decide the issue.

(6) All the powers should be left to the State list except Defence, Foreign Policy, Post and Telegraphs, Railways and currency.

(7) Presidential form of Government under a genuine federation should be established.

(8) **Official language policy.**—Imposition of Hindi as the official language of the country is an irritant in the field of Centre-State Relations. English should continue as the official language. At the State level, mother tongue of the people of the State should be the official language.

Above proposals require drastic change in the constitution. Therefore convening of a new constitutent assembly for the purpose will be the appropriate step.

In 1946 members of the Indian Constitutent Assembly were not elected on the basis of adult franchise. More over most of the native states were not adequately represented in the constituent assembly. Therefore present constitution is devoid of popular democratic base. Therefore convening of a new constitutent assembly to adopt a new federal constitution is desirable.

PART I

INTRODUCTORY

1.1 Our constitution cannot be called a federal one. The main features of a federal constitution are :

(a) It should be an association of states.

(b) There should be a division between general (Central) authority and regional (state) authority.

(c) The general authority and regional authority should not be subordinate to each other but coordinate with each other.

The last is the main feature of a Federation in the traditional sense. But in the Indian Constitution regional authorities are mostly subordinate to the general authority.

1.2 Rajamannar Committee has demanded more powers for the states. We consider that much more powers for the states than envisaged by the committee, are necessary for the smooth functioning of a federal polity. We are of the opinion that only interstate disputes and constitutional matters should be left to the jurisdiction of the Supreme Court of India.

1.3 In a country like India which is not only heterogenous but also multinational, a highly centralised constitution is undesirable. Only a federation giving optimum autonomy for constituent states could be efficient and workable. Peoples with divergence in language, culture and economic conditions should be governed by their respective state govts enjoying optium autonomy. Only in matters of Defence, Foreign Policy, Currency, Post and Telegraph and Railways, the general Government should have jurisdiction.

1.4 Whichever country has tried to impose a unitary form of Government on nationalities divergent in culture, language, history and economic conditions it has disintegrated. The countries which started with a loose federation depending on goodwill, mutual trust and voluntary association, has slowly achieved integration. Examples are the United States of America and Switzerland. The traditional federations have successfully functioned and they have progressed towards understanding, integration and unity. The unitary form of Government imposed an heterogenous nationalities have failed and ceased to exist. Recent example is Pakistan, Austro-Hungarian empire did disintegrate. Irish seceded from the United Kingdom of Great Britain. Poland seceded from prebolshevik Russia.

The genuine Federations, due to their success developed into united and cohesive states. Centralised unitary states imposed upon unwilling people have disintegrated and ceased to exist. The former by its success and latter by its failture exists only in abstract theory.

1.5 The constitution is not sound. It will not endure for long. It cannot be improved by window dressing amendments here and there. It require drastic changes. It should be changed into a genuine federation. The federal Government should confine itself to Defence, Foreign Policy, Currency, Post and Telegraph and Railways.

1.6 Articles 256, 257, 354 to 357 are negation of the autonomy of the states and contrary to the federal principle. We suggest entire redrafting of the constitution and so these provisions should not be in the new constitution.

1.7 The reorganisation of states of India on linguistic basis in 1956 was a reasonable policy and it is consistent with the aspirations of the people. However there are pockets of linguistic minorities existing in various states. These areas of lingustic minorities should be merged with the states where people speak the same language, if the areas are contiguous. After settling these issues of linguistic minorities, there should not be any change in territories. The Centre's powers (Article 3) in this respect should be deleted from the constitution.

PART II

LEGISLATIVE RELATIONS

As stated earlier all the powers except Defence, Foreign Policy, Currency etc. should be with the states. Residuary powers also should be with the states.

Since we visualise a genuinely federal constitution, most of the questions in Part II are not relevant.

PART III

ROLE OF THE GOVERNOR

The Governor's office should be made elective. Governor should be elected by the people of the respective states, on the basis of adult franchise.

The political instability, in the states due to ephemeral coalitions of political parties having divergent views and policies, is a great problem facing our country. This can be solved by having elected governors with popular base. Even when the ministries at the state level fail and no party is capable of forming the government, there won't be a crisis in the state administration. The governor can run the administration without being accused of undemocratic, since he is elected by the people of the state.

3.5 It should be made mandatory that the governor should give assent to all the bills passed by the State legislature. Only in cases where the advocate general of the state advices the governor to refer the bill to the high court, or Supreme Court, he should wait till the respective court clears the bill. Only when the respective courts question the constitutionality of the bill, the governor should withhold the assent.

3.7 The elected governor should have the full 5 year term. Procedure of his removal should be the same as of the judge of the Supreme Court.

3.8 The Governor should be empowered to summon the legislative assembly. He should varify whether the ruling party has majority or not. It should be tested only in the legislature, by the result of the confidenence motion or no confidence motion.

3.9 The West German practice is not desirable. In the case of India, if we introduce the system of elected governors, the administration will, smoothly continue, whether there is a ministry or not.

PART IV

ADMINISTRATIVE RELATIONS

4.4 The President's Power under article 356 should be deleted from the constitution. In case where the state has no party with a majority in the state legislature, the Governor should be given the power to "assume to himself all or any of the functions of the state" by a proclamation.

The article should be deleted because it is a negation of state autonomy and federalism. Moreover the ruling party at the centre has misused the provision for dismissing the state government of an opposition party. Instances are : In 1952 PEPSU Government was ousted by the Centre. In 1959 the Communist government of Kerala was dismissed. In 1975 D.M.K. Government of Tamilnadu was dismissed. In Gujarat, Babu Bhai Patel Government in the same year.

Instead of Presidents rule, there should be the governor's rule—the rule of an elected state governor. The election commission should conduct election within one year.

4.7 No central agency like Central Electricity Authority and Director General of Technical Development should be established without the consent of the states. Each state should have power to apt out of such organisations. Authorities like inter-state Hydroelectric projects may be established only by mutual agreement between beneficiary or affected states.

4.8 There is no need for All India Services like I.A.S., or I.P.S. in a federal polity. The States should have class one services of their own. For administration of limited port-folios like defence and foreign service the federal government could have there own services. But a central service should not be imposed on states.

4.9 The power for the Centre under article 355 to use the central reserve police and other armed forces should be deleted. If the concerned states request other states or centre it may be allowed to send armed forces, in a critical situation.

4.10 News papers, books and printing should be in the state list. Radio and television should be controlled by an autonomous agency which consist of representatives of all the states.

4.11 The Zonal councils have not worked satisfactorily till today. It can be activised for discussing problems and issues of mutual interest to member states.

4.12 Such institutions should be established voluntarily by member states.

It should not be imposed by the Parliament. If states deem it necessary, they can have an independent secretariat.

PART V

FINANCIAL RELATIONS

5.1 An objective review will reveal, the scheme of devolution has not worked satisfactorily in the matter of many undeveloped and semi-developed states. In the initial stages, the allocation from the centre to the states from the divisible pool as well as *indivisible* were devoid of equity. The State governments having chief ministers of stature or strong influence got the maximum allotment from the centre. Especially discretionary grants and loans went to the states having powerful chief ministers of the ruling party. They secured substantial and undeserving assistance from the centre.

Certain chief ministers who were convenient to the ruling clique at the centre by liaisoning and influence secured much more finance than what they are entitled.

To avoid discrimination and allegation certain formulae were worked out. But the formulae itself have worked to the advantage of certain states and handicap for certain other states. Take for example the criteria for backwardness. Formulae treated district as a unit. But paradoxically some advanced states were having many backward districts also within its territory. Therefore, funds went again to the most developed states which had very backward districts also. In the name of helping backward districts, further funds went to the most advanced states having a few backward districts, at the cost of backward and undeveloped states.

For measuring backwardness, a state as a whole should be taken as a unit—not the district.

The location of central sector Industries are also decided on political and party considerations, rather than, economic, social and development factors.

5.2 The spoon feeding of states by the centre have not only resulted in loopsided development and regional disparities, but also has created psychological retardment for states. Self reliance of peoples of the states are eroded.

Economic development takes place not by bread alone. It is achieved by morale, self reliance and other non-physical factors also. Therefore taxation by the centre and its spoon feeding of states should be given up. All the taxes like excise should be left to the states.

In a genuinely federal set-up where all the subjects except, defence, post and telegraph, railway, foreign policy and currency are under the jurisdiction of the constituent states, the states will become self reliant. They will develop according to their own genius.

The centre's expenditure for foreign affairs and defence should be contributed by the states. Income from post and telegraph and railways can be used by the centre.

Even customs duty and foreign exchange should be administered by a finançial council consisting of all of the states. After contributing to the federal expenses, propotionate to the population of each state, the balance if any, should be given to the states on the basis of each states export-import volume.

5.3 The disparities between states cannot be reduced by having a strong centre. A strong centre will be the instrument of advanced states, for perpetuating their hegemony. The ruling party at the centre may stiffle the development of states ruled by opposition political parties or regional parties. Concept of social and economic justice varies from time to time and country to country. In India the greatest economic reality is not the gap between rich and poor classes but the gap between rich and poor states. The disparity between have-states and have not-states has to be reduced. Economic development, especially industrial development of constituent states has to be initiated in the case of certain states and accelerated in the case of certain other states. The whole planning has to be done by the states. In the present set up, the centre allots money on sectoral basis. Instead it should be allocated to the states on the basis of an equitable formula. The states should be free to decide what priorities to be given to which sector (large industry, medium, small, agriculture, communication etc.)

If the constitution is drastically changed in favour of a genuine federal one, as we have suggested earlier, this problem will not arise at all. The states will have the major resources and they will have the powers to decide what they should do with the resources they are having.

5.4 The development policy matters should be left to the states. Then these questions will be decided by each state. The revenue gaps are due to wrong planning, over emphasis and expenditure on unprofitable public sector and unnecessary administrative expenditure on civil service. All these should be given up and there won't be any deficit.

5.5 & 5.6 These questions are irrelevant in a federal set up we have suggested.

5.7 The Central taxation system works to the advantage of the richer states. States should have all powers of taxation. Moreover industries and agricultural products should be given tariff protection by respective states. For example tyre and rubber products manufactured by advanced states destroy Kerala weaker nascent rubber product industry. Kerala should levy tax on raw rubber going outside the state. If the rubber is processed here, there should not be any tax. Similarly finished rubber goods produced elsewhere and to be sold here should be taxed by Kerala state. Only in these conditions local industry would develop. If octroi is constitutional, this type of taxation policy also is constitutional. If, Indian industry in advanced states in India were exposed to competition from advanced countries in the world, even after Indian independence, those industries would have collapsed. Ambassador cars would have remained unsold. Indian textile products would have been competed out of the market by Hongkong, Japanese or Taiwan products. Only by tariff protection, the so-called developed Indian industry progressed. Similarly nascent industries in backward states should be given a short of tariff protection from products of monopolistic industries from the advanced states.

5.8 All the major taxes should be levied by the states. In that case the question is irrelevant.

5.9 In a federal polity, visualised by us, the taxation powers as well as planning will be with the states. The federal government will be receiving contribution to its fund from states, proportionate to their population and other important factors. The federal finance and expenditure should be supervised by a council, consisting of representatives of the states.

5.10 The transfer of funds from the union to the states has never promoted efficiency. All central bodies, including planning commission have no understanding of regional realities. The funds were very often wasted by the states. Schemes drawn up by the Central bodies are often unsuitable to the local situation. The planning commission is a body with no accountability to the elected representatives of the people. It is against all principles of democracy, that a body with no accountability to the people allocate funds and decide the economic policy of the country. Planning commission in the present form should be scrapped.

5.14 Since we envisage a federation in which states levy most of the taxes, the issue is not relevant. In the case of bearer bonds, and similar revenues, it should come under the divisible pool.

5.15 Fortunately, there is hardly any surplus in the public sector. Therefore the question does

not arise. All public sector except defence industries, P. & T. and Railways should be in the state sector.

5.16 We visualise a federal constitution in which most of the powers and tax revenue will be with states. Therefore the present indebtendness of the states would not be there in a genuine federation.

5.19 Even foreign loans should go straight to the states from agencies like World Bank, I.M.F. and consortium of aiding countries. The states should be left free to negotiate with foreign countries, and receive loans. But a council having the representatives of the states and federal government should evolve mutually agreed guidelines. Subject to these guidlines states should be free to borrow from abroad. Th present system of centre functioning as a finance broker should be given up.

5.20 The Loan council suggested, should be a specialised department of the Reserve Bank of India. Proposal is welcome.

5.22 Most of the states have reached their limits in tapping their local resources. The states go for further taxation will push up prices and add to the high cost economy.

5.23 There is tax evasion-not leakage-in a very big way. The centre failure to collect taxes due to political reasons, is responsible for tax evasion. The performance of the public sector is dismal. Only defence industries which has a bearing on the security of the country and industrial infrastructure should be in the public sector. In the initial stages of development private sector should be given the responsibility of industrialising the country. But it should function within the guidelines set by the states. Monopolies in the public as well as private sector should not be permitted.

5.24 Only with agreement of the states, Union government should levy taxes coming under article 268 and 269.

5.25 Major tax revenues are with the centre at present, and the states get paltry funds from the centre. Whenever the states make attempts to levy new taxes or increase the rate of taxes, people already over burdened with various taxes make a hue and cry. The State governments which are in close contact with the people become unpopular. The cumbersome process of centre leavying taxes and states going to the centre with begging bowls is time consuming and result in wasting of time and energy. Therefore as we have suggested earlier, all powers of taxation should be left with the states. But taxes on railway fares and goods should be levied by the centre in consultation with the states and should be distributed to the states.

5.27 The Union territories also should get all forms of allocation from the centre on a par with other states.

5.29 The nationalised banks should be split up. Every (1) & (2) state should have a public sector bank. All the state's banks should be represented in a central council to be constituted. They can help each other and those should be governed by guidelines formulated by central body to be formed.

(3) Authority for the Industrial Licencing should be given to the States. There can be a federal council representing the States, for guidance to the states. Federal Council should work for avoiding superfluous efforts in industrial ventures and promoting mutual co-operation. After studying the requirements, and resources, the council should fix maximum installed capacity for each industry, to avoid over production. On a selective basis certain categories of Industries can be delicensed. When the total production reaches the maximum level fixed by the council, the states should not allow more units in that sector.

The present licensing system has contributed to a great extent the mounting corruption in the country. Favouritism and bribery are mainly the results of the present system of licensing.

5.32 In a federal system, Central financial institutions like the Life Insurance Corporation, General Insurance Corporation and Unit Trust of India also should be reorganised on states basis. At present the large funds of this organisations can make and un make large companies and-its managements. New investment policy of those institutions are decided by the centre. All these organisations should be reorganised on state basis and control should be given to the State Finance Ministry instead of Central Finance Ministry.

NAMADHU KAZHAGAM

MEMORANDUM

Introduction

Before giving my answers to the Questionnaire supplied by you, I would like to suggest that some more questions may kindly be added to the questionnaire to arrive at a fair finding.

The Indian constitution of course was framed after careful consideration and elaborate discussions in the constituent Assembly. But from our actual experience, it is quite evident that our constitution had not served or fulfilled the aspirations of the people living in various regions or areas-of our sub continent which is composed of various nationalities based on diverse languages, cultures and customs. It has also failed to take note of the political demands of the people of various regions. Regional autonomy and its consequences were not not studied deeply and properly at the time of framing the constitution. Though the authors of this constitution were learned Lawyers, eminent Jurists and West-oriented politicians, they have failed to observe and study the real demands and sentiments of the people living in various regions of this country.

It was a time of serious test and turmoil in this country, created by the partition of Pakistan and India, when the Indian Constitution was framed and placed before the constituent Assembly. Worried over the disintegration of the country, the the Fathers of our constitution had to take extra precaution to see that this country does not disintegrate any further. So, they curtailed the powers of the states so as to prevent any such demand in

the future and concentrated enormous powers in the centre, making the states merely subordinate subservient units of the centre.

The states and provinces were formed in such a way without any guiding principle or imagination to reflect the aspirations and feelings of the people but keeping in mind only the administrative convenience. This was a calculated move on the part of the Congress Politicians just to suppress the regional feelings and aspirations that may creep in, in the due course.

While the undivided Madras Province consisted of Andhra Pradesh, Tamilnad and Malabar the Congress Party was having separate party unit as Tamilnadu Congress Committee and so on ; when the state administrative unit was one, the party units were many. So also, the Greater Bombay consists of Maharashtra, Gujarat etc., so the states were not formed on linguistic basis by the constitution makers but they did so purely for administrative convenience.

These aspects were not anticipated at the time of framing the constitution. To achieve these objectives people of various regions had to wage struggles, and make sacrifice of human lives ; then only centre agreed to consider reorganisation of states on linguistic basis.

Another, serious and depressive aspect of this constitution is the neglect of regional languages by not giving equal status for all the languages. Mother tongue is holy and dear to everybody. People worship their languages. Theri mother tongue, their culture are supreme to them. But instead of honouring the sentiments of all the people, Indian Constitution made Hindi supreme and thrust it on Non- Hindi areas which caused the mass upsurge in some areas against this type of imposition. The division of India in 1947 into 2 states as India and Pakistan based purely on religious majority could not survive ; because Pakistan though one Islamic state could not withstand for a long time on the basis of religion. The imposition and domination of urdu on the Bengali spoken area of Paksitan, without understanding the sentiments of the Bengali people became the root cause for a civil war and disintegration of Pakistan with the birth of Bangla Desh. Imposition of Hindi on Non-Hindi people will have similar fate. This is a historical lesson.

The above mentioned incidents are standing evidence for the faulty judgement of the centre in uniting India by neglecting various regional languages and culture, treating Hindi and Hindi belt alone as supreme. Shri B. N. Rao, the eminent jurist was deputed by the Constituent Assembly to tour countries like U.S.A., Canada, Ireland, Britain etc., but Alas ; it is regrettable that no idea was mooted out to tour various regions of this country to study the feelings and aspirations of the people of this country.

I should like to enumerate vital drawbacks in the Indian Constitution. These drawbacks will clearly indicate that the aim of the constitution makers was not to bring a federal constitution for the country but a unitary one. Many of the federal features, as found in various constitutions in some other countries are introduced in our constitution but cleverly ways and means are effectively provided to curb the constitutional rights of the states by the centre and use its discretion. Article 356 of the constitution is a standing instance. In this way no state can enjoy the constitutional rights freely, and the centre can curb the legal rights of the States with the help of the ample provisions of the constitutions.

Our constitution is not federal in nature that the powers are centralised and the states are in a sub-survient position. Some of the provisions of the constitution will clearly prove and illustrate that our constitution is not a federal one. They are :

A. States were not reorganised on liguistic basis at the time of the framing of the constitution.

B. Equal states for all regional languages were not provided in the constitution.

C. Imposition of Hindi as official language for the centre is provided in the constitution. In a multi linguistic country and the imposition of one particular regional language on the entire country of different languages is a clear proof that it is not a federation.

D. The appointment of a Governor for a particular States is at the discription of the centre and the state have no say in the appointment of the Governor. Mostly other state persons are imposed as Governors.

E. The recent trend of the centre is imposing judges from one region to other region.

F. The Centre enjoying the power to recruit the I.A.S., I.P.S. Officers and sending Officers of one region to serve in other region.

G. Regional languages are not encouraged in the Parliament.

H. Regional Political parties and their reasonable demands are considered by the centre as antisocial and undemocratic and at times antinational.

I. Curbing the regional spirits in the name of national integration.

J. Certain provisions of the constitution are permitting the centre to dismiss the state Ministry or dissolve the state assembly and imposing the Governors Rule, e.g., Article 256, 257, 354, 355, 356 with the help of these provisions in our constitution the centre had repeatedly dismissed the state ministry in almost all the states dissolved the state assemblies and imposed President rule.

K. Nowhere in the constitution states are provided with the right for secession which is a guaranteed right for a state in any federal setup, as evidenced by Federal Constitution of certain countries.

L. Nowhere in the constitution provision is made for the states to make state constitutions

to fulfil the aspiration of the regional masses, as provided in federal constitutions.

M. Huge income under the head taxation and other revenue collection are allocated in the union list in the constitution. State Government Income is meagre and inadequate and is under a perpetual dependence at the hands on the centre.

N. Even regarding the rights enumerated in this state list, the centre had repeatedly encroached upon the state list.

O. The residuary powers in a federal set up will be enjoyed by the states ; but in Indian Constitution it is quite contrary.

P. The powers enumerated in the concurrent list are mostly enjoyed by the centre and the state powers in the concurrent list are meagre. If any conflict of rights arises the centre can prevail over the state.

Q. On April 30, 1947 the constituent assembly at its sitting set up two committees, one to report on the main principles of the union constitution and the other on the principles of Model Provincial constitution. Of the 26 members of the model provincial constitution committee, only seven sent their replies. Sri B. N. Rao, the eminent Jurist, had submitted a model provincial constitution to the constituent assembly. Sri B. N. Rao had suggested to elect Governor to act as head of the provincial executive. As B. N. Rao had not mingled with regional masses and as he had failed to study and Judge the Linguistic spirit of the Regional masses, he had suggested the official language for provincial legislature as Hindi or English and if the speaker permits any other language may be used. Section 19 of Chapter II of his Model provincial constitution runs as follows :

"In the provincial legislature business shall be transacted in Hindusthani or English provided the Chairman or the Speaker as the case may be may permit any member who cannot adequately express himself in either language to address the chamber in the mother tongue".

Fortunately this suggestion of Sri B. N. Rao was not approved by the constituent assembly. This is a clear evidence that the framers of the Indian constitution have no adequate knowledge of the feelings of various regions of India.

In the original Cripp's plan of 1942, it was visualised that the possibility of a provision to enable a province to opt in or opt out of the federal Union of India. This was ignored unfortunately.

Almost all the states are struggling for autonomous status or some status equal to an autonomous body :

(a) The struggle waged by Kashmir people from 1947 up today is struggle for autonomous status with a right to Secessation from the clutches of the centre.

(b) The Punjab demand is also a demand for autonomous status for Sikh state of course one group of people in Punjab demands continuously for Punjabi suba or Khalisthan. But a powerful section in Punjab is ready for a compromise if centre agrees for autonomy of Punjab.

Under these circumstances the centre should fairly concede

(a) To introduce a new constitution for this country.

(b) To divide the whole country into five federal units, namely Southern States, Northern States, Eastern States, Western States and Central States.

(c) The centre should enjoy only the powers viz., foreign policy, communication and transport, defence, currency.

(d) There should be a council called as interstate council equally represented by the states at the centre. This interstate council should be sufficiently empowered with a secretariat.

(e) All states should contribute to meet the expenses for defence and other expenses to run the machinery at the centre.

(f) Each Linguistic state shall function with a parliament composed by the elected members from the state and a Governor.

(g) All the powers except enumerated above for centre should be vested with the states.

(h) The residuary powers should be vested with the states.

(i) The federal unit is composed and represented by the Chief Ministers.

(j) The regional languages shall be used for all official purposes within the regions and for the purposes of transactions of Correspondence English may be permitted for all Central Government purposes and interstate purposes. No languages can be imposed on any region.

(k) For all election purposes either for the centre or state, elections should be conducted not to elect a person but to evaluate the representation for a party. Party system of administration should be adhered and voting pattern for electing individual should be given up.

I am placing these suggestions before you for the purpose of fulfilling the real aspirations of the people living in various regions. Imposition of terms and dictations by the centre on states was a grave concern for the leaders of the Regional parties. Accumulation of powers at the centre is a gross encroachment on the valuable rights of the states. The political problems, sparked at Tamilnadu, Andhra Pradesh, Assam, Punjab, Kashmir and other states are really region-oriened grievances and correctly voiced their objections against

centres imposition on their states. The recent compromised formula worked out by the present Prime Minister are not enduring solutions. But a temporary adjustment, which can erupt at any time.

Therefore this is high time for the centre to take necessary steps for the formation of a new constituent assembly to evolve a three tier set-up a full fledged independent state based on language, a group of states as a Federation in the above said five regions, and a confederation formation at the centre.

This is my view and the view of the political party Namadu Kazakam.

Though my view is for a new constitution as detailed above, as you have furnished me a questionnaire I am formally answering these questions just to ventilate our feelings against the provisions of the present constitution and my answering for those questions are annexed herewith.

REPLIES TO QUESTIONNAIRES

PART I

1.1 Our constitution is not strictly a federal constitution of course, it looks as if it is a federal constitution but strictly this is more a unitary *constitution* than federal. The framers of the Constitution had borrowed the provisions of the Government of India Act, 1935 and the Government of India Act 1935 was framed by the then *rulers* of India Continent. Their task was to govern the colonial territory keeping in mind that the British Empire is supreme for all purposes. The Govt. of India Act, 1935 gave only restricted powers to the then *legislative Councils* framed under the Act. I regret to say the provincial legislature of the Government of India Act, 1935 was only acting as an Advisory Board to the Governor or to the British empire through Governor, however, the Act has enumerated certain powers to the Provincial Legislature.

1. The Legislative powers guaranteed under the Indian Constitution for each State provides the States Legislative body to form a State Government, a Cabinet with collective responsibility and legislatures for each constituency. This legislative function of the State is repeatedly disturbed by the high power given to the Centre under Article 365 of our constitution. Under Article 365 of the Constitution the Centre with out any reason disturb the State Legislatures, dismiss the State Governments, dissolve the State Assemblies and impose the rule of *Governor*. Almost all states have experienced themselves this non federal act and undemocratic imposition of Governor's Rule. When Compared with the Government of India Act 1935 the provincial legislature, enjoy only the transistory power. Though the provincial legislature is given some power the imposition of Governor rule or President rule is more like a Democles sword hanging over and above the provincial legislative body.

2. The Governor is not an elected person under the Constitution but only appointed by the Centre. The fair legislations passed by the State either unanimously or by division are sent for the assent of Governor or President. Most of the valuable legislations sent for the assent of Governor or president are lodged in continuously for years together or they are returned want only with some *quearies* to the State Legislature. They are kept in their offices without granting assent. In this context, I would quote, as an example one legislation passed by the then Congress Government from personal experience. When the Land Ceiling Act, 1960 was introduced in the then State Legislature and when it came into force on 6-4-1960 enormous time was given to the landlords to create binami documents just for the purpose of keeping their Vast extent of agricultural lands away from the ambit of the Tamil Nadu Agricultural Land Ceiling Act, 1960. Nearly 20 years have passed since the legislation of the Land Ceiling Act came into existence, certain land-lords were holding Vast extent of lands under their possession and they have cleverly escaped from the ambit of the Land Ceiling Act. For the purpose of redistribution of land to the landless poor rectifying the Defects of the above Act I am the Revenue Minister placed legislation before the State Legislature invalidating the bogus Binami transactions prepared earlier. The Legislation was passed in the State Legislature and it was sent for the assent of the President of India. For several months the legislation papers were lodged in the President's office and returned to State Legislature without granting assent to the Hill. I am quoting this incident to this Commission to show that State Executive power is not free and the State Legislature is greatly handicapped and causes hardship in the name of 'President's Assent'.

3. Thirdly with regard to judiciary many of the foreign countries have followed peculiar system. They are having a Federal Court at the Centre which deals with the inter-State relationship. All Civil and Criminal cases are tried by the judiciary at the State Level itself. Each State is having a Supreme Court at the head of the State judiciary and passes final verdict on the disputes with regard to revenue civil and criminal sphere. The judges are chosen from the respective States and verdict is passed in the regional languages. This feature is essential for a Federal Government. But so far as our Constitution is concerned the Court at the Centre is the highest court for all Criminal, civil and Revenue disputes and also have power for enforcing the fundamental right as gauranteed under the Constitution. The High Courts in the State level are not the supreme judicial bodies but they are under the control of the Supreme Court at the Centre. Even this judiciary is not independent in practice. To control the judiciary the Government at Centre is transferring the judges from one region to other region purposely to keep judiciary within the control of the government at the Centre. I have enumerated these things to illustrate that our present Constitution is not Federal with regard to Legislative powers, Executive powers and Judiciary. The finance controls is purely with the Centre. Heavy taxation revenues are passing to the Centre and the State is always at the mercy of the Centre even to meet immediate relief work.

1.2 I wholeheartedly agree with the views suggested by Dr. P. V. Rajammannar's Commission whose aim is to bring autonomous status for the States. I agree with Dr. Rajammannar's report with regard to Article 251, 256, 257, 348, 349, 355, 356, 357 and 365. The Centre had repeatedly misused the powers under Article 365. The very first instance is the dismissal of Thiru Namboodhiripad's Government in Kerala State. From the dismissal of Namboodhiripad's Government in the State of Kerala down to the dismissal of Mr. Rama Rao's Government in the State of Andhra Pradesh. The dismissal of the elected Governments by the Centre was undemocratic, partial and prejudicial to the norms of the political institutions. The elected governments by the dismissed by the centre is more like the imposition of something against the verdict of the people. Therefore, I am of the view that Article 365 of the Constitution should completely be deleted as it paves way to dismiss the popular Governments of the States. Please refer my introduction.

1.3 India is a multi-linguistic State with different culture and traditions. Due to the advent of British imperialism India and other neighbouring countries were governed by one foreign Government. The purpose of independence is to achieve freedom for the country as a whole and freedom for the liberal use of language in their respective State, and also for the freedom to safeguard the traditional values of the people belonging to various regions. A demand is made to centralise everything, disturbs the spontaneous traditional culture and the growth of the regional languages. In the annals of the 35 years of the running of Indian Constitutional machinery almost all States raised slogans to protect the lofty ideals of the respective regions in one way or other. The slogan raised by Tamil Nadu for autonomous State is one among these demands. As everything is Centralised at the Centre the Centre is unable to meet the demands of the common man. The alternative is suggested in my introduction.

1.4 The U.S.A. permits the State Legislature to function as a separate entity within their jurisdiction merely because certain independent powers are allotted to the State Legislatures. The State legislature has never demanded for any separation. The founder of the U.S.S.R. Comrade Lenin had quoted in one of his speeches that the State should have independent economic powers within their ambit. Merely because divorce is legalised the spouse is not in the habit of urging for a divorce. The States can have powers for separation if the security of the State is in danger in the hands of the Centre. In U.S.S.R. the States are having ample power for separation and to function as an independent State. This power is a legally guaranteed power for a State in a well cultured country.

1.5 (a) I am not fully agreeing with the Constitution is basically flexible, to meet the challenge of changing times. For instance, Tamil Nadu is opposing the imposition of Hindi right from the date of the passing of the provision in the constituent Assembly. So far the Constitution is not amended but some assurances were given by the Prime Ministers repeatedly. Inspite of that huge money is spent by the Centre for Hindi only and all other national languages are not enjoying adequate funds for their growth. Our Constitution is not flexible to present a bill before the Parliament. The amending procedure is causing great hardship, however the demand of Tamils is justifiable. Constitution is amended repeatedly for the ruling party's views and objections. I have elaborately discussed this subject in the introduction under the head.

(b) I am not agreeing with the view that the defects tensions and problems which have arisen in Union-State relationships are not due to any substantial defect in the Scheme and fundamental fabric of the Constitution. The State Government is kept in a position to beg for the least money for the relief work of the States. As Centre is equipped with more financial resources and as Centre is having a command over all States with regard to financial distribution of funds to the States discrimination in the distribution of funds to the States occured repeatedly. Some States under the political pressure with the Centre are able to gain more funds and some other States are not getting their reasonable funds. This discrimination causes tension for the neglected States. Party consideration, political influence and power politics, cause considerable encroachment, discrimination under the distribution of funds by the Centre to the States; the constitution have not regulated proper distribution. The Supreme power guaranteed under the Constitution to the Centre for the distribution of the funds to the State is the main cause for strained relationship with the Centre. Political pressure and dismissal of the popular Government under Article 365 is bad president prevailing even today in the Indian Constitution. Imposition of Judges from one region to other region is curbing and limiting the use of regional languages in judiciary. The selection of highest officers by the Centre and distribution of these officers to various other States also curbs the legal rights to the respective States.

(c) These defects, problems and issues cannot be rectified without a new Constitution. The framers of the Constitution have not forseen the dynamic change nor judged the fair aspiration of the people of various regions. Regional values and organisations are fully ignored and unitary Constitution is framed without taking into account all the linguistic thoughts and traditional values,

(d) (i) Dr. P. V. Rajamannar has suggested some changes in the Constitution only, but I should like to suggest framing a new Constitution itself, as I said in the introduction. The best suited Constitution for our country can be Confederation. The Centre should be allowed to solve the Inter State disputes, transport foreign exchange, Reserve Bank control. Defence, Postal and Revenue, Civil Aviation and major national programme of work like petrolium projects. All other powers should be redistributed to the States and the States should be equipped with all powers inclusive of power for separation. Please refer three tier set up as suggestd in the introduction.

1.6 I agree protection of integrity and independance of this country is of paramount importance.

Already I have suggested the structure of the present Constitution itself is basically in error. Only by bringing a new constitution as I said earlier can maintain the unity and integrity of the country.

1.7 I have elaborately analysed in my introduction.

1.8 Empowering the State under new Constitution for the purpose of better administration and for fulfilling the aspirations of people living in various regions of this country. The people under different regions can be united under the head Federation for instance, Tamil Nadu, Kerala & Andhra Pradesh can be formed as a Southern Federation and the States should be re-organised on the respective languages spoken by the people in a particular territory. Division of people on the basis of languages and uniting them under a Federation can largely help the redistribution of powers from the Centre to the State. The formation of a Federation can help greatly in solving the Centre State disputes and also can help in unity and integrity of the people living within the respective federation and can help largely for the unity and integrity of the country as a whole. For example The Hindi speaking people can be grouped under one Federation. The Northern order including Kashmir can be united another Federation. From Bengal to Orissa can be formed into a Federation. Maharashtra to Gujarath can be formed into another federation. India consists of five federations as given in my introduction and the Centre can be formed as a confederations. Political philosophers are generally appreciating the Federation Structure of political institution in a country where people speaking different languages are diversified in their thoughts, culture and tradition. To achieve this type of Constitution, I have already suggested the entire political machinery should be reshaped and remoulded and a new Constitution should be shaped to fit for a Confederate State.

PART II

2.1 It is unfortunate to comment upon our Constitution. As I have suggested already, as the framers of the Constitution have borrowed from the Government of India Act, 1935, a great mistake has happened in framing the Constitution. In the face of Art. 365 of Constitution the State legislature is not at all an independent body. In the name of internal crises of external disturbances, the State Legislatures are repeatedly disturbed, dismissed and dissolved. Art. 365 of the Constitution is dangerous undemocratic weapon to smash the popular elected State Legislature (For Namboodhiripad was chosen to form a Ministry in Kerala State. The moment, the Ministry was formed, the opposition parties and some other elements were indirectly induced by the Centre itself and caused disturbance against the Ministry. Instead of giving protection to Namboodhiripad's Ministry, the Centre took a drastic step and dismissed the popular government in Kerala). Almost all the States have suffered the dismissal of Government at the hands of the Centre. The Ministry of Dr. Kalaingar Karunanidhi was dismissed in Tamil Nadu. The Ministry of Mrs. Nandhini Sathpadhi was dismissed in Orissa. The Ministry of Farook Abdullah was dismissed in Kashmir and finally the Ministry of Mr. Rama Rao was dismissed in Andhra Pradesh that caused more agitations, demonstrations, Harthal, picketing, mass arrest, violation of 144 orders and finally the Centre yielded for the demands of the people and reinstated Rama Rao in the Office of Chief Ministers, Andhra Pradesh. On Numerous occasions Centre has dismissed various State Ministries, Dissolved their Assemblies and ordered for imposition of Governor's rule.

2.2 I have already suggested that the Centre should enjoy only the powers under the head Defence, Reserve Bank, Monetory control, postal, railway, civil aviation, foreign relationship and disputes, inter river disputes; all other powers should be vested with the State. Framing the Constitution is proper solution for this.

2.3 Answered in introduction.

2.4 Absolutely the parliament is not the competent authority to intervene and pass legislations concerning a State. The state is out and out an autonomous body that it should be freely permitted to pass legislation as it feels and the State legislature alone can be the proper authority for giving protection for people living in a particular place either perpetually or for a time limit. Parliament should not be permitted to encroach upon the legal rights of State.

2.5 I have already suggested the remedies under new Constitution.

PART III

ROLE OF THE GOVERNOR

3.1 The Governor is not an elected person and merely a nominee of the Centre. Under this circumstance no Governor should be permitted to run a parallel Government with the State. We should keep in mind that the Government in any particular state is an elected body. The Chief Minister and the Cabinet Members are directly elected by the people and form a Government. But the Governor under present set up is merely a nominee who acts only as a puppet. There is view that the Governor is to be elected by the people. If Governor is also an elected body it will have way for a conflict between two elected bodies in a particular State.

3.2 The Governor can exercise no right on the State Legislature. He is not competent man to foster the relationship of a State with the Centre. As a Governor is representing as a nominee of the Centre, his function is irreduceable minimum, merely to sign papers in a formal manner. If the Governor exercises any power in conflict with Chief Ministers that will naturally cause crises in the State.

3.3 (a) The Governor is enjoying the highest post in a particular state. He is neither a investigator nor a party man. If he brings in any report against a particular State to the President, he is not competant to act as a Governor. If the Governor

endorses all the views of the Chief Minister, the Governor's post is unwanted one. Either way the Governor's report can serve no useful purpose to solve a problem. In a Democratic set up, the President should give more weight to the decision taken by the Legislature than the report of the nominee, the Governor. Often Governors are not preparing reports; sometime the Centre itself is preparing the report and ask their nominee to sign and on the strength of the report of the Governor the State Governments are dismissed. Therefore, Governor's report to the Present is neither useful nor basically correct. This is the position at present.

3.4 I have already answered this question in more details from my own personal experience as Revenue Minister in the State of Tamil Nadu. This sad legacy in the Tamil Nadu State Assembly is a concrete instance for your kind consideration; if any bill passed by the Assembly infringes any right under the Constitution there are ample powers in the Constitution to take the bill before the judicial body and the judiciary is competent to declare a bill void or invalid against the provisions of the Constitution law when there is a judicial check for a particular bill, the Governor and the President who are in the habit of lodging a bill in connivance with the Centre is a very bad precedent.

3.5 In the quoted above instance from my personal experience the bill was withheld for several years and returned to the State Legislature at a highly belated time. The error committed under the pretext of the President's assent for any bill can be repeated by another President and will become a bad precedent. Withholding a bill by the President or Governor indirectly causes a threat to the autonomous function of the State Legislature. Unnecessary delay in returning the bill paves way to escape from the ambit of legislation and object of the legislation is never achieved due to the delay of the President; whatever may be, when a popular Government passes a bill why should indirctly the President withhold the bill or return the bill without a assent. A new constitutional set up alone is a remedy.

3.6 As I already suggested the Governor is only a nominated head nominated by the Centre. He is not a competent link to strengthen the Centre State relationship. Only the Inter State Council can be the best suited forum for the Centre State relationship. The Governor is often under the control of the Centre. Terms are dictated to the Governor and the Governor is acting according to the direction given by the Centre. The role of the Governor is fully exposed in the dismissal of Rama Rao's Ministry in Andhra Pradesh. When the Governor dismissed Rama Rao and appointed Bhaskara Rao as Chief Minister and as Bhaskara Rao had not proved his strength, question was raised in the Parliament; charges were levelled against the then Prime Minister that the drastic action taken by the Governor of Andhra Pradesh was at the instruction of the Prime Minister herself. But the Governor had acted in connivance with some other Central leader at their instruction. The aspiration is bonafide. An agitation was effectively carried out, continuously for a month or more. The Centre dropped that Governor and appointed some other person as Governor for Andhra Pradesh. It shows that the Centre is having all powers to dictate terms to the Governor. Naturally one will hold the bonafide belief that the action taken by the Governor is at the instruction or instigation of the Centre.

3.7 As the Governor is only a nominee of the Centre none can expect him to work as a Supreme Court Judge.

3.8 Even without the help of the Governor ruling party's strength can be proved or disproved. If the Speaker himself is not impartial then the Governor may be asked to summon the Assembly and ask the Chief Minister to prove his strength whether he has own the confidence of the house.

3.9 The reference quoted from the German Constitution is not suited to our country. I have a scheme in my introduction.

PART IV

ADMINISTRATIVE REFORMS

4.1 This question never arises in the context of my proposals.

4.2 Article 365 should be deleted.

4.3 I fully endorse this view that provisions of Art. 256 are often misused by the Centre to encroach upon the legal rights of the State. This Article confers the power only under the external circumstances, but often the Centre had applied the provisions of this Article as a vindictive measure against State Legislature. Only in consultation with Inter State Council Judges forum and high level consultative body the President can apply his power and not under this article; otherwise the State Legislatures cannot function; these articles are permanent threat for the proper functioning of the State Legislature.

4.4 I have suggested more details in the earlier questions. I am of the opinion that Art. 365 should be completely deleted. If a popular Government fails to discharge its function, it is open for the State to carry any election to form a new Government. Art. 365 is a permanent threat to the democratic rights of the State and therefore this article should be deleted into.

4.5 Whatever may be the circumstances, democratic set up in a particular state cannot be abolished totally for a longer period like 3 years. One year is quite enough and within this period election should be carried out in the State and popular Government should be installed. It is the look out of the popular Government to see the State functions within the ambit of the Constitution. My suggestion is for new constitution.

4.6 The present working arrangement is not satisfactory. It is unfortunate the Election Commission is a tool in the hands of the ruling Party. Ruling Party is fixing the election date suited to

them. For instance, when the former Prime Minister Smt. Indira Gandhi expired the election Commission proposed to carry the election during January, 1985. But as people were mourning the death of Smt. Indira Gandhi and just to exploit the sympathy of people, the election date was advanced from January, 1985 to December 1984. This is a clear instance to show the Election Commission is not an autonomous body. The ruling party as well as the opposition parties should have equal voice in fixing the date for election and a crucial date to be fixed by the Election Commission independantly. Election Commision should not be permitted to fix the election date according to the convenience of the ruling party.

4.7 This criticism is absolutely justifiable. The only remedy would be that these Central Agencies should be under the control and supervision of the Inter State Council. All the State should be equally represented in controlling the day to day work of these agencies.

4.8 I am against the recruitment of All India Services like Indian Administrative Service and Indian Police Service. Police Administration is purely under the State list. Civil Administration also is a State listed subject. For proper working the machinery of the State Government, recruitment could be done bv the State Government itself.

4.9 I am seriously passing this remark. Imposition of Central Police Power in any part of the State without the demand of the State Government should not be done. The centre cannot function as police Machinery in contrast with the State Police machinery in any particular State. If any area is declared as disturbed area by the State it is for the State to see that the disturbed area is kept under control. No other Government except the State Government can exercise police administration in any state. This is my view.

4.10 My view is the State should have independent programme in Radio and Television without the consent or concurrence of the Centre. The Radio and Television in a particular State should fully be under the control of the State. The Centre can also have Broadcasting time in radio and television to broadcast the information with regard to the Centre. 75% of the working time must be under the control of the State and 25% for the Centre. If the State Government seriously opposes any programme the centre should not exhibit such programme. All officers and technicians for Radio and television have to be appointed by State Government in the respective State. The appointee should belong to the respective State.

4.11 Inter-State Council miserably failed in discharging duties in the State reorganisation subject.

4.12 The Inter State Council should be permanent statutory body with legally enforceable powers. The States should equally be represented in Inter State Council. Problems between the States should necessarily be forwarded to the Inter State Council. The Centre State relationship can also be discussed in the Inter State Council.

PART V

FINANCIAL RELATIONS

5.1 For the past 35 years the revenue resources for the Centre were very high and the fiscal position of the State has been very poor. Many States were indebted to the Centre in borrowing for the relief works. As more powers are allotted to the Centre and under the present Constitution Centre is able to collect more money by various provisions of law. The State Governments are badly in need of funds. The Agriculturists indebtedness is a great burden for the state but the state government is handicapped and unable to wipe out the loans because of the Centres instruction compelling the State Government to collect the loans, even though the farmers are continuously suffering from the failure of their crops. Want of funds for the State is the real reason that the Government is unable to work effectively within its ambit. Due to paucity of funds the State Governments proceed a step further and squeez the money from the people in a manner in becoming of a Government. The Government introduced liquor and by introducing or by withdrawing the prohibition Act, Government gains more money in selling liquor. The State Governments should adquately be provided with sufficient resources. The collection of Taxes should be only with the states and centre get contribution from states.

5.2 The State should have a complete fiscal independence regarding resources available in the State to be utilised by the State itself for ever. Out of the total revenue available from the State the Centre should get a proportionate share.

5.3 Every State wants to root out the inequality of income between one citizen and another citizen, remove the caste barriers and wants to establish social justice. The lofty ideals of Thanthai Periyar and Aringar Anna are followed by millions and millions of Tamils who want to establish a casteless society in our State. The so called untouchables viz. the Adhi dravide and people belonging to backward communities have to be assisted by the Government with the educational concessions and employment opportunities. The resource available in the States have to be completely utilised, but under the present circumstances the State is prepetually at the mercy of the Centre as major income like Income Tax and Estate Duty, Insurance, Postal, Railway and other major projects are with the Centre. The States should be empowered to collect all the revenue on respective items and certain percentage of the total income should be given to the Centre for running its machinery. Then only social and economic equality can be achieved.

5.4 This question is of serious concern to the whole of this country. The Government have got a right for taxation but the Centre is having more burden in collecting the taxes as the collection of taxes are not equally distributed amongst the States and the Centre itself is enjoying the power; various threats bubbled in the Indian economy. The perpetual threat of fake notes and black money is not checked by the Centre, in time. MRTP

Commission is not properly functioning. Its ceiling limits are also raised. Under these circumstances the big industrial houses are dictating terms for their benefits. The Government miserably failed in controlling the big industrial houses and Government is unable to check escalation of black money and fake currency notes, consequently for the articles purchased by the common man price is spirelling up and this social evil is not checked by the Government at the Centre. The Centre failed to check all these evils because its area of operation is Vast; its officials are ineffective and the enforceable law are beset with numerous loop holes. Only the State Government can check this economic offences effectively within the limited jurisdiction of their particular State.

5.5 Financial Commission and Planning Commision have miserably failed in surveying the available resources of the State and allocation for planning purposes. The reasons is there is no coordination between State Planning Commission and the Central Planning Commission.

(2) The political influence of some states over the Centre and the Planning Commision in diverting the available funds to borrowed States causes hardship to the poor state. However the Planning Commission and financial Commission are called as autonomous bodies. But they are perpetually under the political influence. The available resources in every state is not surveyed with the help of State Planning Commission and technicians. State Planning Commission as well as the Centre Planning Commission have not so far discussed on this vital subject of this country. Of course, it is well admitted norm that a backward State should always have some concessions in the financial help as well as planning funds, even under the present set up. But our suggestions are given in the introduction.

5.6 We agree there should be a federal fund to uplift the backward State subject to the concurrence of the State. In each and every State certain members are backward both socially and educationally. Under these circumstances, the provisions of Mandal Commission report should strictly be enforced by suitable amendments even in the Present Constitution. Proportional representations of backward communities in employment should be enforced as Constitutional guarantee just as for scheduled Caste and Scheduled Tribe.

5.7 Already answered.

5.8 The taxes enumerated in your question, as I already suggested should be vested with the State, while collecting this taxes reasonable percentage of the proceeds for Centre will be given by States as its due share.

5.9 This never arises because my suggestion already entirely differs that the states should be empowered in collecting these taxes.

5.10 The Finance Commission so far acted as an agent for Union Government surveying the resources available in the State. The Finance Commission ought to have discussed with the State Planning Commission and Finance Administering authorities.

5.12 Question does not arise as I have already made a different proposal.

5.11 Yes. I agree that there is so much of financial indiscipline under the present scheme.

5.15 This question does not arise.

5.16 The question itself supplements my view that States should be more powerful in raising its resources for developmental and non plan expenditure. So far the encroachment by the Centre in the sphere of taxation within the state crippled the State and contributed to perpetual indebtedness towards Centre.

5.17 The most important factor is the encroachment of the Centre in squeezing the taxation finance of the State. Therefore, this further augments my proposal that the taxing power should be only with the States.

5.18 That should be left within the power of the State to borrow as and when they need.

5.22 We do not agree as most of the productive heads of taxes are already usurped by the Centre.

5.23 Leakages in Central taxation as propounded by the question further augment my proposal that the State should be tax collecting authority and not the Centre.

5.24 Does not arise as I recommended that the State should be tax collecting authority and not the Centre.

5.25 Does not arise.

5.26 Centre is further burdened with collection of taxes and hence leakages in taxation. As I already suggested State should empowered to collect taxes. Collection of Taxes is a vital issue.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 As I already suggested, the State itself can implement its projects with due weightage for national importance. State Governments naturally get interested in the success of the programmes.

6.2 There is no need for national Planning Commission, as I have already suggested the State should be empowered to plan.

6.10 The State Plans lose their identity and contents when it is discussed regarding financial assistance from the Centre and therefore the States are not interested in formulating and implementing the economic plan. Therefore I have suggested that States should be fully empowered to implement their plans and there is no need for another Central Assistance in the scheme suggested by me.

6.12 Planning process should be completely decentralised by scrapping the National Planning Commission and empowering the State Planning Commsisio to prepare an effective economic plan keeping in view the availability of resources. Just

for the sake of coordination the State Plans can be discussed at the Inter State Council. Thus the true spirit of cooperation, Federalism can be infused in our planning process.

6.13 The ARCs recommendations only strengthen my proposal that the planning process should be completely within the control of the State.

PART VII

MISCELLANEOUS

Industry

7.1 The industrial development should be completely a State Subject and therefore registration and other matters would automatically fall within the purview of the State.

7.2 There is a misconception that any state-interested project cannot serve the national interest. There is no clash between national interest and State interest. Promoting the interest of the state automatically promoted the interests of the nation. Once this is realised, the problems like national interest, various state interest will be solved.

7.3 Industrial development should be completely a State subject. Therefore licensing, control of capital issue etc. come within the purview of the States.

7.4 Too much encroachment by the Centre in the activities of the State has reduced the State Government to the level of a Municipality. The local needs, aspirations, resources, pattern etc. could be better evaluated by the State than by the Centre and therefore the State should be fully empowered to undertake economic development.

7.5 Such complaints will not arise in, my proposals.

7.6 Such a accustion will not arise if the industrial development becomes 100% a State subject as given by me in my introduction.

PART VIII

TRADE AND COMMERCE

8.1 Trade should be a matter of State subject and certain coordinating measures can be worked out with the help of Inter State Council for the smooth functioning of the inter-State trade.

PART IX

9.1 Agriculture should be a State subject. Centre's intervention will be resented by all states as they do at present.

9.2 The National Commission on Agriculture can be an Advisory Committee helping the States and it will not have any control over State.

9.4 When agriculture and agricultural items are absolutely within the ambit of the State control this question does not arise.

9.5 Research institutions on national level can be of assistance to States.

PART X

10.1 Civil Supply is a State subject and Centre has nothing to do with it. States needs if any can be sorted out through Inter State Council.

PART XI

EDUCATION

11.1 Education is out and out a State Subject and there is no necessity for Central intervention and interference.

11.2 There is no need for University Grants Commission.

11.3 The purposes of consultation and persuasion can be effectively done by the Education Ministers of the State and there is no need for another Central Education Minister.

PART XII

12.1 I have already suggested Inter State Council should be statutorily well equipped body that can settle all disputes between States and disputes between Centre and State and all vital issues. Therefore the American pattern of Advisory Committee is not required.

PRAJA SOCIALIST PARTY

MEMORANDUM

PART I

INTRODUCTION

Federal Government as a popular form of national administration has found a manifest and coveted position in the annals of various constitutions in the world. The manner of inculcating the spirit of federalism in the respective constitutions and the mode of their subsequent implementation though may appear to vary from nation to nation that are wedded in core to this popular form of administration, the stature, prosperity and welfare achieved by these nations inevitably testify to the fact that the spirit of federalism envisaged in their respective constitutions have not merely remained therein as a more piece of monument testifying to the dead political asperations of the people but have potentially coursed through the vains of the nation and fostered a happy and healthy people. Switzerland and United States of America are but two randum examples of this enviable achievement.

Such encouraging political achievements and realities do often spin constitutionalists and other eminent persons into wondering as also probing into the fabric of such constitution to see whether there exists any peculiar or secret manner of embodiment of federal principles in these constitutions so as to lead to the success of their people in practically all spheres OR whether there is any

extraneous influence or circumstance that kindles the spirit of federalism in these constitutions to an ultimate reality. More often than not the manner or quantum in the embodiment of federal principles in these constitutions do not vary but their ultimate effect and achievements do vary which goes to show that some extraneous circumstance decide the ultimate efficiency of the federal principles in a constitution. This extraneous circumstance is nothing but the yawning realisation that a constitution is for the people and a people should never be sacrificed to sustain a constitution.

Reclining against this backdrop of introspection into these various federalisms in action, an insight into the constitution of India would provide much food for thought. Indian constitution it can be said without any reservation is potentially federal in structure but unfortunately works out to be unitary in effect. Our constitution makers have indeed lived up to their declaration to the extent of providing our constitution a "Federal frame work with a strong Centre" but unfortunately the promise of maintaining a firm consistency in the framing of the constitution to that effect has not been followed up in as much as the Centre has been made too strong and the State reduced to mere shadows. The spirit of federalism imbibed in the Indian constitution has tragically enough been confined to the pages of the constitution to be merely spoken about much, reducing it to a mere abstract theory when in contrast the federalism in the constitutions of countries like Switzerland and America have evolved itself to a functional entity wherein the national and regional governments are "Co-ordinate and absolutely independed".

India is a large and hetrogenous because it is a nation holding together people of different tastes and traditions. In short it is a union of state wherein every state has its own individualities and peculiarities calling for a type of administration which can effectively aid the progress of these states as a separate entity so as to enrichen the life of the people therein. *The growth of India as a nation is the growth of these states individually and jointly.* It is an exercise in futility and a vain expectation that a strong union government can effectively achieve the individual development and progress of each state in India because considering the vast size of the Indian territory and its heterogenity all attempts by the union government to involve itself in the affairs of each state would not go beyond a periscopic appreciation and approach and consequent limited developments of the states individually. The fact that the majority of the Indian masses are still wedded to poverty testifies to the preceding administrative propensity.

The chapter on Centre State relations as envisaged in the constitution of India and as held today invites the inevitable and invariable conclusion that although there are literally ample doses of state autonomy therein, the same remains a silent spectator to the degeneration of the states rendering the preamble to our constitution a remote dream. The question is but unavoidable as to what then is the obstacle or impediment to the individual development and achievement of our units state. The answer is that the exercise of federal rights of the state are subject to too much of unhealthy and unwarranted surveillance and restraints by the Centre. This is because the concept of a "Strong Centre" has been unwaryingly over emphasised in the constitution to the extent of making it a despotic instrument. As the unity and integrity of India as a nation was looming large in the minds of the authors of Indian constitution, the over zealous attempt to secure them led the drafts-men of our constitution to unknowingly cripple the healthy federal principles therein by subjecting it at every turn to union scrutiny and deliberation. This manifest situation can be treated akin to an example where an individual after having gifted his horse to another still holds the reins in his own hands. The popular or detrimental dimensions of such a propensity does not need much effort for visualisation. Modestly viewing it, neither does the receipient of the horse derive any benefit from being its ostensive rider as he cannot direct it to destinations of his choice nor can the gifter of the horse holding the reins acquire any advantage as the intension of the gift, being the welfare and convenience of the receiver, is rendered infructous. Inspite of such a deadlock if the horse is spurred on the probable results are that both the rider as well as the person holding the reins will hit the ground with the horse straying away. The states under the Union of India have been gifted autonomy under such an arrangement the result being that the gift is yet to achieve its intention viz. the individual development and prosperity of the states.

An eminent revamping of the Centre State relations is the crying need of the day and unless there is a material and meaningful response to this need, the cry of the people will remain a cry in the wilderness.

There has been a lot of deliberation over the years in the regard. A good lot of constitutionalists as well as eminent study groups have examined this issue in detail. Amidst other suggestion one remedy which has received vide acclamation is the programme of effective decentralisation. Retreating through the preceding observations made herein it appears to be more than warranted that a meaningful decentralisation is the only via media through which the federal principles embodied in our constitution can be clothed with flush and blood enabling it to work into the life of each state and place it on the pedestal of self sufficiency and prosperity.

Decentralisation or the devolution of powers to the state can be achieved within the existing favour frame work of our constitution without bringing in any radical additions. Instead amendment of the federal provisions in a manner which would weed out the bottle necks caused by unwanted involvement, restriction and extortion by the Centre would be the appropriate and positive approach. This is a suggestion advocating more or less a follow up of the lines drawn up in this regard by the Raja Mannar Committee appointed by the Tamil Nadu Government. Of the various articles sought to be revised by the committee only Articles 251, 256 257, 355, 356, 357 and 365 need be

amended or deleted. Because the vehimence of the suggestion advanced in favouring states with palpable autonomy does not relish the idea of weakening the Centre to such an extent that owing to unbridled power the states may eventually disintegrate into separate entities in all respects. The collective status of these states as the Union of India should not suffer at any rate. To be precise the Union government should be equipped with only such powers which would enable it to restrain the states from seceding or proving a threat to any of its neighbouring states or implementing programmes ultra vires constitution. In short only such latitude should be given to the administrative and legislative tentacles of union as would suffice to protect the country or any part of it from external aggression and also prevent the states from causing internal disturbance or seceding to a total separation. In this regard vital subjects such as defence, communication, transport, citizenship, currency, extradition and the like which if left to state could jeopardice the entire Union of India in any manner should be retained with the Centre with absolute prerogative to act upon it. Further details of decentralisation would follow in the subsequent parts herein relating to modification in the different federal relations.

The Praja Socialist Party presents the above modest study of the Centre State relations with suggestions for effective decentralisation before the esteemed Sarkaria Commission for its favourable and adequate consideration. The party would venture a step further to add that an effective, uniform and practical socialism can be achieved only if there is a move to decentralise our constitution.

PART II

LEGISLATIVE RELATIONS

Chapter I under Part XI of the Indian Constitution envisaging Articles 245 to Article 255 deals wih legislative relations between the Union and States. The Chapter on legislative relations between the Union and the state under a federal constitution demarcates the boundaries of autonomy fixed for the states and the Union with regard to the field of legislation. The constitution of India makes a two fold distribution of legislative powers between the Union and the states dividing legislation into two aspects of territory and subject matter. Although in principle there appears an ostensible division of legislative powers in the matter of territories and other subjects it is indeed a sad realisation that the legislative autonomy attributed to the states do not ensure to free implementation as the same is restricted by unbriddled union interference.

Subjectwise the distribution of legislative powers between the Union and the states are exhaustively enumerated under three lists referred to as the seventh schedule in the constitution. They are the Union list, the State list and the concurrent list. An impartial observation of the items that have gone into the respective lists and the latitude given to the states to freely legislate on the subjects allotted to them cannot but escape the conclusion that a truely federal state has no place in the constitution of India and that a federation has no accommodation in the political denstiny of our people.

The Union list over and above including such items as are required to protect the freedom, unity, integrity and security of India as a nation also draws in subjects which in a sincere federal arrangement ought to be relegated to the states. In this regard what are the items that should be reserved in the Union list is an issue which can be decided satisfactorily only after a detailed deliberation. Further item 97 of the Union list needs an amendment in as much as residual matters pertaining to the major items in the Union lists alone should be within the perview of Union legislation. The Union list as it stands now has practically "bottled" our federation.

Coming down to list No. 2 being the State list, not only the items contained therein constitute the left overs of a Union legislative feast but the state finds it practically impossible to enjoy the legislative left overs as the constitution has posted too many watch dogs under the control of the Centre, the result being that the states never achieve federalism. The legislative autonomy of states in respect of the items enumerated in the State list are subject to the following conditions or restrictions of the Parliament :—

(i) Article 200 .	States to reserve bill for assent of President.
(ii) Article 201 .	Empowering President with discretion to accept or reject legislative bills presented by States for ratification.
(iii) Article 251 read with Article 250	State legislation to be subervien to legislative power of Parliament under Article 250.
(iv) Article 356(b)	Declaration of emergency in States.
(v) Article 31(a)	Law regarding acquisition of estates, amalgamation of Corporations, modifying right of Corporate officers etc. made by State subject to President's assent.
31(c)	Laws made by State to enforce directive principles of state policy subject to review by courts unless ratified by President.
(vi) Article 282(2)	State laws imposing tax on water and electricity subject to ratification of the President.
(vii) Article 304(b)	Power of state to impose restrictions on freedom of trade, commerce and intercourse subject to sanction of President for introducing such a bill.

Although Articles 249 and 252 speak of the autonomy of the Central legislature in the sphere of state legislation, the Articles do not go against the principles of federalism as the authority of the Union legislature to legislate under these Articles are subject to the control of state. In short it is a deligated legislation from state to Centre.

Crowning or strengthening the above provisions whereby the Centre could have the final say in state legislation, Article 368 empowers the Union Parliament to amend the federal constitution wherein though the proposed amendment has to be ratified by the legislature of not less than one half of the states, there is no provision therein making it imperative to consult the States or get their concurrent in advance. The absence of such a provision makes Article 368 a dictatorial provision waylaying the federal rights of the constituent states.

The State list in spite of the fact contains nothing but the left overs of the Union legislative feast, has been steadily impoverished over the last 34 years by snatching away from it such vital items as forest, education, administration of justice etc. The 42 amendment which robbed the State list of its material contents also signifies or testifies to the way laying propensities of Article 368 described above.

In viewing the contents of the concurrent list, the most apt and justifiable description of the same would be to state that the concurrent list is nothing but a satellite of the Union list in as much as it not only contains potential subjects but the superiority of Union laws over state laws with regard to the items therein makes the entire lists a supplementary Union lists.

Considering the following facts :—

(i) Union lists contain items to which states are entitled.

(ii) The State list subject to a plethora of Central interference or ratification.

(iii) The concurrent list in effect being a supplementary Union list.

(iv) Absolute power to legislate on residuary items retained by the Centre.

it cannot be but stated that the distribution of legislative powers under our constitution loses its efficacy because in the ultimate operation of all the lists the Parliament retains undue and unhealthy supremacy. This state of affairs have strictly speaking driven state autonomy into a "Coma" for although the state exists as an entity its political, social and economic destiny, lies paralysed. To be precise as is the case elsewhere also the present distribution of legislative powers enforced a situation wherein states who can successfully "Woo" or "Court" the Centre alone will get a piece of the autonomical "Cake".

The Praja Socialist Party puts forward certain broad outlines for remedying the inconsistancies and incongruities that have practically made the legislative relations between the Union and the States infructous and abstract. It would not be wrong to say that the Indian economy is by and large a reflection of its agricultural and industrial potentialities. These items equally constitute the base of the growth of states individually. Industry, agriculture, trade and commerce constitute a vital field to the economic and political growth of the state. It is suffocating to note that these broad sources of economic developments with their allied activities and fields are confined to union legislation. In this view the demand is popular that in order to ensure a healthy growth of our states all topics under and allied to the fields of agriculture, industry, trade and commerce must invariably be transferred to the state list and simultaneously withdraw or amend those articles in the constitution which have hither to been crippling state legislative autonomy by subjecting it at every turn to Union scrutiny. The occasion calls for a review that will take note of the vastly increased needs of the states to assume responsibility to implement developmental programmes and social welfare measures and thereby make provision for suitable rearrangement of the constitution restoring to the states sufficient autonomy to enable its unimpeded growth. If the quantom of legislative autonomy to which states are rationally entitled under a federal set up does not accrue to them, then the existing glaring regional imbalances in the fields of agriculture, industry, trade and commerce would continue to effect their uniform growth and pave the way to trenchant distortions in their economy.

It is suggested that necessary reshaping be done of the powers granted to the Parliament in the matter of amending the constitution whereby amendment seeking to restrict, curtail or deprive the State of its legislative powers, be introduced in Parliament only after the prior consultation with and concurrence of the states. It would be also pertinent to suggest here that provision has to be embodied in our constitution which would prescribe a definite time schedule within which the President is bound to exercise his power under Article 200. With regard to Article 201 the same may be amended as to take away the unbridled freedom of the President to dissent with legislation introduced by States unless they are manifestly ultra vires the constitution.

PART III

GOVERNOR

The Governor as contemplated under the provisions of the Indian constitution is a representative of the Union, acting as the executive head of the State. The Governor as projected by the constitution appears to be more or less an arbitrator. The executive, financial, legislative and judicial superintendence of the Governor highlighted in our constitutional set up makes the state autonomy appear to be a puppet dancing to the tunes of the Governor.

In the legislative field the Governor has his absolute discretion to reserve any bill for the assent of the President under Article 200. This goes basically against federal spirit because each and every bill formulated by a state reflects certain exigencies in the life of the state and its development. The urgency of the bill is yet another factor. Considering these aspects if the Governor uses his right to reserve bills for the assent of the President indiscriminately, then a state's proposed lines of development will stagnate leading to degeneration instead of progress. The ordinance making power of the Governor is also a potential weapon which if left to stray can cause a lot of havoc to the healthy growth of the state. Finances which form the blood of state autonomy is also subject to control by the Governor in as much as money bills which seek to augment the revenue resources of the state in order to meet its developmental programmes are required to be recommended by the Governor. In short the role of the Governor as envisaged by the Indian constitution is that of a state superintendent appointed by the Union executive.

But in spite of the office of the Governor being picturised as arbitrary by our constitution, the experiences of states over the last thirty four years goes to show that the Governor is nothing but a static via media between the Union and the State whereby generally he neither offends the state nor favours the Centre. Of course the séries of reports made by Governors different state to the President under the Article 356 was not justified on all occasions which further points to the fact that Governors can under the existing constitutional provisions retard the prospects of the state. As the subject of Centre State relations is much under fire now owing to the seething discontent in the states and as the Governor plays a pivotal role in the matter of Centre State relations, in view of the suggested decentralisation of the Union, a thorough rearrangement of the Governors administrative province is imminently required. In the event of the states being conferred with substantial autonomy the Governor has to be empowered with more powers to act as a safety valve. In a decentralised atmosphere a Governor should act as a sentinal of national integrity, unity and security. Accordingly the Governors should hereafter be equipped with only such powers which would enable them to help the Centre maintain the unity, integrity and security of the nation. A Governor should be a periscope of the centre at the state. Without unnecessarily impeding the policy making by states the Governor ought to keep a watch on the states exercising their autonomy to ensure that nothing therein is likely to go against the provisions of the constitution or endanger the unity, integrity or security of the nation. Even in such circumstances the report of the Governor must be subjected to necessary scrutiny by Union State Councils before the President or the Parliament can act upon it.

Keeping in view the prospects of revising the potentialities of the Governor's office in the wake of effective decentralisation, the Praja Socialist Party ventures to make the following suggestions.

In the matter of appointing or electing a Governor the existing provisions shuold be amended. Hereafter the names of persons proposed to be appointed as Governors must be informed by the President to the Prime Minister who in turn shall place them before the Lok Sabha and the Rajya Sabha. Only such candidate who is elected by both the Houses should be appointed as Governor by the President. Only those candidates who have been selected by the majority of the members of the Houses present and voting shall be declared elected.

Further the existing procedure of consulting the respective Chief Minister before appointing a Governor should be done away with because a Governor who is appointed with the aid or concurrence of a Chief Minister will perpetually be under a feeling of obligation to the concerned ministry which would consequently act as a impediment in the effective and impartial discharge of the duties of the Governor as a representative of the Union executive. Under a decentralised set up if the Governor acts hand in glove with the respective states who are riding high on the crest of autonomy then the constitutional safeguards intended to check the possible dangerous progress or propensities of state will be rendered nugatory.

The following suggestions may also be granted sufficient consideration :—

(i) The Governor should be under and obligation to summon the leader of the largest party or leaders of parties which fought the election as a coalition to form a government. The largest party or coalition should be determined only in accordance with the election results.

(ii) The question whether a government retains or has lost confidence of the legislature should be tested on the floor of the house and not in the discretionary assessment of the Governor.

(iii) There should be a provision that if at least one third of the members of the legislature ask for a session, then the Governor should have the power to summon the legislature.

The protection of minority and backward classes constitute a major responsibility entrusted to the Union and States. In this regard it may be suggested that fifty per cent of the selection of candidates for Governorship should be from the Scheduled Castes and Scheduled Tribes. This is all the more necessary because these backward classes even now do not have sufficient representation or say in the matter of protecting the right or upliftment. Sufficient inclusion in Governorship would enable them to see that states makes adequate provisions for their upliftment.

As a conclusive suggestion it is also required that if the Governor continues to have discretionary powers under the prospective decentralisation than it must be made imperative that all discretionary exercise of powers by the Governor should be subject to the review of an Union state council.

PART IV

ADMINISTRATIVE RELATIONS

Administrative relations in a federal division of powers proves the efficacy or utility of the legislative and financial autonomy of a state.

The administrative relations or the state executive autonomy is largely governed by Articles 256 to 263, 356, 365 and 323-A of the Indian Constitution. A casual reading of these provisions would once again evince the very same observation that as is the case elsewhere in the realm of Centre State relations, the State executive is practically a fiction in the sense that much of the State executive authorities are either appointed by the Union executive or the Governor who is the agent of the Union executive in the state. In addition to this there are over all patent checks on state executive latitude by the Parliament under article 256, 257 and 365 of the Constitution.

The reason why the Union executive is saddled with the control of the state executive is that the Union and concurrent list under the legislative relations have attributed so much of legislative field to the centre that in order to maintain and protect the supremacy of these lists the constitution makers had no other choice but subject state executive to frequent surveillance and check by the Union executive. This is the very reason why our Union and States do not have separate agencies for the administration and execution of all their respective laws and programmes.

In view of the suggested decentralisation of the constitution, the executive relation existing now between the Union and the States require the following readjustments.

1. As the Union list is to contain only those items which are to deal with or concern the unity, integrity and security of the nation, Articles 256 and 257 should be so reconstructed so as to restrain the executive control of parliament over state legislators strictly to the extent of subjects which are retained in the Union lists under the prospective decentralisation. Article 356 should be further strengthened to be used as an ultimate resort in case owing to substantial modification of Articles 256 and 257 the states tend to go against the interest of the nation. Merely because the state has failed to comply with any direction issued by the Union executive is no ground for invoking Article 365 and retaining it would make it a potential weapon in the hands of the Union executive so that inspite of being conferred with autonomy otherwise, the states would not venture to implement their developmental programmes under fear that the very state administration could be watered down by the Union. This is once again a propensity that goes at the roots of federalism. Where different political parties stand at the helm of power at the Centre and State, this article can prove a disastrous weapon. Hence Article 365 is to be totally wiped out from the Indian Constitution.

2. Article 356 has undergone certain major amendments vide the 42 and 44th amendments to our constitution. Though under the existing Centre State relation this erosion by the Centre into the State legislative life span is highly derogatory, in view of the proposed effective decentralisation it is believed that the Article as it stands now need not be devitalised. But the operation of Article 356 should not be left to the unilateral opinion of the Governor. There should be provisions to subject the report of the Governor to a detailed and speedy appraisal by a Union State Council such as :—

(i) Council of Governors headed by the President as the Chairman.

(ii) Council of Chief Ministers headed by the Prime Minister as the Chairman.

(iii) Council of Ministers for each portfolio headed by the respective Central Cabinet Minister as the Chairman.

(iv) Councils constituting eminent judges from State and Centre.

Considering the possibility that owing to overnight developments in States inviting action under Article 356 may take time, the Article may be so modified as to permit an immediate interim application of the provision by the President only for a period of one month and that in the meanwhile the mediating council should file its opinion report and any extension of the emergency period must strictly be advocated by such report.

3. Article 355 of the constitution enabling the Union to locate and use its Central Reserve Police and other armed forces in the aid of the civil power in any state is a healthy provision provided the Union is not allowed to use it *suo moto*. Only when a state forms its own opinion that situation within the state warrants the aid of Central forces and accordingly informs the Centre, should the Union act under this Article.

4. Mass media being one of the vital links holding together a bunch of states as a nation should be under the equal purview of both the Union and the State. A fair and reasonable sharing of the means of mass communication media is all the more warranted when states are allotted more autonomy under a programme of effective decentralisation. A total handover of this item to the State list is not advisable as it creates tendencies of sedition which is again a possible threat to the unity, integrity and security of India as a nation.

5. Inter-state Councils at contemplated under Article 263 of the Constitution is an highly useful body which requires absolute implementation at the earliest. When States are conferred with viable autonomy there could be occasions when the developments of a particular state would occasion problems with another State. Under such circumstances unless there is an intermediary to help settle problems mutually states could go at the throat of each other making autonomy a source of internal hostility and destruction. Although the States to a dispute should be bound to adhere to the ultimate directions of such a body, the body should not be vested with too much discretionary power as it would defeat the very purpose of its existance. An amicable settlement of issues and disputes should be the guideline of the inter-state council. The council could very well have its own secretariat but the same should envisage ample representation from the states concerned. The council should be given the prerogative to appoint from the state executives certain feelers to assess independently the issue or problems between states.

6. The power of the Governor under Article 258-A is not advisable in the sense a unilateral exercising of the prerogative herein will go against the executive autonomy of the state. Substantial consultations with and concurrence of the state must be accommodated in this Article.

7. Agencies like Agricultural Price Commission, Central Water Commission, Monopolies and Restrictive Trade Practices Commission, Director General of Technical Development, Food Corporation of India etc. are under the dominant control of the Centre and accordingly it has made palpable inroads into the State's autonomy. Impoverished as

the State list is now, the attempts of the different states to develop their respective potentialities and personalities atleast in the items they have power to legislate is rendered infructuous as the agencies stated earlier act under a law that is alien to the legislative imperative of the state. When a state passes a legislation to implement a developmental programme the particular legislation takes into consideration the peculiar circumstances or problems in the state which the legislation will have to solve or accommodate and giving the Central agencies a blanket executive jurisdiction in such matters tantamounts to paralysing the economic, political and social growth of the state.

PART V

FINANCIAL RELATIONS

As the majority of questions raised by the esteemed commission under this chapter retain a suggestion or spirit of financial centralisation, the Praja Socialist Party in advocating an effective decentralisation finds it immaterial to answer or report on any of those questions.

The financial relationship in a federal set up constitute the most important criterion in assessing the autonomy of unit states. No amount of legislative or administrative license to states would serve any purpose unless and until there is substantial finance to sustain or shelter the two. In short finances in a federal set up constitute the cart wheels of legislative and administrative autonomy of states.

Article 264 to 290 define the financial relation or arrangement between the Union and the States. The gist of the said Articles is that the Union shall be entrusted with the entire revenue which shall then be redivided amidst the different states. At present the financial assistance from the Centre to the states fall into the following categories :—

(1) Devolution of taxes under Articles 268, 269, 270.

(2) Grant-in-aid under Article 275.

(3) Grants and loans under Article 282.

(4) Ad-hoc and discretionary transfers.

The above four medias of revenue devolution is subject to the recommendations of the Finance Commission constituted under Article 280 of the constitution. In short the states at present do not have any direct access to revenue worth mentioning and instead is still under financial spoon feeding by the Centre.

An ideal federal financing is one under which both the Union and the states have independent resources sufficient to implement their respective plans and projects. The system of financial distribution under our constitution fails to correspond to this ideal. Compared to revenue decentralisation of countries like Australia and West Germany, the Indian states are nothing but beggers at the doors of the Centre. The reasons for such a state of affairs is that on one hand the majority of the elastic financial resources are reserved for the union and on the other hand the procedure for devolution of revenue is highly undefined which results in three-fourth of the budgetary resources remaining with the Union while on the expenditure side the share of the Union and the States are more of less equal. To be precise state finances are conspicuously disproportionate to their requirements. Reviewing the working of the mechanisms for devolution and examining the details of resources transferred by the Union to the State during the last 34 years it is to be said that the scheme of devolution envisaged by our constitution has not been encouraging because there are still glaring regional imbalances and inequalities in the matter of economic self sufficiency and development of states. The only achievement of such a scheme of devolution is that it has helped maintain the comparative *status quo* of states as was visible at the advent of our independence.

In view of the need of augmenting state finances the only way out is to effect a substantial separation of fiscal relations of the Union and the states whereby majority of the elastic taxing heads are transferred to the state lists. A complete devolution of revenue resources is not advocated since the Centre must have substantial funds to meet the overall requirements of the nation and in order to meet this the Centre cannot be expected to knock at the doors of the States when occasions arise.

Financial stability of states cannot be ensured by augmenting revenue resources alone. On the other hand states will have to drastically cut down on unnecessary expenditure. When financially sound states and the Centre put an effective check on waste expenditure the savings thereby can go to the promotion of states who are not so fortunate in spite of their independent resources.

The apprehension that giving more financial powers to states will only further tilt the balance in favour of richer states is unfounded and illogical since richer states can be made to subvent to poorer state under some practical principle. For instance if a rich state does not have sufficient energy resources say electricity, instead of making heavy investments within the state to make arrangements for production of electricity simply in order to maintain *status quo,* the concerned state can be directed to purchase electricity from a state which is not very affluent, so that the heavy margin of financial wastage in the richer state can be avoided and a part of the amount transferred justifiably as price of the electricity to the state supplying it.

Under the present set up of financial devolution states are often constrained to borrow loans from the Centre to meet their basic requirements or developmental programmes. States that borrow loans from Centre go into further insolvency owing to the fact that payment of debts constitute a major part of the states own revenue resources. Herein it could be advised that instead of treating such advances from the Centre as loans, they could be treated as grants-in-aid so that existing or prospective developmental programmes of the state need not be subverted to facilitate repayment of

loans. The only restraint to be exercised herein by the Centre is to strictly scrutinize the loan application of the states to see that the amount granted does not go into unimportant expenditure items.

It is a fact that states are not exploiting their own sources of revenue. This is due to the fact that under the existing financial rapport between the Centre and States, the States are demoralised by the realisation that any augmentation of revenue by exploiting their own resources would either result in the Centre confiscating the returns or it could be made a convenient for the Centre to reduce financial aid to the state by suitable amendments to the constitution to either effects by the Centre. To be brief, the moment the Centre realises that states have some potential sources of revenue they would move to transfer the same to union purview under the guise of "public" or "national" interest.

It is a fact that owing to historical as well as geographical reasons, even if there is a substantial transfer of revenue resources to the state list, certain states may not be able to become economically sound. In order to faster economic development of such states it is advisable to create a special federal fund which should be exclusively used for the purpose of aiding economically under developed areas. The Finance and Planning Commission are not adequate in the sense that there distant appreciation of the State's under developed economy would only prove futile. To be more precise if such commissions do not concur with the opinion of a certain state that they are economically under developed, then such states will have no other go save resort to borrowing which again is detrimental considering the poverty of the state.

It is indeed more than a fact that the Centre and the State have been often indulging in unnecessary and uneconomic expenditure. As regards the Centre this would not have manifest reactions but as regards the states such expenditure have a tendency to deplete the already insufficient revenue. In order to check such tendencies it is suggested that national and regional expenditure commissions be constituted and endowed with such drastic powers that the exercise of restraints by the respective commissions would also include right to initiate a no confidence motion against the respective Ministries.

Natural calamities have serious eroding effects into the state economy. Revenue reserves of States could often get grounded owing to expenditure incurred on account of natural calamities. Under such circumstances it is suggested that the Central Government should set-up apart a separate account for meeting expenses on relief measures occasioned by natural calamities in any part of the country. The quantom of aid required should be assessed on a systematic basis and not on ad hoc consideration. In order to facilitate this, the team that is saddled with this responsibility should also include representatives of the State government.

PART VII

MISCELLANEOUS

Industries

The Industries (Development & Regulation) Act 1951 enacted by virtue of entry 52 of the Union list, is a nefarious piece of Union legislation that has not only paralised the industrial potentialities of the various states in India but also amounts to a mockery of the preamble to our constitution.

Almost 95% of the industrial layout in India comes within the purview of the Centre. As entry 52 in the Union list does not contain any authoritative or logical yards stick to ascertain which are the industries that require the control of the Centre in national interest, the Central Government has been committing a dacoity on the states by including almost everything that can be defined as an industry. It would be pertinent to ask as to what is the "National interest" in items like razor blades, gum, match sticks, household electrical appliances, cosmetics, foot wear, steel furniture and like many items, that they have been brought under the Union list. Probably it is the desire of the Centre that the people of India should have one clean shave a day, or that all ladies must augment their beauty by liberal use of cosmetics and that every house in India should have sufficient electrical appliances, steel furniture, cutlery, sewing machines and presssure cookers. Ridiculous and ludicrous as it may appear to term these industries as matters of national interest they have been conveniently included in the Union list with an ulterior intention namely the confiscation and concentration of revenue resources.

As India is predominantly an agricultural country, development of industries form a vital subject in as much as agricultural does not provide much scope in terms of revenue. Agriculture has practically seized to be source of economic development for most states because a bulk of the agricultural produces are consumed in the home market itself. Industries form the base of federal growth and their control by the Centre is not congenial for the independent growth of state. Accordingly it is the call of the times that industries be substantially transferred to the State list enabling states to achieve thereon financial autonomy as well as development. Only those industries that are connected to feel like defence, nuclear research, telecommunication, currency, aviation, navigation etc. should be under the control of Union. Other industries dealing with day to day requirements of the people must be left to the absolute discretion and control of the state.

The subject of industrial licensing must undergo basic and radical changes. States must be given ample powers to enter directly into contracts or treaties with foreign countries for mobilising industrial knowledge, equipment, raw materials without the unnecessary and time consuming procedure of channalising such activities through the centre. In the very same manner export of industrial products also should not be fettered by the Centre.

Locational decisions on Central investments in the public sector is an issue which states must be invariably taken into confidence because over industrialisation of a sector has much effects. Industrialisation is a major source of atmospheric and environmental pollution. Concentrating industries in a sector which is already cramped in the regard will have adverse and deletrious effect on public health and hygiene. In this regard industrial licensing could bring in some strong provisions restricting location of industries in populated areas.

Under the existing tendency of industrial locations quite a few states have been practically neglected in the matter of heavy industries. The State of Kerala can be an apt example of this situation. While the states of Maharashtra, Tamilnadu, West Bengal, Haryana, Andhra Pradesh are practically over cramped with industries, states like Kerala, Karnataka etc. are practically dry in this respect. Employment being one of the burning issues rocking the nation, the same should be included as one of the material guidelines in the matter of industrial location.

To conclude the subject of Industry must be substantially transferred to the states giving the Centre only an over all supervisory role.

Trade and Commerce

Entry 42 of the Union list deals with domestic trade and commerce and entry 41 therein deals with trade commerce with foreign countries (export and import). Restrictions on the movement of essential and scarce items is a very commendable provision included in our constitution. In a decentralised set-up states should not be given a chance to turn a blind eye to the society of essential items in other states. Articles 301, 303(2) and 304 needs no reconsideration in the event of any further decentralisation. But articles 301 and 303(1) are definitely a perennial source of conflict between the union and the state as also between the states. Constituting an authority under article 307 to look into such conflicts and recommending remedial measures would go a long way in easing Union State tension on the subject of trade and commerce. What is to be borne in mind is that the state resource potentialities cannot be exploited to their maximum unless and until there is scope to bring them into the national market. Therefore the authority constituted under Article 307 has not only the duty of strengthening Union-State relations in the subject of domestic trade and commerce but should also be bound to see that the federal fiscal structure is not paralised or rendered infructuous owing to bottlenecks in trade and commerce.

This opportunity is also availed to suggest that trade and commerce with foreign countries constituting the export and import policy of India should also be relaxed palpably in order to help states establish a direct rapport with foreign countries for augmenting their commercial prospects as also meeting the requirements of the local market. The field of export and import being a subject which if missed could impinge on subjects like national integrity or security, the union should be given a power of surveillance or superintendence to see that the commercial and trade relations between the local states and foreign countries does not touch the unity or integrity of the nation as also the foreign policy of India. Other than this the union should not have a tendency to crib at every dealing of states with foreign countries.

Agriculture

Agriculture constitutes probably the most important and expansive subject from point of economic self sufficiency. Inspite of the fact that the union has sincerely deliberated often on this subject since independence, the lot of agriculture continues to be in a miserable plight. This is one of those concrete instances where as earlier pointed out in this report, the Centre can effect only a periscopic administration and development in this field owing to the fact that practically half the territorial expanse of India constitutes agricultural land and allied activities. Inspite deliberations on the issue of revolutionising agriculture in the country, the plight of the common farmer still remains a bitter story. Lack of sufficient fertilizers at approachable prices, non-availability of advanced agricultural implements, insufficient subsidised loans for agriculture, irrigational problems have all together aided in reducing agriculture to a much dreaded activities inspite of the fact that it is required for the basic sustenance of the society. At this rate the situation is not far when agriculture will become part of history and the nation will have to go begging for food. Such an eventuality will have catastrophic effects. Let us not crave for the "touch of Midas". In order to avert the possible dangerous to the field of agriculture, the Praja Socialist Party would suggest that the subject of agriculture excluding forest should be assigned to State list. Forests should remain in the Union List considering the fact that the latest unbridled tendency to deforestation has created a lot of ecological problems including climate. Deforestation affects climate which in turn seriously hampers agricultural programmes.

Education

Education is a factor that decides the competency of Union and States to undertake implementation of federal projects in the right spirit. Education decides or controls the efficacy of administrative set up. Unless those at the helm of power have at least basic knowledge of matters, state autonomy will become a toy in the hands of politicians.

Education in order to receive the right attention should under federal set up be the lookout of the States. Considering the heterogenuity of India a uniform or centralised code of education is neither advisable nor feasible. In order to reserve and protect the educational rights of minorities and backward classes and in order to take education to the remote corners of the country, the subject should be independently handled by the various states. Both central as well as state involvement in education will burden the average Indian student with so much of controversy and headache that education will fail to achieve its universal target namely the moral and intellectual development of the society.

Education in the present day context has to be awakened from its traditional sleep and made more pragmatic and value oriented. This can be achieved only when the states have an independent control of the matter.

Panchayats

In a federal administration it is the lowest unit of self administration that can effectively look into and reddress the requirements of the people. India even today is a land of villages and the development of these villages and their upliftment from the historical shackles constitute the first line of concerted state activity under an autonomous development. A few sprawling cities in India exhibiting the technical and structural potentialities and advancements should not act as a cover to the fact that the visible development of India over the last 34 years have not even thrown their light over the numerous and remote villages in India.

The only administrative agency that can effectively bring to the villages and translate into effect the messages of the material development of India, is the village panchayat. Most unfortunately panchayats as a unit of local self administration remains a neglected entity. In view of the "Ram Rajya" propounded by the late father of the nation Mahatma Gandhi, panchayats are practically nowhere today.

Panchayats are to be revitalised immediately so as to effect transit of developmental aspects to the villages. In this regard provisions have to be made in the concerned legislations whereby the panchayats get substantial funds for implementing their programmes aimed towards the economic, social and cultural development of our brothers and sisters in the villages. Panchayats should have a steady and mandatory source of financial support from the state governments over and above the finance mobilised by the panchayats by way of panchayat taxes.

Backward Classes

Although the Constitution of India provides for extraordinary aid to the backward classes in order to help them come up it is rather not encouraging to note that these provisions supported by their subsequent legislations have not achieved much in this direction. Although we can see citizens from the backward classes holding good offices now, it represents only a negligible ratio to their entire lot which still live in *cognito*.

In order to keep up the spirit and trend of constitutional support for the upliftment of the backward classes it is highly imperative that the period of reservation of seats for the backward classes in the matter of appointments should be extended at least for another twenty five years.

Elections

Under the existing provisions of the People's Representation Act, candidates who stand for the election often resort to unhealthy practices for ensuring their victory in the election. Voters are often influenced by candidates by various acts of favouritism. Under such a tendency the administration of a state or centre will never get the cream of intellectuals or eminent persons to formulate the administrative policy of a state or centre. Instead any person who has substantial wealth at the hands can purchase his way to the helm of power. Herein in order to avoid such practices it is suggested that the People's Representation Act be so modified as to make provisions whereby the concerned government shall make the arrangement for propaganda or canvassing of candidates as also restrict election expenses of candidates so that the electorate is not purchased. Candidates may be issued with identity cards by the government in this regard. Unless foolproof provisions are made in the People's Representation Act to effectively check candidates from unduly influencing voters, the country will never see a good administration.

Yet again provisions may also be made in the People's Representation Act whereby an elected candidate can be recalled by the state or constituency that has elected them to power. Provisions must be made to effect a refrendum whereby candidates can be recalled. This is a vital provision to be embodied in the act so as to save the fate of the people from the clutches of ruthless and unscrupulous politicians who having been voted to power becomes both a headache to the administration as also to the people who voted him to power.

In concluding this report on the subject matter of Centre-State Relations, the Praja Socialist Party, once again seeks to remind that THE PROSPERITY OF INDIA AS A NATION IS THE PROSPERITY OF HER STATES, and therefore a decentralisation encouraging the independent growth and development of states is the call of the hour.

REPUBLICAN PARTY OF INDIA (KAMBLE)
REPLIES

PART I

INTRODUCTION

1.1 Yes. Can be called Federal. And is Federal. In the strict sense as well.

1.2 No.

Tamil Nadu Dravidians and others like them, have a legitimate grievance.The legitimate grievances would require appropriate legitimate remedies. But certainly not the ones suggested by Rajamannar Committee.

1.3 Heterogenuity can not be removed by territorial remedies like decentralisation. Remedy lies in annihilating heterogenuity and making India homogeneous.

In my view, the optimum Constitutional provision should be to enable India to be a 'self governing community'. The slogan namely 'Unity in diversity' is a cloak to keep India heterogenous perpetually. That must be given up once for all.

1.4 Apart from such question, we have to grapple realistically as to what kind of form and system of government will subserve India to make truly a nation: and still more important, whether every Indian is truely loyal to Constitution in every day life.

1.5 The eminent persons mentioned in the question hold their respective 'Sociological' views on Indian polity and its functioning. The views experssed in (a) and (b) nullify each other. The remedy suggested in (c) renders itself almost nugatory.

The Commission will have to locate the power which is capable of and responsible for working these relationships 'over the years' not in conformity with the true spirit and intent of the Constitution. I have given my suggestions in a consolidated form at the end of these replies to all questions.

1.6 Yes.

The provisions in the Constitution are there for everybody to see.

1.7 The Constitution is meant to provide Constitutional governments ALWAYS at the Union as well as in the States. It is most note-worthy that there is no provision of a 'break-down-clause' at the level of the Union; whereas there is such provision as the level of the States. Constitution contemplates perpetual Constitutional Government at the Union.

The provisions of the Constitution mentioned in the question are there, because the Constitution, should not be found wanting in any eventuality. These provisions are of exceptional nature; not supposed in the ordinary course, to come in operation. To consider the reasonableness or otherwise of them is to reduce them to ordinary provisions, which I refuse to do.

There should be made similar consitutional provisions for states as provided for Union, deleting the 'break-down' clause.

1.8 It is for those who propose re-consideration of Article 3, to place their views. On understanding those views I will be able to express mine. Not at this stage.

PART II

LEGISLATIVE RELATIONS

2.1 Instead of imputing the alleged encroachments to the Union, the proper method would be to impute the same to the actual and responsible functionary in the Union.

The proclamations of Presidential Rule in more than 200 instances, are concrete cases.

2.2 The concept of unity and integrity of the Country is different than the concept of the strength of the Centre. The former concept is related with India being made a self-governing Community. Diversity in unity cuts arcoss this concept. So also the concept of the strength of Centre cuts across the concept of unity and integrity of the Country. The three lists, namely that of the Union, State, and Concurrent should be changed only if subjects of national importance are placed in State list and vice versa. Subjects like that of labour, Tenants, Scheduled Castes, Scheduled Tribes, Backward Classes, Weaker Sections should be included in the Union List.

2.3 Such a principle of consultation is quite desirable.

In pre-Independence days such Instrument of instruction was there in 1935 Act. Now its place, in Independence days, has been taken by the Directive Principles embodied in the Constitution with this difference namely these are the Instructions issued by the constitutional Assembly to the Govt. of the day at the Union as well as in the States.

2.4 As stated in reply to Q. 1.7, the Constitution contemplates always Constitutional Govts. at the Union and the States. The provision mentioned in this question is not come into operation in ordinary course. Such provision is there simply for the reason that the Constitution should not come to be considered as wanting in an exceptional contingency.

2.5 A suitable Constitutional provision may be considered to deal with the abuse of the Constitutional power. Please also refer to earlier reply containing in the concluding portion.

PART III

ROLE OF THE GOVERNOR

3.1 Under the Constitution of India, the Constitution makers had envisaged almost the same role for the Governor of a State as the role for the President of India in the Union. There is, of course slight variation between the two. Role of the Governor, as well as of the President of India, are mainly in connection with being one of the Components of the State Legislature and the Parliament respectively; and also acting as the Constitutional Head of the State and the Union respectively.

(a) The Constitution hardly envisages any role, as such. for the Governor, or for the President of India, in the context of Centre-State relations.

(b) The office and the powers of the Governor are misused by the Prime Ministers of India (mostly by late Jawaharlal Nehru and Smt. Indira Gandhi), presuming wrongly that the Governor is an agent of the Union Government. It is in this wrongly presumed context of Governor being such an agent, that new theory of role of Governor in the context of Centre-State relations is being advanced. Centre-State relationships can be maintained only by patriotic sentiments and actions. Hardly a Governor can do such a job. The misuse of powers of Governor for the last 34 years for Party and other purposes has already damaged the Indian polity, and there will hardly be a truly Constitutional Government, either at the Union or in the States, if present state of affairs continue. To appreciate the correct meaning of 'Constitutional Government' it must be noted that absence of it means rebellion.

3.2 Reply to this question is covered by the previous question 3.1. The only role for Governor for any purpose, including of fostering healthy Union-State relations is that he should act perfectly Constitutionally.

3.3 Under the Constitution, Governor has hardly any functions or duties. So the President of India, Governor, like the President of India has only two prerogatives :

(a) It is only when there is a Constitutional 'breakdown' in the state that he is to make a report to the Persident of India. This means no Government can be carried in accordance with the provisions of the Constitution. If there is a Government functioning in the state, such a report by him would be the abuse of his office.

(b) To appoint a Chief Minister is the sole prerogative of the Governor under Art. 164. Nobody else including even a Prime Minister can displace his prerogative. He may use his exclusive prerogative even wrongly or foolishly and suffer the consequences. In India, such a Governor is yet to be seen.

(c) Dissolution of the Legislative Assembly is the second prerogative which the Governor can use as indicated in (b) above.

These are incidents of the office of the Governor, which run with office and any attempt either to minimise or to maximise the incidents is to wreck the system of Government. The amendment made by forty-second Constitution Amendment Act to Act 74 surcumscribing the prerogatives of the President has done enough damage to the Constitution and to the system of Government, which is bound to cost India, also in future.

3.4 Wherever there is a second chamber, either the second chamber is superficial or the reservations of the bills for the Governor or President is superficial. The underlying purpose is to guard against to any hasty enactment.

The latter part of this question can be answered only by those who are or were Chief Ministers. I am none.

3.5 Partly yes; and partly no. Speaking generally the precedents cry aloud what Lord Action said "power corrupts; and absolutely power corrupts absolutely". Partly no because, it would depend upon the nature of grounds on which the assent was withheld.

3.6 The former part presents correct position, and not the latter. Kindly also refer to previous reply to Q. 3.1. So long as Governors men of a political party, and are under the obligation of appointing power the Prime Minister they cannot be expected to act impartially and in accordance with the Constitution when interest of the political party (as also of the appointing power) conflict.

The instances of N.T. Rama Rao and Dr. Farookh Abdullah are recent.

3.7 The nature of the office of Governor is such that he cannot have a guaranteed term. The procedure of his removal should be the same as in case of President of India, in which case the Governor will have to be elected. The appointment and removal go-together.

3.8 No. The job of a Governor or of President of India is to see that there is a Government to govern. His job is not of majority-maintenance. In England there were a large number of minority-Govts. over a long period. Apply this suggestion to empowering the President of India for exposition of its futility.

3.9 May not. It may increase No-confidence-motions. Governor should act rightly.

3.10 Where from the Administrative Reforms Commission got the so-called 'discretionary' powers of the Governor. He has only two prerogatives. If guide lines are to be issued to Governor, they will have to be issued also to the President of India for the performance of similar role.

PART IV

ADMINISTRATIVE RELATIONS

4.1 It is for the Chief Ministers or ex-Chief Ministers to reply this question.

4.2 Subject to what I have stated earlier I am inclined to hold the second view, for the reasons stated earlier.

4.3 This is a commonsense recommendations which may be accepted.

4.4 The power under Art. 356, is generally not exercised properly. The reasons are : as in the cases of Andhra Pradesh & Jammu and Kashmir, the expression namely "........the Government cannot be carried in accordance with the provisions of the Constitution" is misconstrued, even if there is a Government carried in accordance wtith the provision of Constitution. Secondly Governors, in such, alleged situations, have acted without 'aid & advice' of Council of Ministers with Chief Minister as the head of it. Third reason is : such alleged actions by Governor, transform a Parliamentary system, into a sort of Presidential one, at that moment.

4.5 I do not agree with that view. Clause (5) of Art 356 is not a safeguard. It is unsafeguard. Art 356, should not be invoked unless in the rarest of rare cases. failing which a state may be declared as unfit for self-rule, and should be administered as such.

4.6 I wish to offer no comment in this regard.

4.7 Such Agencies should be entrusted to whosoever is able to implement the principle of responsibility more effectively. (i.e. either Union or States).

4.8 Services are an integral part of autonomy. Provinces are usually made autonomous. Under Constitution there are no more Provinces. They are States. Such of the services confined to local State area should be under the control of State-services. Services necessary for implementation of State List

should also be brought under State Services as distinguished from All-India-Services, with corresponding responsibilities attached to States and the Union respectively.

4.9 Law and Order problem is a very serious one. Under the present Constitutional provisions the views of the Administrative Reforms Commission is regrettable. The contingencies contemplated in Art. 355 are different and of special nature. Such a view of the Commission or of the Union will supply enough material for a possible future war between the Union and the States. Either the law & order subject be retained with the States and the Union should aid them; or this subject be taken over by Union and accordingly Constitution should be changed. Mid-way is dangerous.

4.10 Those in need of broadcasting and television facilities of mass-communication are the Union, States and the different communities of the masses. These facilities should be shared by these three on a fair and reasonable bases as three are in equal need. In the name of the Union or States certain very few communities are misusing these facilities which may invoke very strong protest.

4.11 Zonal Councils have hardly served the purposes.

4.12 Establishment of such a Inter-State Council is long over due which the Union Government has regretfully avoided. However, such inter-state council will not be competent, to 'iron out the inter-state' or 'Union-State differences' as has been put in this question.

If the disputes are touching the decision of power, the Supreme Court of India would be real forum to adjudicate the same. Otherwise Supreme Court would be, to that extent, superfluous in a federal set up.

Such Council is meant to serve Public interest. Its functions are stated in the Article itself of Art. 263.

PART V

FINANCIAL RELATIONS

5.1 No.

5.2 The observations of Study Team of A.R.C. "Centre as always the giver and the States the Receiver" are regrettable and this kind of relationship which is analogous to what existed during the British Imperialistic Government should now after Independence, be scrapped. If the State-resources on their own are not enouh, then the resources between states and the Union deserve to be recast in a manner to make the states autonomous financially, consistently with their responsibilities.

Alternatives indicated in (d) may be tried.

5.3 My views on the observations are :

Directive Principles are not properly quoted. All the people of a rich state are not rich. In a rich state few classes are rich; some are poor; and the rest poorest. Similarly, all the people in a poor State are not poor. In a poor state also few classes are rich; some poor, and the rest poorest. Thus to classify States as rich or poor is misleading. Truly, it is the class of the people, who are rich, poor, and poorest.

Is the Union prepared to make a public solemn declaration that it needs to be strong in order to use its funds for the development of poorest classes? There is no evidence so far to sustain such a claim by the Union.

5.4 The Union Govt. must produce the necessary evidence of the last five year-plans in the fulfilment of the objective in question. Though deficit financing is harmful to the last consumer, yet if the amounts of deficit financing are to be used for developmental work of the poor classes, and not for sustaining the Govt. the same way may be resorted moderately.

5.5 The objective criteria should be :

(1) More the concentration of power in a poor state greater should be the share in taxes, and plan and non-plan assistance with specific reference to development of the poor classes.

(2) Less the concentration of the power in a rich state lesser should be the share in taxes and plan and non-plan assistance.

5.6 That Finance and Planning Commission are not adequate for the purpose is proved by results obtained so far after Independence.

On territorial basis, a 'Special Federal Fund' and on poor classes basis a 'Special under developed classes fund' should be established.

5.7 Besides the three principles enunciated, the other one should be accepted namely the responsibility to give its citizens tha minimum civilised life, applying the test that those who are denied the opportunity will have the priority.

5.8 Central levy subject to control by a Council of Central and State Finance Minister would be inconsistent with the principle of responsibility.

5.9 Such proposed permanent Finance Commission would also be inconsistent with the principle of responsibility.

5.10 As such conditions were not attached by the successive Finance Commissions, under the Constitution of India, the expected results would hardly be realised.

5.11 Yes, I boradly agree. Such results are obvious, because of absence of principle of responsibility. The correctives would be to :

(i) Enact a law of the Parliament determining (a) the qualifications which are requisite for appointment as Members of Commission (b) the manner in which they shall be selected.

(ii) Involve the effective representatives of the class of people for the benefit of whom the resources are transferred.

(iii) Impose statutory obligation on State Government of submitting periodical terminal reports on the projects under taken under the transferred resources.

(iv) Apply the principle of responsibility.

5.12 My comment about the proposition in question is that it is not even a 'broad' one. Neither it is radical. Such proposition is as old as the year 1877 to 1882; and by nature quite imperialistic as that of the British, during which period Sir Richard Temple advocated, resource-transfer, through taxsharing for keeping in with the sentiments that it is the province itself which realises the tax-money, which is also for its own use. The Seventh Finance Commission of the year of 1984 is recommending propositions of the year 1977-82 which may not be conceded without the principle of responsibility.

5.13 The priority suggested by the Seventh Commission is perverse cutting across the very basis for which grants-in-aids are made. These grants should be used only exclusively for the purpose for which made. The principle set out by the Seventh Finance Commission must be scrapped.

5.14 Divisibility should be governed either by the existing provisions of the Constitution or by amended provision.

5.15 Not satisfactory.

5.16 My comment is either the States are incapable of enforcing their own responsibility in financial matters; or Union has robbed their responsibility.

5.17 In the name of State a group must be playing with the finances of the State without being responsible whatever to anybody. The measure would be strict enforcement of responsibility.

5.18 I agree to a certain extent the restriction can be relaxed to the extent they suffer by virtue of not having the necessary freedom in the matter.

5.19 Not justified.

Transferring foreign credit obtained for financing State projects through the Centre is wrong and unethical financial transaction. Centre has been habituated of transferring foreign credit, as well as transferring various sums provided in the budget for the Scheduled Castes, Schedued Tribes and weaker section to other projects, and allowing such sums to lapse. There was no effective public opinion raised against this mal-practice. Therefore now it is the turn of States for being deprived of. Public opinion protest against all such types of financial transactions is called for.

5.20 Reserve Bank of India should reflect in its functioning and administration the interest of each communities as well as qualify it as a Reserve Bank of India, besides co-ordinating the borrowings for Centre, State, and Private sector.

5.21 The factors contributing to 'unhappy position' of States finances are :

(1) That there is an absence of good Govts. in the States as well as the Centre.

(2) And similarly there is absence of sound financial system to sustain good Governments. The unhappy position of the States as old as when the Provinces were created by British Imperialistic Govt. It simply means that though there is adult franchise and Parliamentary and State elections periodically, there is yet an abuse of Govt. by the people, of the people and for the people.

5.22 Yes, to some extent.

I would suggest implementation of the Directive Principles particularly Art 39 and specially its clause (8) about the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

5.23 By itself, the Convention prior consultation with States is not going to improve the financial system as a whole.

5.24 Yes.

5.25 It may be to some extent.

5.26 The grant be revised and enhanced in proportion.

5.27 Yes, grievence, is justified.

The measures I would suggest are

(1) Either the Union Territories with Legislative Assemblies should be pomoted to full statehood;

(2) Such of Union Territories which are truly reflecting the characteristics of U.T. should be responsibility of the Union ;

(3) Concept of Union Territory should not be debauched.

It would prove to be very dangerous to unity of the country.

5.28 The finance of the Union as well as of the States are to be so divided as to make their self-reliant in any contingency. Till now the responsibility does not rest with the people either at the Union or in the States.

For obtaining maximum use of relief assistance in the present circumstances is to enforce strictly the accountability and responsibility.

5.29 My views on the suggested three All-India-Institutions are :

(a) They are overlapping each other;

(b) It will be a Dyarchy;

(c) Responsibilities will be divided;

(d) If the differential interests of the States suffer, which are to that extent powerful organs how much more the economics interests of the various communities and citizens are bound to suffer under the present economic system.

(e) The real remedy is not sought and confused propositions suggested.

5.30 For fulfilment of conditions of spending the funds prudently and benefits going to largely to the people, who collect and distribute funds may become relevant unless the same is also done by the people.

5.31 Call the Commissions by any name. What is their constitutional position; and how the principle of responsibility to be enforced. Whether the Parliament and its members have all failed ? Whether one likes or not but in the whole Questionnaire a case is irresistible that just as the British rulers though good administrators were incompetent to achieve the welfare of the people of India, so it appears the Governing class in India is by the same token incompetent to do the same.

5.32. The reports of the Comptroller are seperately submitted to the President in case of Union accounts and to the Governor in case of State accounts. This shows a relationship bearing on Centre-State.

5.33. In addition to voucher audit, evaluation should also be pursued in good time.

5.34. Under the Act sufficient powers and duties have not been enjoined upon the Comptroller and A.G.

5.35. These reports are not comprehensive enough. It should clearly point out glaring omissions, inconsistencies, illegalities and comparative evaluation audit.

3.36. It is no sufficient check today. But it should be a sufficient check in future.

5.37. Can and should act as a watch dog.

5,38. I do not think Expenditure Commission is needed.

5.39 Authorising the States to do so would defeat the underlying purpose. Centre should have the means to ensure that the funds meant for specific purpose are in fact utilised.

PART VI

ECONOMY AND SOCIAL PLANNING

6.1. The three short comings, among others noted by A.R.C. study team, reflect on alarming picture of disorganised state of affairs which can be hardly called "Planning" of National perspective.

Remedial measures I propose are :

(i) There should be a sub-committee representing the Union, of Planning Commission, only for subjects exclusively falling within Union List.

(ii) There should be another sub-committee representing the States, of Planning Commission only for subjects, exclusively falling within State List.

(iii) There should be a third sub-committee representing jointly the Union and States of Planning Commission only for subjects falling within concurrent list.

(iv) These three sub-committees of Planning Commission should be co-ordinated by the Planning Commission presided over by P.M. and submit its co-ordinated report to National Development Council.

(v) The N.D.C. Council should represent Union, States, Union Territories, and representatives of different Communities.

6.2. As stated above in reply to Q. 6·1.

6.3. As stated in reply to Q. 6·1.

6.4 Union should have its Union Planning Committee under the Chairmanship of the P.M. Each State should have its State Planning Committee under the chairmanship of the respective Chief Ministers. Also refer to reply to Q. 6·1.

The contents of this reply and the reply to Q. 6.1 if acceptable should be embodied in the provisions of the Constitution of India.

6.5. As in replies to Q. 6.1 and Q. 6.5.

6.6. Please refer to replies to Q. 6·1 and Q. 6·4 also the modifications I propose are :

(1) In State-Plan pertaining exclusively to subjects in State List, the decision of the State Planning committee of the concerned State should be final subject of course to co-ordinated adjustments by the Planning Commission and N.D.C. In this Plan no National priorities can arise.

(2) In the Union Plan pertaining exclusively to subjects in the Union List the decision of the Union Planning Committee should be final, subject of coruse to co-ordinated adjustments by Planning Commission and N.D.C. In this plan no question of State priorities can arise.

3) In the Concurrent List Plan pertaining exclusively to subjects in the Concurrent List, decision jointly by Union and States shall be final subject to co-ordinated adjustment as above. In this Plan both National or State priorities can be considered.

6.7. It is unconstitutional to channel any distribution of funds to States through Planning Commission. It should be on State to State basis from Union to respective states, and Union Territories.

6.8. Yes; Changes as proposed in different above replies.

6.9. The Planning Commission and N.D.C. working under the Union Govt. have failed to remove poverty and achieve balanced regional development. The shares of weaker sections of the people and undeveloped regions are being sacrificed under the cover of Planning. There is absence of Planning as 'might is right' works, in both the Union and the States.

6.10. Please refer to replies to Q. 6.4, Q. 6.6., Q. 6.7 and Q. 6.8 above.

6.11 The present machinery is not only inadequate it is illusory, meant for perpetuating the backwardness of the people. This machinery deprives the needy and breeds corruption. The real and effective representatives of the people for whom the schemes are formulated should be associated closely involved on a democratic basis, in the matter of implementation of schemes and if necessary in the formulation of schemes and place before the respective Legislators the periodic reports of the implementation from time to time.

6.12. Covered by above replies.

6.13. Whether it is Union Planning or State Planning, the categories of people for whose benefit the schemes are meant should be involved in the implementation of those schemes democratically, periodic reports of implementation should be placed before the Legislature concerned; publicity about implementation and such reports be made in local newspapers.

PART VII

MISCELLANEOUS

Industries

7.1 Please refer to Dr. B. R. alias Babasaheb Ambedkar's (the Chief architect of the Constitution of India) memorandum submitted to the Constituent Assembly, particularly at page no. 14 to 16 of that memorandum which suggests :

(1) Key industries to be owned and run by the State ;

(2) Basic industries to be owned by the State and run either by State or Corporation;

(3) L.I.C. to be the monopoly of the State; and

(4) Agriculture to be made the State Industry.

The explanatory nores of Dr. Babasaheb Ambedkar are at page nos. 30 to 35 of the said memorandum. I have adopted these as suggestions, which the Commission should seriously consider.

7.2 (1) Yes, there should be some norms. Reasonable way to laying such norms to give opportunities to all communities.

(2) Deletion is not necessary.

7.3 There should be constituted all-communities-Industrial-Development-Council representing all communities who should be empowered to decide the guideline for these matters including clearance of Capital-issues, import of capital goods, and raw materials, and foreign collaboration.

7.4 (a) The States have not organised sufficiently to support this small sector; nor for the elimination of inequalities for the exploited communities.

(b) The glaring deficiencies of the States approach are almost the same, as the glaring deficiencies of the Central approach to the States and the Union Territories.

7.5 The working of the Centrally controlled national industrial financing institution like I.D. Bank of India; I.F.C. of India I.G. of India, L.I.C. of India and U.T. of India, is the same way discriminatory to State Plans. And the State Plans are similarly discriminatory against the exploited communities in the respective States which is not remedied by the Union.

7.6 Yes, the criticism is justified...The States must be consulted.

7.7. The criticism is justified. The Centre has neglected certain States in the matter of direct investment in heavy Industries. Nor Centre has championed the cause of underdeveloped States; or exploited communities in the states. My suggestion for all round development of underdeveloped states and underdeveloped communities in each State is that there should be established a Council for under-developed States and under-developed communities with sufficient powers to decide all matters concerning their development.

7.8. No. Another No.

Yes, As stated in reply to Q. 7.7.

TRADE AND COMMERCE

8.1 It is absolutely necessary to appoint such Authority. Such information remains a closely guarded secrets, though India is free and a Republic, and electorate is based on adult franchise. Appointment of such authority is a must. Even the present commission on its own could have called for such information either 'suo-moto' or upon the inquiries from public.

Agriculture

9.1 Mere territorial view in terms of Union and State is not enough. I would go with that point of view which will stand broadly the test of Article 39. of our Constitution which is a part of Directive Principles.

9.2 Please refer to my reply to previous Q. 9·1 above.

9.3. Co-operation between the Centre and the States would be there to the extent to which Union and States are sociologically co-operative with each other. If the Sociological impediments are removed, the co-operation may increase.

9.4 There are serious problems in Centre-State relation in those aspects namely fixation of agr. prices, irrigation, credit, forestry policy and administration etc.

The solution is in lessening sociological frictions, economic disparity failing which solution would be only political in due course.

9.5 Covered by previous replies.

Food and Civil Supplies

10.1 There is scope for improvement in the areas mentioned. The responsibilities should be tested as per provisions in the Constitution.

10.2 Yes. Should be periodically reviewed. A Commission should be set up for taking periodical review of such subjects and similar other subjects in the Constitution.

Education

11.1 Such criticism will be justified is States also want that the Centre and all States together should decide all matters in the field of Education for India as a whole. If any State is criticising individually for its own against alleged interference etc. such criticism is not justified.

11.2 The word "grants" in the nomenclature of the U. G. C. itself shows its limited purpose as to grants without any concern for education, much less for University Education. Thus the Commission like any other Central Commissions suffers from the same discriminatory attitudes.

11.3 One of the suggestions is to make the entire subject of Education only a Concurrent subject, deleting it from the Union List as well as from the State List.

11.4 I discern that there are many difficulties. In India Education is going to be a greatest problem in future. There must be uniformity of education throughout India. This cannot be achieved by present system of Education. Either the whole Education should be the job of the State without any scope whatever for private educational institutes, or whether education is imparted either by the State or private institution the syllabus for each standard, diploma or degree must be the same throuhout India. Past Political, Social structure is a grimmer and graver reminder that disastrous effects of a war.

11.5 Covered under previous replies above.

Inter-Governmental Co-ordination

12.1 Our Constitution provides for Inter-State Council. If we can be profited by the experience of U. S. A. Advisory Inter-Governmental Commission or any other similar body in any Federal State, we should be willing to be profited by the same.

Supplementary Note

(To replies to the Questionnaire on Union-States Relation)

On important issues not found place in the Commission's Questionnaire.

1. *Issue No. 1 : Transitory or non-enduring nature of States :*

The Rulers of India prior to or after the Independence of India have treated the States on the assumption that they are transitory or non-enduring. This is clear from the facts namely:

(1) Prior to Independence there were about 162 Units (whether former Princely States or former British Provinces).

(2) After Independence were formed 'A' 'B' 'C' 'D' states.

(3) With abolition of 'A' 'B' 'C' 'D' States, some bi-lingual States and some uni-lingual States were formed.

(4) These were abolished, and linguistic States were formed.

(5) Later on Union Territories, one after the other were added.

Playing by the Rulers with the formation or the abolition, or division of States; or creation of Union Territories have cost India great deal. Therefore without any further loss of time the question of enduring States must be settled with reference to principles of modern concepts of a 'States'.

2. *Issue No. 2 : Curbing of distruption of Union*

The forces of disruption of the Central Govt. have once succeeded and effected Partition of Union. Those disruptive forces under different grabs are still operative. Union is as vulnerable as the 'States'. True and effective remedies, political and Constitutional will have to be found.

3. *Issue No. 3 : South v/s North and unity*

The poison of balkanisation of Southern States, and consolidation of Northern States must be emptied at the earliest.

4. *Issue No. 4: Official language ONE OR MANY ?*

If Indians really want Unity of India more than one official Language either at the Union or in various States are bound to break the desired unity. Whether in the Union or in the States there should be one and same official language. Such of those who are opposed to such suggestion will have to explain how to maintain Unity of India.

5. *Issue No. 5 : Castes and States and Unity*

In certain areas, certain Castes are numerically greater and dominant. So much so that such States have become almost Caste-States. Caste is anti-National. Such States are bound to turn as anti-National. Therefore very strong and effective checks and balances are necessary.

6. *Issue No. 6 : Two Party-system and Unity.*

Neither Unity of India, nor Unity of any existing State can be preserved in the absence of two-party system both for Parliamentary elections as well as State elections.

7. *Issue No. 7 : Electorate and Unity*

Electoral system based on single-member-territorial constituency has failed leading to unconstitutional Presidential Rules. Plural-member constituencies in each State in certain selected areas need to be introduced.

8. *Issue No 8 : Exclusion from Political power of certain communities*

Exclusion from power is sure sign of slavery. This must be remedied.

9. *Issue No. 9 : Prime Ministership and Unity*

The Prime Minister of India should be elected by the whole House of People.

10. *Issue No. 10 : Grant of rights to Budhists—converted from Scheduled Castes.*

Depriving those who have become Budhists, of their rights acquired by the Scheduled Caste after a long and better struggle is a discrimination against religion. This discrimination is most immoral particularly in view of the fact that there is no remedy to remove untouchability.

11. *Issue No. 11 : Question of Boarder States*

Such a question is a National question, and as such should be settled only on the National level in consultation with representatives of all communities in India.

REVOLUTIONARY COMMUNIST PARTY OF INDIA

REPLIES TO QUESTIONNAIRE

PREAMBLE

In our opinion, after a protracted period of centralisation, a period of gradual decentralisation in both political and economic spheres can alone take the country from its present moribund stage and account also for the growth of divisiveness, secessionism and tension. This also will pave the road for uplifting the backward and downtrodden tribes and other sections from its present helplessness to an active state of regeneration which in its turn will help in building a healthy nation based on national integrity, secularism and democracy.

20th November, 1984.

PART I

INTRODUCTION

1.1 In course of the three decades and a half years since the Constitution came into force. Its federal form has been retained, but its federal content has been greatly eroded. The trend is toward concentrating more power in the Union at the cost of the States.

1.2 Articles 251 and 365 need to be suitably amended so that when different parties are running the government in the Union and in a State or States, the political prejudices of the former do not impede or thwart or prevent the exercise by a State legislature or Legislatures of the rights conferred on it or them by the Constitution.

1.3 to 1.6 It is undoubtedly true that a country of such size and diversity of population, culture and language as also unequal levels of socio-economic condition should have a large measure of devolution of resources and responsibilities to the States from the Union. A lot of conflict and tension has arisen because of the trend of the Centre to arrogate to its powers which should rightfully belong to the sphere of the States. The unity of the people and the territorial integrity of the country have paramount importance.

1.7 The Constitution should be suitably amended to restructure the obligations of the Union and the States.

1.8 The power of the Centre in the exercise of the Article 3 of the Constitution should be left undisturbed.

PART II

LEGISLATIVE RELATIONS

2.1 & 2.2 The Constitution, as it was originally framed, had apportioned the respective powers of the Centre and the States in more or less liberal way. But over the years the Union has continued to increase its sphere of power by encroaching on the rights of the States. According to our view, the Concurrent List should be carefully scrutinised so that those items in it which can be and should be left to the purview of the State should be transferred to the States while those in national and public interest exercised by the Centre should go in the Central list.

2.3 Yes.

2.4 While it is not possible to make a list of "national" or "public" interests, the nature and character of what should be considered a "national" or "public" interest should be clearly spelled out in the Constitution. Such powers should not be exerciseable by the Union for a period beyond six months.

2.5 When the parliament seeks to enact a legislation that infringes on or materially affects the right of the States as guaranteed in the Constitution, then the rough bill should be mooted through the Inter-State Council to the State/States concerned before introducing in Parliament.

PART III

ROLE OF THE GOVERNOR

3.1 Over the years, the office of the Governor has come to be more and more misused in the interest of the party running the Union Government and against the interest of the State Governments blatantly for political reasons. The Constitution makes the Governor the formal or titular head of a State but there are instances galore of a governor interfering in the day to day administration of a State which, as a formal or titular head, he is not only not supposed to but is not required to do.

Arbitrary dismissal of an elected State Government enjoying a majority in the legislature and equally arbitrary induction of a new government without ascertaining whether or not they command a majority in the State Legislature violating both the letter and the spirit of the Constitution, has been a rule rather than an exception in recent times. Witness Sikkim,

Jammu and Kashmir and Andhra etc. The Constitution should be suitably amended so as to make it obligatory on the part of a governor to verify the actual strength of a government which is supposed to have lost majority, on the floor of the House (unless the Chief Minister on the ground of his having lost majority) and to test the majority claimed by a new party or coalition of parties in the House within fifteen days of the swearing in of the New Government.

3.2 The Governor can foster healthy Union-State relations only if he abides by the letter and spirit of the Constitution, if he refuses to act in the political interest of the party running the Union Government. In this connection it is also necessary to amend suitably Article 164 which makes the holding of the office of the Chief Minister or Council of Ministers absolutely dependent on the "Pleasure" of the Governor. As the Governor is the titular or formal head of the State and as the Governor is supposed to act on the advice of the Council of Ministers headed by the Chief Minister who is responsible to the State Legislature, Art. 164 should be so amended that the holding of the office of the Chief Minister depends on his commanding the majority in the House, rather than on his enjoying the "pleasure" of the Governor, who can exercise his "pleasure" without reference to and independently of the State Legislature.

3.3 If the Governor exercises his independent judgement without prejudice and without such extraneous considerations as the political attitude of the Union Government to the State Council of Ministers and if the questions as to whether or not a Council of Ministers enjoys the confidence of the House or whether any other party or coalition of parties can command the majority in forming a new government, are left to be decided by the House itself, the chances of abuse of power under Art. 356 (1) will be considerably reduced.

3.4 There are specific instances of West Bengal bills being with-held by the President as cited in page 9 of 'Reply to questionnaire by West Bengal Government'.

3.5 (i) Centre dictates, (ii) Presidential with-holding of Bills—a threat to State Autonomy, (iii) Undue delay in most cases.

3.6 Yes. The Governor should be, rather than is, a close link between the Centre and the State. But the Governors of States other than those ruled by the Congress Party; have not acted impartially.

3.7 Yes. But concerned State Government's opinion should be taken into account before appointment.

3.8 Yes.

3.9 We do not think that the procedure adopted in the German Federal Republic is suitable for our purpose. Such a procedure will also not be necessary in the case the appointment of Governor and the Selection of Chief Minister are made in the manner suggested above.

3.10 It would be difficult to formulate "guidelines" on the manner in which the Governor shall exercise his discretionary powers but it is very important that the circumstances warranting such an exercise of the discretionary powers are sufficiently clearly spelled out.

PART IV

ADMINISTRATIVE RELATIONS

4.1 to 4.3 It cannot be gainsaid that the provisions made under Articles 256, 257 and 365 can altogether be done away within a federal structure. But it is necessary that they are not misused by a Union in quashing the State/States' rights to the Union for political reasons. In our opinion, the Constitutional implications and the operating ambit of these clauses need a thorough reexamination for amending the said Articles.

4.4 Looking back over the three and half decades since the Constitution came into force, it cannot be denied that the powers given to the Union under Article 356 have more often than not been misused. While it is true that this Article cannot be done away with, the modalities for its exercise have to be evolved so that the Union cannot abuse these powers for political consideration.

4.5 The maximum period for such a proclamation should be reduced from the present three years to one year.

4.6 Yes, working satisfactorily

4.7 While the functioning of the organisations do not make undue inroads into the State's autonomy, we do believe that all of them can be more useful to the States. For that, it is necessary that the representatives of the State or States should be included in the Governing bodies. The modalities of selecting the representatives of the State should be mutually agreed upon.

4.8 We do believe that the All India Services have a vital role to play in ensuring uniformity in the day to day functioning of the State Governments under the provisions of the Constitution. But we do believe that the training of both the IPS and the IAS has to be thoroughly re-structured so as to make the members of these two cadres' service people oriented under the discipline of the State where they are employed.

4.9 While Article 355 cannot be done away with, the Constitution should be so amended that the right of the Union to use, suo moto, the Central Reserve police and other para-military and military forces in aid of civil power in any State is done only when communal riots have broken out or when the territorial integrity of India is in danger.

4.10 Reply already given in 2.1.

4.11 The Zonal Councils should be re-activated. They should meet at a regular intervals for the disposal by a permanent secretariat.

4.12 Yes. It is desirable.

PART V

5.1 The plan and discretionary transfer has fallen rom 60% to a much lower figure. The constitutional thought of "automatic and free from interference" has not materialised. While considering this question instead of assessing the total resources as well as for the public domain for the use of the nation, only the central transfer to states are considered. As this is a correlated question, the estimation of a social equity and the evolution of available resources should be the principal determining factors. It is vital for the development of the nation as a whole to have fiscal planning of States where complementation and Supplementation are absolutely necessary. A new alignment on the basis of resource-planning, resource-development and resource-distribution in an integrated manner can foster the national growth. Finance Commission which is an appendage of the recommendary body should have independent and over-riding capacity for implementing their recommendations.

5.2 The dependence of the States on the Union has grown for the last thirty odd years. The Union's fiscal and resource-using powers are arranged in such a manner that it would raise resources only to meet the short term requirements. The growing needs of a society in the transitional period between backward feudalism and advanced capitalism needs a redefinition of fiscal resources. Firstly, the present trend of truncating State List by absorbing them in Concurrent, Central List is to be changed. Secondly, a shareable pool of all taxing heads and powers is to be built up. Thirdly, objective assessment of the shares to be allotted to the States should be built up not only on the basis of the principle of performance but also on exigency of our unevenly developed country. The objective is to keep the mind open and look at the question of social, cultural needs of different areas of the country. The national monetary policy embracing all these, is to be formulated. The States should have their particular say. To solve the problem of equitable transfer of resources the above measures are the immediate task.

5.3 More financial power to States should not automatically tilt the balance in favour of richer States. The richer states having higher growth rate have to always help the weaker states with a lower growth rate by subvention, the policy of which should be formulated by Inter-State Council with a view to not only distributing equitably but also fostering national growth. Secondly, the Inter-State disparity cannot be done away with unless the above is impartially and objectively implemented. The present tendency of the resource-transfer from the Union to States smacks of arbitrariness and is detrimental to social and economic equity.

5.4 The resource-availability is a factor. The management needs control of expenditure. Effective and efficient use of deficit finance will not always lead the country into a blind alley.

The resource-assessment and development is the first criteria before the measure of deficit financing is introduced. Today the deficit financing has led to inflation and heightened the project costs with respect to time of implementation. This leads to industrial recession and imbalance between the industrial and agricultural growth. National consideration on this is of paramount importance.

5.5. & 5.6 The criteria for resources should be based on equity principle. The question is how to ensure adequate resources for the States. On the one hand encroaching upon resource-raising areas of the States and on the other hand creating a special fund is not called for. Suitable amendment in the Constitution should be made to avoid such encroachment and assure equity in reasources-sharing. Financial share of resources from the Union to the States is done arbitrarily and not equitably. Unless the Constitution is clear cut on the directives, the matters will not improve at the time of centralisation. Unless Centralisation is limited and reversed, the dencentralisation, signifying the resource-availability, will not be realised. Monetary resources with economic fiscal management is to be left to the States. Unless the States are on their own in their taxing and borrowing powers they would not be able to have economic management. The free delegation of fiscal responsibility to the States would not only stimulate the growth rate of the States but also of the Union.

5.7 All the three prinicples stated in the questions would be upheld even if concurrence rests on financial availability. This will strengthen the flow of resources. Most of the fiscal items covered by Arts. 268 and 269 are transferable to the States' Governments and would pave the way to availability of such finance.

5.8 There is no justification in total centralisation of all taxing powers. Here the States are denied of tax-raising power. As it should be in a federal polity, the Centre should act in consultation with the States for the distribution of the fiscal power. If necessary, such decentralisation of taxing powers in imposition as well as in administration with regard to local conditions should be introduced. Pre-independence taxation structure is completely out of date.

5.9 The plan and non-plan transfer should not have any distinction. The present practice is distinctive and arbitrary. This has created a situation of uneven and unbalanced development. The allocation to the States should depend on assessment of resources to create Inter-State equity. The Planning Commission is not so constituted. If the present trend is continued the decision for fiscal transfer should rest on an independent body under the Inter-State Council.

5.10 Finance Commission have attached undue weightage to the gap filling approach. This has resulted in some States overstating their gap, while some other have no incentive to reduce the same. On the other hand the arrangements have not led to narrowing inter-states disparities.

5.11 The view is valid. The present approach in the aspect of filling gaps in the capital and revenue accounts should be abandoned. Asset of independent and objective criteria should be laid down to determine the allocation between the Centre and the State as well as among the States.

5.12 A solid foundation should be laid for equitable transfer of fiscal resources between the Centre

and the States and among the States. If this is done, tax-sharing and grants-in-aid can improve the Centre-State relations.

5.13 Grants-in-aid should be replaced by resource-sharing in the transitional period. Better-off states should not be favoured with this save in case of emergency. To dispel any misunderstanding this should be allocated by Inter-State Council alone.

5.14 The share divisible pool should include the totality of resources raised by the Centre on both revenue and capital accounts. This should include as in the 'Question' the special bearers bond scheme, revenue from administered prices of petroleum, coal as also from income tax surcharge, corporation tax, wealth tax, estate duty, custom duty, excise duty, central excise tax. This should also include the investment pattern of LIC and Unit Trust. Regarding the above, the present policy is arbitrary. The turnover of all LIC and Unit Trust in a particular State should, in co-relation to other fiscal activities of the State, be determining enough for allocation on a Zonal or State basis. This also holds good for National Savings Certificate, Postal Cash Certificate. Our contention is where the people of the State are creating these funds, they should have a share in its investment pattern. This also should be a critically determining factor in the Deposit/Advance Scheme of the nationalised bank's operation. The central interest tax of 1% on loans taken by Terms Deposit holders from banks is very much arbitrary. The State should have at least 50% of the interest tax charged by the Centre.

As the States are entitled to 85% of the proceeds from income tax, most of the above listed funds should have 25% to 85% for the revenue raising scheme to be utilised by the State; the only exemption be in the case of National Defence Certificates.

5.15 There is no denying that the total savings available in the country should be shared between the public and private sectors. Whereas public sectors should devote this to the growth of heavy, key and basic industries, the private sector also may be allowed to fill in any gap in the above. The private sector should be mainly entrusted with the establishment of consumer industries, if necessary through diversification. If this policy is followed by an equitable distribution of capital by fixing of priority, the balanced growth will be assured. The fixation of share for the distribution of the tax and non-tax revenue in the capital receipts is important to assure this balanced growth. The way such distribution is being effected is not satisfactory, for the simple reason that this is leading the country to price inflation, industrial recession and growing unemployment.

5.16 The evaluation is not correct. The deficit and total disbursement proportion of the State Governments is well below that of the Centre's. The State's fiscal difficulties are the direct result of the shrinking shares of the States in both Centre's capital receipts and direct market borrowings.

5.17 The indebtness of the States whether massive or not, depends not on absolute figures but on relative conditions. The Inter-State Council should make a periodical review with a view to writing off portion of those indebtness as and when necesssary. This decision should be governed by the criticality of the situation prevalent in a particular State. These debts are to be lessened on the one hand by countering it with a better growth rate and by promoting suitable industries or on the other by writing it off in a graded manner in commensuration with the depreciated money value.

5.18 The Constitution has undoubtedly restricted the the rights of the States to borrow. If a State Government is in deficit it cannot borrow without the explicit permission of the Centre. The gradual centralisation has led to this position of fallacy. While in the beginning more than 60% of the total public borrowings was assigned to States, it has come down to 10% now. This anomaly is retarding the over all growth. The backward States are growing more backward and thus creating a situation nearing collapse. Any principle of sound financing should be based with an idea to increase the quota from 10% to 30% immediately so that the tendency is not for reducing but increasing the share of public money.

5.19 On the question of foreign loans we have serious reservations. On the one hand, the loans and credits received from the international markets have a quite high rate of interest. This leads to price inflation and money devaluation. On the other, the quanta of shares of these loans allotted to States is meagre as well as at a higher rate of interest. Conditions of repayment are also of shorter duration than that of the Union Government to the external agencies. The review should be made where the rate of charging a higher interest and apportioning arbitrary shares of the loans received from outside world is reversed by subsidising the interest rate and by greater apportioning. The subsidy in interest and sharing of loan amount may vary from State to State.

5.20 The idea of a national Loan and Credit Council for setting borrowing limit is good, for the RBI as an appendage of the Union Government cannot perform this function. Alternatively, the Reserve Bank of India should be so constituted as to represent the total nation independent of Union Government's dictation.

5.21 This is another example of an anamolous claim by the Union. Deficit financing is 15% in the Central level and less than 3% in the State level. Deficit financing policy should either be drafted through the National Credit Council or by the R.B.I. restructured as an independent entity constituting the State's representatives. As it is true that the States should not have any overdraft limits fixed by the new policy, it is equally true that the centre should not also cross a limit of loans as fixed by the above body. This special situation needs a special policy and as such no policy should be mechanically and arbitrarily determined. A total national money planning can remove the present anomalies.

5.22 Correct. Most of the States have failed to reach their target. Most often than not they have not even set a target. Inter-State Council should set this target and allocate from the divisible pool in concord with their performance. This is a way for maximum finance resource planning.

5.23 Admittedly the Centre has been lenient in both Corporate and Income taxation matters. The Inter-State Council should firstly transfer some of those to State List and secondly fix tax rates of items in the Union List, but important to the States, with regard to yield.

5.24 That is what it should be.

5.25 As the Centre is not utilising the Article 269 the fiscal item should come to the State List.

5.26 There should be a modus operandi for estimating the income from Railway passenger fares and expenses incurred in raising such income. This would give a fair idea of income-expense ratio. Then performance-wise allocation from this pool can be made to the States.

5.27 Union territories are in special category and allocation for them depends on national consideration.

5.28 Natural calamities bring in emergency situation which can be tackled on national level. Central and State teams should assess the damage ascertain the quanta of relief and the Centre should provide immediate relief and repair the damage. Whether there should be budgetary provision or not is a secondary matter.

5.29 States should be represented on Boards of R.B.I. and nationalised banks, so as to guarantee the State's participation in developing credit policy. This should be first step before creation of such Councils.

5.30 There can not be a question of spending funds imprudently. The raising, sharing and distribution should be linked up in a manner reflecting the contribution of the States.

5.31 Adding one and more commission would not plug hole any leaks. The risk lies in the prerogatives of the Union for raising resources beyond plan target, threreby creating a ground for wasteful expenditure on the part of the Centre. The attitude is to be cleared.

5.32 Modality of appointment of the Comptroller and Auditor General needs to be changed. Inter-State Council, and not the Union Cabinet, should be the Advisory body to the President. A retired C.A.C. cannot accept appointment in private sector. Necessary benefits and emoluments be suitably adjusted.

5.33 Performance appraisal and evaluation auditing should be strictly adhered to.

5.34 C.A.G.'s powers should be extended to cover all areas of auditing, specially in relation to defence and foreign expenditure.

5.35 & 5.36 Already stated in 5.34. This will arm C.A.G. with sufficient powers to bring to public notice any particular development, pattern or trend in public expenditure.

5.37 The Estimates Committee with their present set-up and capacity should be so structured as to give orientation to the administration by their expert advice.

5.38 The C.A.G., if necessary with modification, can displace the proposed Expenditure Commission. By their detailed analysis can guide the States making proper expenditure.

5.39 C.A.G. should have adequate authority for ensuring that the funds are properly spent by the States on projects—State. Central or concurrent. No unnecessary interference should continue.

PART VI

ECONOMIC AND SOCIAL PLANNING

6.1 The two organizations in charge of economic and social planning are the National Development Council and the Planning Commission. They have no constitutional or legal status. It is, therefore, needed to supplant this by Inter-State Council with due representatives of the State Governments.

6.2 For functional purpose both the Planning Commission and National Development Council are to abide by guidelines of the Inter-State Council.

6.3 The Planning Commission by their subservience to the Union Ministries treats the State Government as underlings. This feudal heirarchical structure must be changed.

6.4 The question of including Ministers in the Planning Commission does not arise as in our view, it is a highly specialised secretariat to help in the formulation and evolution of both technical and managerial expertise.

6.5 With the stipulations made earlier, the National Development Council and Planning Commission, as reconstituted, would be in a position to offer advice on the over all aspects of planning.

6.6 Macro fixation of priorities and targets is the delegated job of the Commission. Detailed suggestions of the Planning Commission as accepted by the Inter-State Council should form the basis of the State Plan from grass root level (to start with, the administrative district level). This should be in the purview of the State. Instead of subjecting State plans and proposals to scrutiny for over-riding, the process should be diametrically opposite. The district plans co-ordinated into State Plan both prioritywise and targetwise should be allowed by the Planning Commission acting as the secretariat of the Inter-State Council. The cost performance and net work progress monitoring should be the task of the Planning Commission.

6.7 The question of channelising Central assistance by way of loans, grants etc. becomes dependent on the restructured role of the Planning Commission.

6.8 to 6.10 Once the State Plan based on co-ordination of district plans is approved and plan size determined the resources should be channelised from the Central loan and grants. Any increment in the size of the State Plan where the resources are raised by the State cannot be with-held on any ground. This covers also World Bank Loans and IDA credits which should be reissued when the Inter-State Council evolves a

master plan on a national scale by co-ordinating all the State Plans submitted on the basis as stated earlier. The Union Ministry have no behesting role.

6.11 The country is sadly lacking in the monitoring progress and evaluation of target costs. This is to be strengthened at both States and Union ends. The monitoring criteria should be preferably uniform throughout the Country; if not, it should be a uniform criteria in each State.

6.12 Indian Constitution incorporates the ideas of Panchayat body functioning. The very backward situation in which India is passing through, does not encourage as yet the advocacy of a real grass root or village level planning. When a co-ordination between the rural people and the rural administrative personnel is built up based on the administrative capability in formulating plans with a realistic view for timely execution in an effective manner both by the trained administrative personnel as well as the conscious panchayat bodies, then and then alone formulation of plans from the grass roots could be possible. As a starting point, a macro compromise should be envisaged by district level planning. This alone can evolve a viable State plan and a National Plan.

6.13 As suggested above, this would also make State Plan Boards effective as an Advisory Board.

PART VII

7.1 to 7.3 There are certain strategic defence industries, which are based on Defence Secrets. These industries are absolutely in the Centre's domain. There may also be some massive investment industries like Rail-Road-Communication-network, Hydels and Thermal Power Plants which should remain in the Central Public Sector. All other industries should be given over to the States whereby they are free to issue licence for the establishment of industries to State, joint, private sector as necessary. The present position where the State is not even entitled to look into matters of a particular industry without prior permission of the Centre is not only unhappy but also ridiculous. Thus, a considerable number of industries may be shifted to the State jurisdiction and the State can also look after the 'national' interest with no less responsibility. A decentralised structure in setting up industries heavy, key and basic and a policy of healthy nationalisation of backward industries engaged in export in the interest of the masses as well as for higher productivity and for countering imbalance in import-export trade are needed. This imbalance is bound to happen when import of capital goods and vital raw materials is essential for the introduction of advanced technology.

7.4 The above restructuring will expedite the progress and make the plan targets realisable.

7.5 The present arrangement of allowing 10% of the current capital receipts of the State is thoroughly a making of the Centre. Market borrowing has the same fate—10%. LIC holding of State Government's security has fallen by 50%. This meagre distribution affects the progress of States. The Story of Financial Institution is such, where the doling out by Centre, if any is quite arbitrary.

7.6 Any Central investment is not made on air but in a particular State. That is why it is absolutely essential to take the State into confidence in any project formulation. All the Financial Institutions are under Union Ministry of Finance. So on the clearance of the Finance Ministry to set up any project in a particular State, it should be done involving the Financial Institutions including nationalised and commercial banks operating in the State so that the feasibility of the project becomes real. The viability would be dependent on the monitoring of the project implementation by these Financial Institutions. Here also it is preferable to apportion the investment holdings to nationalised banks for supporting the projects in their territorial areas.

7.7 & 7.8 From our view point, in the beginning all public projects in the heavy sector was done in consideration of the availability of raw materials. Although these were not captive industries, still it played a great role in the total socio-industrial progress. At present projects are not being implemented in the interest of the nation as a whole. A sort of reward-punishment theory has taken hold of the Centre's decision making. The feasibility and viability of a project in a particular State is no longer the determining factor. As such, obstruction to a healthy and proper industrial growth is taking place. This is to be changed in view of the necessity of introducing advanced technology for progress everywhere throughout India and to meet the challenges of future times.

PART VIII

TRADE AND COMMERCE

8.1 It is very essential to introduce State Trading for intra and Inter-State trading in nationally important items. This is to evolve the price uniformity on nationally important items as well as freight equalisation without which price uniformity cannot be achieved.

PART IX

AGRICULTURE

9.1 & 9.2 Agricultural and all other subjected territory is exclusively state service despite the present trend of encroaching in this sphere. It is absolutely imperative not only to reverse but also to drop the present entries in Union Concurrent List.

9.3 The Inter-State Council should direct the Planning Commission for Joint Working Groups with the States with responsibilities for recommendation.

9.4 The States should be free to fix firm agricultural prices within their territories. Major irrigation projects where more than one State is involved or of national importance should be jointly sponsored by the Centre and the concerned States. Though, as in other spheres, the general line on agriculture may be determined by the Planning Commission under the aegis of Inter-State Council, the specific programme ought to be formulated by the States. Co-operation between national and regional institutions is needed for execution.

9.5 The high-handed attitude of both NABARD and ICAR does not encourage co-operation between them and State Agencies. This to be checked.

PART X

FOOD AND CIVIL SUPPLIES

10.1 & 10.2 The present policy of procurement, pricing, storage, movement and distribution of food grains and other essential commodities is detrimental to the improvement of Centre-State relations. Much co-operation and co-ordination is needed. The guidelines can be decided upon by the Inter-State Council on the operational measures arrived at. The guideline is to be worked out by the Centre in consultation with the States keeping an open view on the peculiarities of each situation. This should also be done in the sphere of price regulation so as to evolve a desirable system of price administration in the State level.

PART XI

EDUCATION

11.1 to 11.5 The diverse ethnic, social, linguistic and cultural composition of our country with desparate economic structure need proper assessment in formulating programme in the sphere of education and philosophical policy. Rigid centralisation is a grievous mistake. Transference of Education to the State List is necessary. At the same time guidelines should be there so that syllabus or standard of university education in all States are more or less uniform. Primary education should be in vernacular; secondary with syllabus in English, Hindi and vernacular medium and in the University level it should be in English and vernacular only.

PART XII

INTER GOVERNMENTAL CO-ORDINATION

Such an institution will be helpful, provided proper epresentation from the States is assured.

TAMIL ARASU KAZHAGAM

MEMORANDUM

I am grateful to you for inviting me to tender evidence on behalf of the Tamil Arasu Kazhagam before the Commission appointed to examine and review the working of the existing arrangements between the Union and the States. I am also thankful to you for forwarding a copy of the Questionnaire issued by the Commission.

The Tamil Arasu Kazhagam was born on 21-11-1946. It was started by nationalists like me who courted imprisonment in the Struggle for freedom. The first and foremost policy of the Kazhagam is to work for national integration. The second policy of the Kazhagam is that, without detriment to national integration and as a means of strengthening it, the States should be reorganised on linguistic basis.

Tamil should be made the official language of Tamil Nadu, medium of instruction in the Universities in Tamil Nadu and the language to be adopted in the Courts in Tamil Nadu.

The Central Government should have only powers that the States voluntarily surrender to it. These powers should be : External Affairs, Defence and Communications. The residuary powers including all other powers should vest in the States.

This policy of the Kazhagam will not, in any way, be detrimental to either national integration or the relations between the Centre and the States. Only on this basis, the Kazhagam, having considered the Questionnaire forwarded by the Commission, submits its views about the changes called for in the existing Constitution. Kazhagam expresses its views generally instead of answering the Questionnaire with reference to the questions enumerated therein seriatim.

Before placing its demands, the Tamil Arasu Kazhagam desires to point out briefly the assurances given to the various linguistic groups in India by the Indian National Congress, during the Struggle for Freedom, to the effect that Independent India would be established according to the structure of the Indian Nation.

India has been gifted by Nature to be federal in structure. A considerable number of people, belonging to various religious denominations live in this country.

From the linguistic point of view, several languages having their own district grammer and literature are prevalent in India. Among the languages recognised in the Indian Constitution, except Urdu, Sindhi and Sanskrit, each of the other languages has its own separate and district region. These regions have got their own distinct and individual political history. These histories are age-old and they date back to more than 1000 or 2000 years.

Indian culture, since it comprises different religions and languages, is a combination of diversities.

Bearing all these in mind the Tamil Arasu Kazhagam has to urge that India, has been destined to be in a federal structure. Only in consonance with this structure, the relationship between the Central Government and the State Government should subsist in India. The Congress has promised to the Indian people, by means of the resolutions passed at the annual sessions of the Congress and the election manifestoes released on various occasions, that the States would be constituted only on that basis.

From the point of view of the geographical features of India, the Central Government should have been made a federal Government with powers to deal with only threee subjects, viz., External Affairs, Defence and Communications. The power to deal with residuary subjects should have been vested in the States and autonomy should have been given to each State. But, unfortunately, the present Constitution does not fulfil this principle.

The Congress was all along demanding from the British that the Constitution of independent India should be framed by a Constituent Assembly comprising representatives elected on adult franchise. But, the Tamil Arasu Kazhagam wants to remind the Commission that the Constituent Assembly which framed the present Constitution did not consist of representatives elected on adult franchise. Contrary to this, the Constituent Assembly formed in 1946 consisted of representatives belonging to the Hindu, Muslim, Sikh and Christian religious denominations in complete violation of the policies of the Congress.

The Minto-Morley Reforms of 1909 came into force during the British regime. Secondly, the Montague-Chelmsford Reforms came into force in 1921. Thirdly, in 1937 another political reform came into force under the Government of India, Act, 1935. The Kazhagam wants to remind the Commission that these three reforms reduced graudally the powers of the Centre, while increasing the powers of the States.

Finally, the Constitutional reforms recommended by the British Cabinet Mission in 1946 contemplated full autonomy to the States. In support of this, the Kazhagam gives below an extract from the scheme formulated by the Cabinet Mission :

"There should be a Union of India, embracing both British India and the States which should deal with the following subjects : foreign affairs, defence and communications; and should have the powers necessary to raise the finances required for the above subjects.

All subjects other than the Union subjects and all residuary powers should vest in the provinces."

The Kazhagam wants to remind the Commission that the Indian National Congress accepted without murmur the principle of real federalism at the Centre and complete State autonomy in the plan formulated by the British Cabinet Mission. Prime Minister Nehru moved a Resolution called the 'Objectives Resolution' on 13-12-1946 in the Constituent Assembly formed on the basis of the plan formulated by the British Cabinet Mission.

The relevant portion of the Resolution was as follows :—

"wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union. or as are inherent or implied in the Union or resulting therefrom;"

The Kazhagam wants to highlight the view expressed emotionally by the Prime Minister Nehru while moving the resolution :

"It is a Resolution and yet, it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication."

Unfortunately, the British Prime Minister, Lord Attlee released a Proclamation in the British Parliament, excluding the portion in the Cabinet Mission's Plan preserving the national integration prevailing from Kashmir to Kanyakumari and partitioning India.

In spite of this, the Indian National Congress and the Constituent Assembly which functioned under its aegis, and the Government of India which was its guide, changed its policy. Nobody can say that the Congress committed itself to the policy of State autonomy only to avoid the partition demanded by the Muslim League. To say so will be to doubt the integrity of the Congress. The Kazhagam has no doubt about it. The Congress committed itself to it only because it believed that for India which was federal in nature, a Constitution with federalism at the Centre and autonomy in the States was the most suitable one.

After the exit of the British and the separation of Pakistan, the Congress and the Government of of India functioning under its aegis gave up the policy of federalism. The reorganisation of States in 1956 was based only on the demand of the linguistic nationalities. After that, grant of autonomy to the States could not be avoided and should not have been avoided. It is not a mere administrative problem, but a right of the linguistic nationalities. Justice Sarkaria Commission should not at all view the relationship between the State and the Centre as a mere administrative problem. If so considered, it may not be possible for it to find a remedy in full.

We want to remind another matter here. In India in nine States non- Congress Governments have come into power. Among them, in West Bengal and Tripura the United Progressive Front under the leadership of the Communist Party is in power. In Karnataka the Janata Party is in power. The State Governments under their rule are also demanding complete autonomy for the States. In six other States also non-Congress Governments are in power. These States and the Parties which rule them are as follows :

States	Party
Tamil Nadu . . .	A. I. A. D M. K.
Andhra Pradesh . . .	Telugu Desam
Punjab	Akali Dal
Kashmir	National Conference
Assam	Assam Gana Parishad
Sikkim	Sikkim Sangram Parishad

These State Governments and the concerned ruling regional political parties of the States are demanding complete autonomy for the States.

In this background, it will be evident that the demand for State autonomy has become a serious challenge to the Central domination. The continuance of this condition will not be helpful to the national integration of India. If national integration is to take firm roots, Justice Sarkaria Commission should examine the relations between the States and the Centre from the time of the attainment of Indian Independence. This is a request kindly made by the Tamil Arasu Kazhagam. The Commission should examine the problem of the relations between the States and the Centre on the basis of the British Cabinet Mission's Plan of 1946 and the Resolution regarding 'Aims and Objects' passed in consonance with that by the Constituent Assembly on the 22nd January, 1947.

The States constituting the Indian Union are not enjoying equal status. Kashmir has been given certain powers and political status not enjoyed by other States. Why should there be discrimination between the States according to circumstances and emergency ? To put it in a nutshell, Justice Sarkaria

Commission should recommend to the Central Government to endow the other States also with the same status as the State of Kashmir. This is unavoidable and should also not be avoided.

In this background, the Tamil Arasu Kazhagam submits its firm demands to the Sarkaria Commission. They are as follows :

1. Powers relating to the three subjects of Defence, Communications and External Relations and the allied subjects, namely, Customs, Currency and Citizenship should be vested in the Central Government.

2. Residury powers including all other powers should be vested in the State Governments.

3. In the Seventh Schedule to the Constitution, there are the Union List, the State List and the Concurrent List. The subjects in the Concurrent List should be added to the State List and there should not be any Concurrent List.

4. Since there is only one Constitution for both the State Governments and the Central Government, it becomes necessary to amend it frequently. This degrades the sanctity of the Constitution. To remove this defect, the Kazhagam demands that each State should be empowered to have its own separate Constitution.

5. If the above demands of the Tamil Arasu Kazhagam are implemented and there is true federalism at the Centre, changes in the judicial sphere are also inevitable.

For a real federal India, what is needed is not a Supreme Court. Therefore, a Federal Court is absolutely necessary. The Federal Court should have jurisdication over disputes arising between one State and another State, disputes arising between the States and the Centre and issues relating to national Constitution.

6. Article 263 of the Constitution makes provision empowering the President to constitute a permanent Council to resolve disputes arising between the States and the Centre. But so far such a Council has not been constituted. The Sarkaria Commission should recommend the constitution of such a Council at least hereafter.

7. Provision should be made in the Constitution to nationalise inter-State rivers of India.

8. Since a time-limit has been prescribed in part XVII of the Constitution of India to make Hindi the official language of India, the position at present obtains that the only official language of the Centre is Hindi. On account of this, attempts are made everyday to impose, directly and indirectly, Hindi on the non-Hindi-speaking States. Therefore, Part XVII of the Constitution should be amended on the lines of the assurance given by Nehru.

9. Whatever steps are taken by the Central Government on the recommendations of the Justice Sarkaria Commission, prior concurrence or ratification of the State Legislatures in the form of Resolutions should be obtained.

TAMIL NADU KAMARAJ CONGRESS

MEMORANDUM

What predominates in our Constitution is its unitary feature. The distribution of powers between the Centre and the States follows the pattern which was outlined in the government of India Act, 1935, and this fact stands out glaringly in several Articles of the Constitution and in the VII Schedule which enumerates the exclusive legislative power of the union (list I), the states (list II) and the concurrent legislative powers of both (list III). The executive powers exercisable by the union and the states are based on their respective legislative jurisdiction, that is on the jurisdiction given them under these three lists. All residuary matters, including taxation, are left within the jurisdiction of the union. This means that the residuary powers are with the centre.

As the VII Schedule and other provisions of the Constitution would show that the autonomy and powers of the states in the legislative, economic and financial, as well as in the administrative sphere are already much circumscribed. What has happened during nearly three decades of the Constitution is that even the restricted autonomy and powers of the states have been steadily eroded and undermined while there has been a growing concentration of powers and authority with the centre. Not only certain provisions of the Constitution, but a whole number of other factors, political as well as economic, have contributed to this unhealthy and harmful development. What stands out today is a striking imbalance in centre-state relations, the states having lost much of the substance of their autonomy.

Responsibility to implement most of the welfare activities lies with the states, whereas the sources of revenue are limited and meagre. As a result, not only the dependence of the states on the centre has been increasing, but developmental and other social welfare activities of the states have been hamstrung and even, in some critical areas, crippled. The democratic features and norms of centre-state relations have been a casualty not only to the detriment of the states and their people, but even to that of national unity and national integration. This has encouraged fissiparous and divisive tendencies and forces.

The financial resources of the states are today too in-adequate for their developmental and other welfare activities and the sources from which they can raise their revenues are also equally inelastic. As a result, the gap between their legitimate needs, and their resources has gone on widening, despite all their borrowing "overdrafts" and the so called ways and means advances from the centre.

Not only are the major sources of revenue under the exclusive jurisdiction of the centre, but banking, insurance and public financial institutions are also under its control. So are the country's economic and fiscal policies in the formulation of which the states have no say. These factors, together with the manner in which the central funds are disbursed to the states, have made the latter increasingly dependent on the centre with an escalating negative impact on the whole spectrum of centre-state relations.

The situation is further worsened by the fact that the states are denied any share whatsoever in the revenue receipts of the centre from such major sources as customs and export duties and corporation tax. The so-called "central assistance" under different heads such as "grants-in-aid", "discretionary grants', the state's share in the income tax receipts of the centre etc. are inadequate. It is the "discretionary grants" no assured assistance under the Constitution, which has begun to predominate and constitutes the major share of the total aid, giving the central government a powerful leverage for unjustly pressurising and influencing the policies of the states in many fields of the latter's activity. Occasionally, this is used as an instrument even of political pressure on the states. This has caused much resentment in the states, although under the monopoly of one-party power, such resentment has been silenced at the official level.

The role of the Finance Commission, which is appointed by the central government and whose composition, powers and functions are open to question has made no material differences to the centre-state relations over the question of resources.

The administration of five-year plans which has given rise to demarcation between planned and non-planned sectors has been taken advantage of by the centre especially to establish its control over a number of subjects in the concurrent and state lists, which come within the scope of planning. The Administrative Reforms Committee expressed its concern at this development which according to it, has tended to unite the horizontal pieces (of the so-called plan sectors in the states) into a single monolithic chunk controlled by the centre, although operated in concurrent and state lists. The national planning certainly requires well directed central authority. That authority should be recommendatory one and not a mandatory one.

It is, however, not in the financial and economic fields alone that the states are handicapped or the inroads into their powers and autonomy have taken place. The exclusive legislative jurisdiction of the states and their executive powers have been in various ways encroached upon under one pretext or another. Some provisions of the Constitution, including several entries in the Union list and concurrent list, have facilitated this. Though "industry" is, for example, under the exclusive jurisdiction of the states, the centre has acquired a very wide, almost unlimited, range of control over many industries in the states. The trend is one of extending such sweeping jurisdiction of the centre over matters which are supposed to be the state subjects.

The arbitrary resort to President's rule in the states under Article 356, some times even for sorting out the internal problems of the party in power, the provision for President's assent to certain categories of bills passed by the state legislatures, centre's control over the All-India services even when their cadre's are under the employment of the states—all this has enormously contributed to the undermining of the federal principles and of the powers and autonomy of the states.

Experience would underline not only the disturbing growth of unhealthy and harmful trends and practices, but also that of authoritarianism. Moreover, the denial of wider powers and greater autonomy to the states, which are their legitimate due, go only to bread the disruptive and divisive tendencies and forces. To counterpose the question of the unity of the country to the legitimate demand for more powers to the states is entirely misconceived and wrong.

In any federal structure worth the name, the federal centre derives its strength and authority in very large measure from the willing cooperation of the constituent states which, too must be invested with their necessary powers and authority. In order that they may be based on a strong democratic foundation, centre-state relations must necessarily ensure that both have their legitimate due in the field of powers, authority, resources and opportunity to discharge their respective responsibilities to the people and the country. The problems we face are however the concentration of power and resources with the centre, while the states badly lack them, while their development, responsibilities continue to be expanding.

In effect, the federal features contemplcted in the constitution are given a go by and it has taken the shape of a Unitary State. We are forced to arrive at such a conclusion for the following reasons among others.

1. The Indian Constitution was promulgated so as to form a strong Government at the Centre. Since the communal riots, insubordination of the princely states, foreign aggression and such dangers were rampant in the period, the constitution makers felt confirmed in their sense of the need for a strong government at the Centre. Hence they set apart 97 items in the list of powers and duties allocated in the concurrent list. And only 66 items were included in the list allocated for the state government. Further they have specified in the constitution that in the case of a conflict between the centre and the state over a common item it was the Central Government which had the final say; and also that in all matters out side these three categories the Centre alone had the residuary power. Hence according to the constitution the allocation of powers to the states is an exclusive right of the centre.

2. The amending of the constitution is not an easy matter in the nations like America where the federal system is operative. But in India the Parliament can amend the constitution in any manner it wants by means of the two third majority. The states need not ratify the amendments except when these involve certain parts of the constitution. Further even the proposal of any amendment can be brought up not by the state legislative body but only by the Parliament.

3. According to the constitution the states do not have the right to promulgate their own law. On the contrary in Russia and Switzerland the state do have the right. The Indian Constituent assembly in its role as an assembly representing the whole of India formulated the constitution. The states have to function only within the bounds of the constitution. The State of Jammu and Kashmir is the sole exception to this rule and Article 370 in the constitution has accorded this right to this state.

4. The Constitution of India has not accepted the principle of equal representation of all the states in the Rajya Sabha. The representation has been made proportional to the population and this is against the concept of federal system.

5. In countries like America every one has two fold citizenship *i.e.* as the citizen of the state of residence and as an American. But the Indian constitution has accorded only a single citizenship and this is another difference between the federal system here and elsewhere.

6. Unlike in other federal systems there are union territories in India. These are directly administered by the Central Government and do not have even the status and powers of the state governments.

7. In other federal nations the constitution does not provide for the suspension or elemination of the federal system. But there is such a provision in the Indian constitution. The Central Government may replace the federal system by unitary system in emergencies like War and Internal security problems, over-ruling the state governments. Further the President of India may dismiss the state governments on his assumption of its maladministration or its incapacity to deal with law and order situation. All these powers have rendered the Central government a feudal overlord.

8. The Constitution of India has granted power to the Parliament to pass legislation on any item in the state list, if a resolution relating to any issue or issues of national importance is adopted with two third majority in the Rajya Sabha. Similarly, the Parliament has power to formulate legislation on any item in the state list, to fulfil its commitment to international obligation. That is the central government has the right to override the powers with the state governments.

9. There is an important provision in the Indian Constitution which is detrimental to the concept of federalism. The constitution has created cadres like I.A.S., I.P.S., I.F.S., etc. The centre alone has the power to appoint men in these cadres and allocate them to various states after they qualify themselves. They are controlled by the Centre though they serve the state in various capacities. Hence they do not act in any manner prejudicial of the centre. In countries like America the state service is different from central service and their loyalty is not divided between the two governments. But in India the indirect control of the centre over the state governments administration is made constitutional through all India services.

10. The Governor of a state is appointed by the President of Indian Republic and he can continue in the post as long as the President likes. This practice helps the Centre to check and supervise the administration in the states. This is against the spirit of Federal rule. A state is really autonomous only when it has the power to choose its Governor.

11. The Indian Constitution has instituted a Central Election Commission and it has the power to conduct and supervise elections to state legislative assemblies and the Parliament. The President of Indian Republic appoints the officials of this commission. The state government has no say in the institution of the election commission and also in the appointment of officials in the commission. This is certainly against the concept of federalism.

12. In America and other nations there are two systems of judiciary. The state governments in these countries have the power to institute special courts of law to implement the acts and laws passed by their legislative bodies. But in India the High-Courts of the states function as constituents of the Supreme-Court.

13. The article 3 of the Indian Constitution is a dangerous one. Under the provisions of this article the Centre can increase or diminish the border of any State. It can change the nomenclature of any state. The Parliament has powers to do these. The state assemblies can only submit their views to the Centre in these matters. It is not obligatory on the part of the President to concede the request of the state governments. He can act independently according to his own will. In the United States of America the border of any state can not be altered without its concurrence.

14. The special feature of federal administration is the division of finance of the nation. Adequate finance should be granted to help the State and Central governments to function autonomously. But in India the fiscal policy is an obstruction for the smooth functioning of the state government and the finance allocated to it is disproportionate to the duties assigned to it. Hence the state governments are at the mercy of the Centre. As a result the interference of the Centre in the state administration assumes massive proportions.

15. The state can implement an act passed by its legislative assembly only after the President's assent. Otherwise it will be invalidated. The Governor is also invested with the power to keep in abeyance any act passed by the legislative body and the state has no powers to compel the Governor to submit it to the President. Over and above this the President reserves his right to with hold or delay any act passed by the state assembly. There is no time limit for such delay by the President. The President can also reject the act if the Centre-State relationship is not friendly or if the policy of the state government is out of tune with that of the Centre.

Our Proposals

1. The Constituent Assembly responsible for the existing Constitution of India was not an elected body by the people of India.

Adult franchise was a phenomenon unknown at that time. Only people who had property enjoyed the power to Vote. In 1946 these were the people who elected representatives to the various state assemblies. These legislative bodies elected representatives to the Constituent Assembly.

Besides, nearly one third of the Indian population lived in princely states. These people did not have the right to elect representatives to the Constitutent Assembly. On the contrary representatives of the heads of the princely states were sent to the Constituent Assembly. As a result the Constituent Assembly was not representative of the people of India.

2. The present Constitution of India was formulated prior to the formation of linguistic states. The present formation of states is very much different from what it was during the British Raj. The political and socio-economic factors of the states have undergone massive changes along with the topography. The present constitution is lacking very much in accommodating these changes. In fact the constitution is a hindrance to fulfil the aspirations of the people of a state. The Centre-State ill feeling or quarrel is a sequal to this sense of alienation.

3. The Congress was in power both at the Centre and the States when the constitution was written. Hence the constitution emphasised an Unitary system. At present many states are ruled by Political parties which emphasise the rights of state governments and federalism. Out of the 22 states in India 9 states are ruled by Political parties which fight for more autonomy and power. In most of the other states, the state governments are very powerful though they are not characterised by their demand for greater autonomy. It is better to take into account the possible impact in the future consequent upon any increase in the representation of these political parties in the Parliament committed to greater autonomy.

4. The political landscape in India presents a galaxy of states ruled by parties with different political ideologies with a centre ruled by the majority of a single party. The Constitution of India has not taken into account this pattern of different shades.

5. The 42nd Constitutional Amendment promising "Sovereign Socialist Secular Democratic Republic" was passed in 1976. It is quite unfortunate that several sections of our Constitution is against this objective.

6. The present Constitution of India has failed to respect and recognize adequately the urge for self-rule by the different linguistic Nationalities in India. The existing constitution is deficient in promoting national solidarity and will become defunct once it provides for full autonomy to states and a centre that respects the rights of the State Governments and functions in co-ordination.

7. It is disheartening to know that our 35-year-old constitution has ignited greater tension between centre and states than friendly relations. This shows that our constitution is out of joint without relevance to the existing situation.

8. We cannot redeem the ill-effects of the constitution by certain additions and deletions.

9. It is impossible to grant more autonomy and powers to the state governments within the framework of the present constitution. It has serious limitations in recognizing and granting adequate power to the State Governments.

10. Hence a new Constituent Assembly shall be formed with members elected by adult franchise. Our political party strongly emphasises the need for a new Constituent Assembly responsible for the formulation of a new constitution committed to Federalism guided by enlightened concepts of democracy and ethics.

TELUGU JAATI VIMUKTHI SANGAM

MEMORANDUM

Before going into our views on the topic, it is necessary to review the historical background of the Indian Union Government and the State Government and the State Governmental entities to have the understanding of the causes and conditions that played in shaping the present situation of Indian political irregularities. Later we like to give the factual explanations for many topics involved in this subject.

Historical Back-Ground

1. With the advent of the British Colonial rule the terms 'India', 'Indian Government', 'British India', etc., have come into common usage. Prior to the formation of British rule, this land what we call now India or Bharat was never one country with one nation. Prior to 1857, before the onset of the British Government rule, there were several kingdoms ruled by several feudal lords. The boundaries of those kingdoms were not static. The mighty annexed the weak nations. There were empires of Mauryas, Kanishkas, Kushans, Satavahanas, Moghuls, Bijayanagaras etc., but this sub-continent was never named as India or Bharat. Even in the prehistoric ages, before the formation of royal rule, when the 'Jana Pathas-rule' or 'Gana parishath-rule' was in existence, there was no country ruled by Bharats or Indians. Actually the name 'Bharat' was used to this sub-continent. It is mentioned in the scriptures too as 'Jambu deveepe' (Jambu island), Bharata varshe (Bharat time), Bharata Khande (Bharat Continent). Never it was mentioned that Bharat was a nation. There were several nations in this sub-continent with primitive collective rule as 'Ganas' or 'Janapathas'. Upto the formation of Maghatha Empire (6th Centrury B.C.) there were 56 nations (Chappanna nations) like Amga, Vanga, Kalinga, Gandhara, Kamboji, Kuru, Kuntala, Saakya, Andhra, Chola, Chera etc. Later definite nations were evelvod according to the language of the people.

What is the Nation?

2. According to the historical and political understanding of the nation, the universally accepted definition is "A Country with continuous piece of land, wherein the majority of people speak one common language and live with common economical relations, common culture, habits, and tradition". The common majority-language is the backbone of a nation. Neither religion, nor race, nor governmental power could evolve the people into a nation. In the evolution of human society, the stages of living together passed through family, gens, clan, sect, village, town, ultimately all these amalgamated into a higher coherent society of living as nation which is now the highest form of human state of affairs. The world is evolved into nations. There might be several alien mighty rulers who annexed other weak nations. But peoples' communications and living harmony were always maintained by the national spirit. The binding force of nation is the common language through which human communication and human facilities were civilised. Even the religion or philosophy was translated into the national language. There is no other force in the world which

can keep the people as one entity than the nation. So far in the world it is highest form of human bondage and there is no international brotherhood without understanding the nation and the nationality.

It is the history of the entire world that nations struggled to get independence out of the foreign rulers. The entire modern history of European countries reveal the same national struggles. Although Europe is entirely embraced by the Christianity and the entire people are of white race, still people struggled for their national independence against alien rule. Thus the English, the French, the Spainish, the German, the Finnish, the Dutch etc., nations evolved. But in Indian sub-continent after the Feudal royal regime, the British Colonialism with the power of new arms of guns and gun power annexed all the native national powers for their exploitation. Two hundred years of British rule could not make the nations into one homogeneous nation. The nations here were very ancient and each nation has its great heritage of culture, literature and common economical relationships which could not be smashed by any oppression or progressive ideology.

Evolution of Indian Nations or Indian States

3. The Indian national struggle was actually the joint struggle of the nations that went against the British hegemony. Originally the Indian National Congress was an Indian Organisation established by the Britishers through Lord Daffrin with their own henchman called Mr. Hume in 1885. Its progress among the nations until 1920 was inconsiderable. In 1928 when the Indian National Congress at Nagpur adopted the resolution that the Congress parties should be established according to the nations, then the progress of the party's activity was considerably seen. Andhra Congress, Tamil Congress, Bengal Congress, Malayala Congress, Gujarath Congress, Assam Congress, etc. were formed for the propagation of the Congress Party. The existing nations' utility were recognised, and the Congress party began to spread all over the nations. During Quit India Movement in 1942 Congress Party promised that if independence would be achieved autonomous status would be given to all nations with people power and only a federal coordinated government would exist in the centre to look after the common necessities. But later in 1947 when the British gave the Political power to the Congress party, it did not keep the promise of giving independence to all nations. Instead the Congress continued to rule the nations on the same lines that of the alien British rule. The constitution was so framed that the political power is left to the Central Government which is by no means different from the Vice roy rule of the British Regime.

The Indian constitution in the first article defined what is India:

> "India that is Bharat shall be the Union of the states".

It is very clear that there is no India nor Bharat without the states. But the State is not defined properly. It took another five years to realise the meaning of the state (in 1956) as linguistic state as a result of the struggle and self-sacrifice of Potti Sreeramulu in Telugu land. Nations realised that the hegemony of one nation over other is untolerable. The nations lead the struggles for their individuality and it last with great sacrifices of blood and lives they could achieve their individual linguistic states or national states. Thus in the Indian sub-continent states are evolved to establish recognition for the nations.

The Feudal Nations and the Democratic Nations

4. A nation is defined not according to race, religion, nor the ruler's boundaries. Historically nations are evolved according to linguistic reality. They are evolved in thousands of years of collective, coherent economical and cultural affinities. In the feudal era these nations are evolved. Later one mighty national annexes other weak nations with wars and adamant administration. When the royal rule was dissolved with the growth of capitalism, the parliamentary system was put in operation instead of kingly courts and royal hierarchy, the people of one language or one nation began to claim their own parliament for the economico-social betterment. Any hegemony of one nation over others is strongly protested. The imperialistic tendency of big nations over the weaker is opposed. A nation's resources are claimed to be utilised for that nation only. Any plundering of the resources by an alien nation or colonial imperialism is radically opposed. In the parliamentary era or democratic era, the outlook of nation, thus fundamentally, is a phenomenon to oppose the imperialism and its sabotage. Feudal national outlook was once propagated to sing its glory that how it was superior in culture and tradition than other nations. The feudal national glory is the glory of royal rulers and royal heroes who protected their nation from the alien tiraders. But the modern nation or the democratic nation stands for the people and for the integration of their own people to utilize their own sources for themselves without any foreign interest, otherwise it knows clearly their economy would be ransacked by the foreigners and subjugate them ultimately to slavery, and poverty. This democratic national outlook is predominant now throughout the world. The nations now are revolting against alien rule and alien plundering of native economy. In other words the nations are struggling for independence and democracy.

It is the era of National Struggle

5. Entire world is involved in national struggles. The present history is under the pangs of giving birth to new nations for the establishment of democracy. In pakistan, Sindhs and Pathans are waging struggles for their national freedoms. In Iran the Kurdhs are relentlessly fighting for their national independence; the Irish people have not stopped their fight to vacate the British from a small piece of their mother land; the Tibetans are struggling to release themselves from the alien rule of the Chinese. In Indian sub-continent too national consciousness has arisen. Nagas, Mizos, Tripuras, Maities, Assamese, Kashmiris, Punjabis, Tamilians, Telugu people and other non-Hindi people are now conscious of their nations and feel that they have to get self rule, and self respect. The thought of nationalism for every nation in India is so strong now a days that even some nations are boldly coming out to declare that they are not Indians and they want independence from India, like the people of Kashmir, Nagaland, Mizoram, Manipur and Punjab.

Indian Integration and States Autonomy

6. All political thoughts now-a-days are centred in the problem of independence to nations. The Indian Government is on the other hand proposing for national Integration, knowing clearly that there is no nation like India. The question of preaching integration arises when there is no possibility of Union between the nations now existing. The new terms into the Indian Political dictionary that have entered are 'secessionists', 'separatists', 'sons of the soil' and 'regionalism'. These words are coined by the Indian government to show its vehemence over he spirit of independence for nations. But it is afact that no nation in India is fully realising that it is a part of Indian Government which is vested with monopolic power over the Indian sub-continent. The integration is meant to honour the hegemony of the central government over the States.

State and Centre Relations

7. It is reality that after 37 years of so-called integration—rule of the Indian government, the problem of 'State and Central Relations' is yet to be decided. The original meaning of Indian Union Government was already wiped out. It is replaced by the deedful word 'Indian government'. There is no union of the states in practice. There is only Central hegemony over the States. The states are helpless, have no self rule, have no self respect, no decentralisation of power, everything is decided by the Central Government alone. What for the state government stands is also not clear. The differences and conflicts between the state assemblies and parliament have grown up thicker and higher. The states are subordinated to the central government. 3/4 of the taxes collected from the states goes to the Centre. The states in turn have to beg for any programme from the centre. The money that centre gives to the states is no other money than the taxes collected from their own states. The states are consciously realising the hegemony of the central government over them in the matter of economy, political solidarity and social betterment. The States began to show their distrust over the Centre. Removal of the Chief Ministers, replacing the state ministry with puppets and baffoons, by the Indian government, created helpless grudge in the states against the central government. Ultimately a stage has come that every state with a degree of difference is asking the central government not to interfere with the state matters and also asking to precise the business of the centre and the state in the administration and power. The governor post, a non entity of the people, not elected by the people, the old sore of the British regime, is still maintained by the Centre as the watch-dog over the state. Everything that is asked by the state government is to be recommended by the governor to the centre which in its turn by its own methods honours or dishonours, the acts passed by the state. All these events made the state sub-serviant to the Central Government. An atmosphere is created that in reality there is only one government in Indian sub-continent, that is central government which is named for democratic relief as Indian Union Government or federal government. Such words sound no meaning of integration among the common minds of people.

In view of the above hegemonic rule of Indian Government over the states the conflict between the centre and the states is so real that it cannot be wiped out, unless a real democratic tendency of federalism is established. It is the time to enunciate clearly what is the state and how a federal attitude between the states can be existed.

Nationalism means democracy and Democracy can never bow down before any hegemony, whatever pions nature it exhibits superficially

8. Nationality should be defined once again not with the point of view of the Indian rulers, but with the internationally accepted definition, i.e., "A Nation is one which consists of people speaking in majority one common language, living in one continuous piece of land, since the dawn of the history, with common socio economical link and common culture". It is universally accepted definition of the nation. In this light, India is not a nation. It is a mixture of several nations. A real democracy is possible where there is no hegemony over the state affairs by the alien forces. Any force other than the nation, acting to shape a nation definitely will create the conflict. In the Indian Sub-continent the conflict between the states and centre is enevitable, as long as the states entity is not considered by a federal unity.

TNLO's Suggestions

10. In order to mitigate the conflicts between the states and central government and to avert the state struggles existing against the central government, Telugu National Liberation Organisation suggests to the honourable Sarkaria Commission the following points to maintain the real federalism between the States.

1. Every linguistic state is a nation and it should be represented by its own elected members and by its own acts.

2. There should be only one election to one nation or state, and there should be only one government to each nation or state.

3. Each nation after its assembly elections, and after its formation of the Government shall send ten representatives, irrespective of their population, selected by its own way to the federal union. There should not be separate elections to the federal government or union government, otherwise the very federal meaning and purpose will be lost.

4. The national governments or the state governments are the real governments, a federal union of Indian nations will be possible only when these nations send their representatives to the federal organisation.

5. The federal organisation should not interfere with the nations or states. It has to discuss for the common benefits of all nations in the sub-continent.

6. Each nation in the federal union represents all the matters in its own mother tongue or national languages, except keeping English for the correspondence with other nations or with the federal union matters.

7. A federal union of Indian nations (states) is possible only when every nation has got the right over its native sources, business and industry for its own people. A federal government should not have the right over any nation by any means to utilize one nation's sources to others without one's consent.

8. Each nation should be allowed to maintain its own flag and its own choice of government and its own constitution including and right to secession from the federal organisation if it feels necessary and inequitable for its existence.

9. Each nation or state will contribute the funds for the working of the federal organisation.

10. There should not be any state or territory rules by the federal union.

Democracy should be made possible if the national levels, federalism is to be maintained only for the common interests of all nations.

UNITED GOANS

REPLIES

1.1 Our Constitution is not federal strictly speaking because some unique features found in other federations are absent. See Federal Republic of Germany, see U.S.A., see U.S.S.R., we strongly advocate *autonomous states*.

1.2 We entirely agree with the findings of the Rajamannar Committee appointed by the then Tamil Nadu Government urging for greater autonomy. We gave our views to the Mathew Commission stating clearly that the Supreme Court should have two wings—Constitutional Wing to hear Constitutional matters and Appellate wing to hear other appeals.

1.3 We entirely agree that there should be provision for considerable centralisation in terms of emergency. But in a heterogenous country like India, the need for complete decentralisation is a must. In other words there should be complete autonomy granted to all States.

1.4 Federation of the "traditional" type exist as a "functional" entity as distinct from an "abstract" theory. See the Federal Government of Germany, see the U. S. America.

1.5 Our Constitution is basically sound and flexible enough to meet the challenges of the present times. What we have to do is to regulate laws impinging upon certain spheres of Union State relations. We would suggest to commend the Constitution by granting greater autonomy to States.

1.6 Our independence and integrity has to be ensured at all times. Should we see any designs aiming at our Independence and integrity, article 352 of the Constitution must be imposed without delay ?

1.7 Constitutional provisions covered by articles 256-257, 354 to 357 and 365 are enough safeguards.

1.8 We think that art. 3 of the Constitution should be left untouched.

Answers to Part II

2.1 The scheme of distribution of legislative powers between the Union and the States shall be stopped once autonomy is granted to the States. All abuses shall stop. We are not here to substantiate the concrete instances of which the Commission is aware.

2.2 The distribution of powers under the legislative lists of the seventh schedule of the Constitution shall end once the states are granted autonomy.

2.3 We don't think that such a course is desirable. It is entirely the responsibility of the Centre.

2.4 Such an anomaly should end. The States are and should be competent to legislate. The States do not abrogate their powers.

2.5 No, because the very powers which will contain the autonomous States Act shall suffice.

Answers to Part III

Role of Governor

3.1 We feel that the conduct of the Governor should be brought under review by any Court Tribunal or body designated by the Legislature of the concerned State to bring him in par with the President whose conduct can be also brought under the review of the Court.

3.2 Governor should strictly work within the Constitutional frame.

3.3 We entirely agree with the performance/functions of the Governor under 356(1), 164 and 174(2). He only interprets the Constitution.

3.4 The purpose of the Constitution makers in providing in Art. 200 for reservation of Bills by Governor and in Art. 201 for the consideration of the President is only because if it became law it would derogate from the powers of the High Court as to endanger the position which that Court is by Constitution designed to fill.

3.5 The prerogatives by law instituted should be maintained.

3.6 Generally Governor is a link between the State and the Centre. They generally act impartially in accordance with the Constitution. But there have been instances where Governmor abrogated their impartiality. Take the case of Telugu Desam. People revolted against the partiality of the Governor and was sacked.

3.7 Yes, We entirely agree.

3.8 Yes. We entirely agree.

3.9. No. We are familiar with the working of the Federal Republic of Germay. Similar provisions should be incorporated in our Constitution.

3.10 We agree that guidelines on the manner in which discretionary powers should be exercised by the Governors be formulated by the Inter-State Council.

Answers to Part IV

4.1 The purpose, function and use of articles 256-257 and 265 in the scheme and frame work of our Constitution have to be continued in the Federal frame work. We have not yet come across any incident of any State which was threatened of being invoked by article 365. But, once the States are given autonomy, the framework will ,have to be changed because the Centre will have to take care of Defence, Communications & Foreign Affairs.

4.2 Since Art. 365 has never been invoked it may as well continue as a reserve provision. It is purely a consequential clause.

4.3 Art. 256/257 are necessitated to avoid conflicts, as such the recommendations of the Commission carry no much weightage. We all explore all the avenues at our disposal, failing which it comes into operation art. 256/257 and 365.

4.4 We have to be very explicit here and state that the Constitution makers with a remarkable foresight provided "a necessitas" in art. 256 for the use by the Union and in our considered opinion this remedial measure which was never exercised has to be preserved with all sanctity.

4.5 We have seen what has happened in Punjab & Assam. No one can say for how long President's rule should continue. In disturbed areas specially we have to be cautious and Parliament should be empowered to extend the time-limit if so requires. Art. 356 has not been misused if not for the disturbances created in a particular state.

4.6 No. Census and elections may be continued to be implemented by the State Administration. The present arrangements really work satisfactorily.

4.7 No state should allow the Union to make inroads into the States autonomy. Central agencies should be mere guiding factors.

4.8 We are of the firm view that All India Services have not fulfilled the expectations of the Constitution makers. In fact they have fulfilled the expectations of their own relatives and friends. Only State Service Commissions have done commendable job. All India Services should have representatives from each State to defend it own interests.

4.9 We are of the firm view that the Union is competent by virtue of Art. 355 to rush its aid to civil power in any State.

4.10 We share the views of the State that Broadcasting and Television facilities should be shared between the Union and the States as both have got equal for access to these mass communication media for putting across their views to the people.

4.11 Zero contribution. If it had collectively pursued the States interests, by this time Goa, Daman & Diu would be elevated to full fledged State.

4.12 Once the States are declared autonomous the question of Inter-State Council is redundant.

PART V

5.1 Yes, We entirely agree. Wherever the States are financially weak they should be aided. However, the States must and should procure to ameliorate their own resources. In case of Goa, Daman & Diu we will take care of it.

5.2 The alternatives and combinations suggested by the A.R.C. study team should continue. In fact without waiting for the Central aid, States can obtain loans from various financial institutions to complete their projects.

5.3 Give more powers (Financial) to States who will be able to govern their own life. It has been so till today.

5.4 To bridge the revenue gap, Centre for the time being should make good the deficit.

5.5 We would suggest that Finance Commission and Planning Commission be entrusted the task of evolving a formula to determine :

(a) the share of taxes

(b) plan assistance

(c) non-plan assistance.

5.6 A special federal fund is a must if faster development in economically underdeveloped areas is envisaged. Finance and Planning Commission should be taken into confidence.

5.7 We are of the view that Part XII of the Constitution ensuring "freedom of trade, commerce and intercourse" within the country is a must to avoid irregularities in the taxation system and thereby there will be competition in the trade and all will flourish.

5.8 We advocate separation between the imposition of such taxes and distribution of the tax proceeds. For the former we suggest Central levy of these taxes subject to control by a Council of Ministers and State Finance Ministers.

5.9 In fact it is needless to elaborate that the role of Planning Commission will be limited to functioning as an agency for overall investment planning and decision making in the interest of rational utilisation of scarce capital resources. In our view the Finance Commission should deal with all financial transfers (Plan & non-plan on an assessment of capital and revenue resources).

5.10 In reality the transfers, both statutory and discretionary, from the Union to the States, on the advice of successive Finance Commissions or otherwise, promoted efficiency and economy in expenditure on the one hand and narrowed down the disparities in public expenditure among the States, on the other.

5.11 Finance Commision should be asked to deal with this subject.

5.12 This broad proposition should be accepted in toto.

5.13 The principles laid down by the Seventh Finance Commission for grants-in-aid under art. 275 should be accepted.

5.14 We fully agree that all Central revenues be brought within the divisible pool of resources which in turn can distribute it under the grants-in-aid to the States who show deficit.

5.15 We do not agree that the savings should be shared in private sectors.

5.16 The States should procure means to finance their own projects and make it self sufficient and viable. They should borrow money from various financial institutions. Once a State is viable, deficit will disappear.

5.17 As stated above the only remedy we can suggest is that States should mobilise their own resources from all sources. In difficult cases of mountaineous regions the Centre should step in and help them overcome their burden.

5.18 Centre should not impose any restrictions on the freedem of States to borrow. Financial autonomy has to be respected.

5.19 Absolutely not. It is ridiculous to suggest that the Centre charges higher interest to the States than what it pays to the foreign lender. The present system of transferring foreign credit obtained for financing States Projects through the Centre to the States should continue without any hindrance. In fact foreign borrowings should be encouraged if the States are to prosper and projects get completed.

5.20 It is foolish to interfere with the working of Reserve Bank of India. It should be allowed to continue to coordinate the market borrowings not only of the Centre and the States but also of the private sector. There should be no Loans Council. Improvement of the functioning of Reserve Bank should be done by the Finance Commission.

5.21 Finance Commission should appreciate this aspect.

5.22 We have opined above that States should go all out to improve their resources. Beg, borrow or steal but complete all the projects from the finances from all financing institutions.

5.23 We again repeat that such aspects must be looked after by the Finance Commission.

5.24 We don't mind if the Union ascertains the views of the State Govts. before moving a Bill to levy or vary the rate structure or abolish any of the duties and taxes enumerated in art. 268 and 269.

5.25 Yes. We do agree that art. 269 should be better exploited to augment the resources.

5.26 We agree with the views expressed by the States. It is urged that this grant in lieu of the passenger fares tax should be revised and enhanced in proportion to the increase in the collection of railway fare.

5.27 The Union Territory of Goa alone collects fabulous taxes by way of Central revenue and what Union gives to the territory is negligible. We suggest a share in the buoyancy in Central taxes.

5.28 The present working arrangements should continue.

5.29 We entirely agree for the creation of only two All India Institutions, the National Loan Corporation and National Economic Council. As regards National Credit Council its role is played by the Reserve Bank of India.

5.30 Yes. We subscribe to the view point that the benefits go back largely to the people.

5.31 Yes. We agree to the view point suggested.

5.32 The present system should be continued. The Parliament and the Legislatures are the watch dogs.

5.33 The Comptroller and Auditor General is the proper agency to suggest ways and means for better efficiency of auditing.

5.34 Parliament is the proper forum to check the functions of the Comptroller and Auditor General. Criticism of Ashok Chanda has no relevance.

5.35 It is left for Parliament to suggest and implement ways and means for better functioning.

5.36 Yes. The views and suggestions made by the Comptroller and Auditor General are to be complied.

5.37 We agree to whatever suggestions made to improve the image of the administration.

5.38 Not necessary. It will create confusion which will be worse donfounded. Let us not interfere with the working of the Comptroller and Auditor General.

5.39 The check exercised by the Comptroller and Auditor General is sufficient.

PART VI

6.1 The suggestions made by the A.R.C. study team and other studies conducted by experts are to be observed carefully and implemented specially the shortcomings in planning relationship.

6.2 We fully support the suggestion.

6.3 We go by the Planning Commission. Some misunderstanding which is always there in all the committees can be sorted out.

6.4 The three views expressed on the composition of Planning Commission should be examined by experts appointed by the Prime Minister.

6.5 We fully support the suggestion.

6.6 Leave it to the Planning Commission. Do not interfere with their working.

6.7 Let us not discuss the merits and demerits of the present system of channelising Central assistance to the States. We feel that their working is satisfactory.

6.8 We agree with the present system. Let us not interfere to add confusion.

6.9 The criteria evolved by the National Development Council is satisfactory.The present system of allocating the Central assistance is also satisfactory. Special Central assistance for Tribal and Hill areas should continue.

6.10 Leave it to the Planning Commission to supervise it.

6.11 Let us continue with the present system.

6.12 At the moment we should not think of decentralising planning. Let the States suggest if they so desire.

6.13 No. Inspite of having Planning Boards in each State, the National Plan can never be less imperative. We agree that each state should have their own planning boards.

PART VII

7.1 Once decentralisation of powers take place in the States, it is the prerogative of the states to issue licences to any industry because industrialisation of States will bring prosperity—see the case of Punjab. Whenever Union's guidance is required by law it shall be observed.

7.2 Public interest is national interest. There cannot be national interest without public interest. Everything that is in public interest has necessarily to be in the national interest. It should be laid down by Parliament what industries should be controlled by the Union and what industries should come under the purview of the States.

7.3 Once Parliament lays down and define what industries should come under the purview of Centre and the States, automatically improving and decentralising the present procedures will come into being.

7.4 To fill the gap in technology states have to go all out to procure the technology as is being done now by P. M. Only then all deficiencies will disappear.

7.5 These financial institutions should be directed to go all out to finance every state plans and every industry because execution of States Plans and putting more industries will being prosperity and minimise unemployment.

7.6 States must be taken into confidence.

7.7 To make Central investment decisions more objective, states have to be taken into confidence.

7.8 We fully subscribe the methodology adopted to identify backward areas for provisions of various central fiscal and financial incentives for promotion of industries—Take the territory of Goa, Daman & Diu—It was neglected before liberation—After liberation within 25 years the progress made in stupendous.

8.1 In fact we do not subscribe to the view for appointment by Parliament by law of an authority for carrying out the purposes of arts. 301, 302, 303 and 304. There should be no restrictions on trade, commerce and inter-course among states. Only then India will prosper.

9.1 We subscribe to the view that Agriculture should be the State subject.

9.2 The States know their needs. Once agriculture is made the state subject, Centre's interference will end.

9.3 We have suggested that States should have their own Plans. We agree with the suggestion made by the National Commission on Agriculture (1976).

9.4 Once agriculture is made the State subject all anomalies will end.

9.5 They should be asked to go all out to help the States.

10.1 Autonomy will decentralise powers and only then the burden of Centre-State consultation will end.

10.2 Again, autonomy will solve all the problems, States must be made to decide their own affairs.

11.1 Centre's interference is not justified. Hence decentralisation of powers to the States.

11.2 University Grants Commission should not be interfere with the University Education—University is autonomous.

11.3 Education should be the State subject and all states must adopt uniform code for education.

11.4 The Constitutional provisions under art. 29 and 30 must be preserved with sanctity because India is secular—We see no interference.

11.5 No conflicts have been noticed.

12.1 The Advisory Committee is not required on the lines of USA.

UNITED GOANS PARTY

OUR CASE FOR STATEHOOD

When Goa, became free, Nehru was keen that Goa's identity must not be diluted or distortion of the Goan identity.

Goa deserves to be a full fledged state with Konkani as its official language. Goa has its own importance, historic and cultural. Goa's attitude towards life is very different from others. Goa is a charming land and a viable state in every respect. The conscept of Union Territory is outdated. The composition of Goa State should comprise Goa, Daman and Diu as it has been known to be with us for centuries. They want to continue to be with us in all respects including Goa University. At the famous Opinion Poll they overwhelmingly voted against the merger with Gujarat and opted to continue with us. Goa's socio-cultutal the demographic, the popular sentiments, the handicaps of Union Territorial States and the question of financial viability confidently concludes that there is sound justification on which the people of Goa, Daman and Diu have rested their demand for a full fledged state. The very document prepared by Goa Government is unequivocal in its affirmation of Goa's unique and homogeneous socio-cultural identity. The general way of life, food, habits, housing pattern, social and religious beliefs, etc. are all quite distinct and that even the socio-religious fairs and

festivals which are held all the year round even in the interior parts of the territory have independent cultural homogeneity of their own.

The social and cultural ties among the people are too strong to create any discord between the sections of population following different religious faiths. As a matter of fact, Goa, Daman and Diu is the only area in the country which can claim complete inter religious harmony. On the demographic front, states like Nagaland and Sikkim have smaller population and two other Manipur and Meghalaya are of comparable size. Goa has the highest density population (285 per sq. kilometre) The basic idea in presenting the demographic data is to bring out the fact that the people of this Territory are better educated and knowledgeable and their demand for statehood is not merely a result of blind mass following of political leadership. On the popular support for statehood we can cite examples of 1971-76 and 1983 when the Goa Assembly inspite of different compositions each time, it passed unanimous resolutions urging the Central Government to grant Statehood. It is unfortunate that so far no final decision has been taken on this very important issue and that the issue is emotionally loaded and any further delay will risk popular discontent. The handicaps Goa suffers as a consequence being Union Territory is due to the severe limitations of the Legislative Assembly. Its powers to enact laws on any of the subjects listed either in the State List or the concurrent list of the Eight Schedule of the Constitution is subject to the ever riding power of Parliament to make laws for the Union Territory on any of these subjects. This is a severe limitation. Legislatures of full fledged States do not have any such handicaps. Under Rule 56 of Rules of Business Union Territory of Goa, Daman & Diu, prior approval of the Government of India is necessary before introducing in the Legislative Assembly, Legislation on any of the subjects listed in the concurrent list or any of the subjects to which second proviso of section 25 of the Union Territory Act applies.

Experience has proved that this is a dilatory process and that often the very object of the proposed Legislation is defeated on account of the delay that takes place in is accepted to be a measure of relative economic prosperity between different areas. Goa, Daman and Diu claim rightly to have made considerable progress since Liberation as it ranks seceond to none but to U.T. of Delhi. The Territory of GDD recorded an average annual rate of growth of 7·2 percent over the last two years.

It is indeed pretty high compared to other states. The surprising low rate of growth in per capita income (3·5% p.a.) and it is due to fast growing population and it is due to the large influx of population from outside.

According to 1971 Census as much as 14% of the population was made up of immigrants. The rising trend of the territory's Revenue (tax or non-tax) is yet another proof of the growing economic prosperity. The total revenue in the year 1971-72 was 482 lakhs has now gone up to 3286 lakhs in 1984-85, thus recording the rise of 800% over a period of 13 years. The per capita tax revenue has also gone up from Rs. 56 to Rs. 276/- over the same period. The total non-tax revenue has gone up from Rs. 353 lakhs in 1971-72 to Rs. 2560 lakhs in 1984-85 showing growth of 625%. Goa has been making greater effort at resource mobilisation through taxes. In fact that the per capita tax revenue is the highest in Goa, Daman and Diu is indicative of the facts that this territory is among the most highly tax areas in the country. The responsibility of the Govt. of India bears on account of Goa, Daman and Diu is minimal and it would most likely not have to provide any more grants in aid than at present after it becomes a State. Govt. of India is collecting 150 crores approximately as revenue from Central Taxes and Duties in this territory. Goa's claim to bridge its small deficits is more than justified. The new State of Goa will be able to raise funds from the various financial institutions besides the Govt. of India to meet its development projects receiving the necessary approval from the Government of India. Even the various departments of Government have first to obtain clearance of the respective administrative Ministries of the Govt. of India to include proposals from the Planning Commission in so far as the Plan Scheme are concernde. Even after Scheme is included in the Budget and approved by the Legislative Assembly, the Govt. cannot execute it without the prior concurrence of the Govt. of India if the expenses involved exceed Rs. 50,00 lakhs.

Again there are many schemes especially in the fields of Agriculture, Animal Husbandry, Fisheries, Education and Social Welfare which involves an element of subsidy. Unlike in the case of full fledged states the U.T. Govt. has no powers to sanction such subsidy without prior approval of the concerned administrative Ministries as well as Finance Ministry. Obtaining approval leads to protected correspondence and the delay causes non-utilisation of subsidy due to late receipt or non-receipt of approval. *The limitation on raising finances* : The U.T. has no powers to guarantee loans to be raised from the market or other financial institutions though such powers are enjoyed by State Government. The Govt. of India has to stand guarantee for such loans on behalf of Union Territory.

Goa cannot raise loans from L.I.C., I.D.B.I., I.F.C. or other similar institutions and has to depend upon the Central Govt. for funding for capital intensive projects. This is a serious hindrance to rapid progress.

The trend of economic growth over a time period rather than the balance sheet on a fixed date is more relevant in assessing the financial viability and it can be measured in terms of the gross state domestic products, and the per capita income. The GSDP of this territory has 114 crores and the per capita income was Rs. 3694 both at current prices in 1982-83. The per capita income is accepted to be a measure of relative economic prosperity between different areas, Goa, Daman & Diu claim rightly to have made considerable progress since liberation as it ranks second to none but to the U.T. of Delhi. The Territory of GDD recorded an average annual rate of growth of 7·2 percent over the last two years.

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YUVA JANATA
(Goa Unit)

MEMORANDUM

Why Goa Should be A State?

I. We are the Youth Wing of the Janata Party and we have among our various objectives the following :

(1) Full fledged Statehood for Goa (2) Konkani as sole official language (3) Inclusion of Konkani in the Eighth Schedule of Indian Constitution (4) Greater autonomy for States within the framework of the Indian Constitution.

We are committed to fulfilling these objectives and hence we take this opportunity of presenting Goa's case before you. While we are aware of the fact that your Commission is set up to study centre state relations we feel that the case of statehood for Goa is closely related to your terms of reference and hence this representation. The various reasons why Goa should be given statehood are as follows.—

1. **Historical** : Goa's earliest reference can be found in the Mahabharat. Ever since its creation Goa has been ruled by invaders be it the rule of the Chalukyas, Yadavas, Vijayanagar and Bamani Kingdoms, Kadambas, Adil Shah and finally the Portuguese. The first signs of fulfilment of Goan peoples long standing aspirations *i.e.* right of self determination came with the liberation of this territory from 450 years of Portuguese Rule. However since 1961 the year of Goa's liberation this aspiration has not been fulfilled in so far as we continue to be a Union Territory controlled from Delhi. Had we to achieve the status of a State we could conduct our affairs directly as other States of the Indian Union do. This would give us a free hand in the administration of our territory.

2. **Opinion Poll** : Following closely in the heels of Goa's liberation came the historic Opinion Poll wherein the Goan people expressed their desire to remain a separate entity in the Indian Union. We rejected the move for merger with Maharashtra. The message was clear that Goans wanted to live within our present boundaries and do not want any additions to our territory. *In other words the Goans are opposed to the theories of either Vishal Gomantak or Poorna Gomantak*, which can best be described as back door efforts of Maharashtra to colonise Goa. As a result of the Opinion Poll we have remained as a Union Territory pending elevation to a State. We hope that your Honour will take note of the wishes of the people of Goa that we would like to be elevated to the *level of a State within our present boundaries only.*

3. **Reorganisation of States** : By the time Goa joined the Indian Union in 1961 the reorganisation of States on a linguistic basis had long been completed. Hence we did not get the opportunity of joining the Indian Union as a State inspite of the Opinion Poll. Our constant demand for statehood within our present boundaries has not been fulfilled despite promises to that effect by various Prime Ministers. This has led to a feeling of neglect and frustration. The delay in granting of statehood has hampered our efforts for a speedy development thereby slowing down the rate of progress. A new hope has set in with the appointment of your Commission as well as with the news that a Union Territory in the border area is likely to be elevated to a State. We hope your favourable recommendation will pave the way for Goa also attaining Statehood with the others.

4. **Uniqueness** : The social and cultural life of Goans is unique in itself and has come to be appreciated by all. The customs, food habits, dress, traditions, hospitality and life styles are unique and have continued to be handed down from generation to generation. This uniqueness awed our late Prime Minister Jawaharlal Nehru who was committed to maintaining and preserving this uniqueness. The only way this can be done is by granting statehood within our existing boundaries. Together with our scenic beauty and splendour Goa will be a gem of a State something which every Indian can be then be proud of.

5. **Communal Harmony** : The communal harmony that prevails in Goa is second to none and granting of statehood will make it a model for other States. The spirit of religious tolerance and sharing the joys of one anothers religous festivals is a milestone which will go a long way in helping the Central Govt. to achieve its goal of National Integration.

6. **Economically** : Today the per capita income of Goa is one of the highest in the country. The standard of living in villages is also high thus leaving no difference between the cities and villages. There is in fact no place that can be termed a village when compared to the rest of India. An average Goan has a house to live in and four square meals. Further economic studies show that should Goa be given statehood the percentage of dependence upon the Central Govt. for finances will be proportionately lesser than that of other States. With the attainment

of statehood the pace of development will hasten. This we are confident will make Goa a surplus State in the long run. Further there are certain Union Territories with lower standards of living and worse economic conditions that are likely to be given the status of States. This explodes the myth of the Economic Viability.

7. **Language** : The language of the Territory shall be Konkani since it is the language of the masses. Today the people converse in Konkani. The 1971 census showed that 64.81% of the people registered their mother tongue as Konkani. The 1981 Census has not been released and it is learnt that about 75% of the people have registered their mother tongue as Konkani. Foreign rulers tried to suppress the language for fear of losing control over the seat of power but they could not succeed. The language though stunted by the suppression of the foreign rulers got an impetus after liberation and developed at a rapid speed. The Sahitya Academy has recognised it as an independent literary language in 1975 and many goan writers have bagged the prestigous Sahitya Academy Awards for literary works in Konkani language.

8. **Second Grade Status :** Despite 25 years of our liberation Goa is without the status of Statehood and language. This makes Goans second grade citizens. The granting of Statehood will rectify this imbalance and restore the honour and dignity of Goan people and put them on part with other Indians as respected citizens of the Indian Union. This will further help the Goans to work harder and speed up economic development which will reflect in overall nation building efforts.

9. **Daman and Diu** : The Union Territories of Daman and Diu could be left as centrally administered territories with the elevation of Goa to a State. The Administrative expenses are exhorbitant keeping in view their distances from Goa. This has led to eye brows being raised by the Union Finance Ministry. Further apart from geographical distance the culture and languages are also equally distant from that of the Goans. Hence the need for separation.

10. **Manpower** : The requirement of manpower in case of Goa's attaining Statehood can be met with in view of the fact that we have almost all the professional institutions required for turning out skilled manpower. Any new streams can be started in view of Goa University coming into being with effect from this academic year.

To sum up we feel that all these various factors make up a strong case for Goa's Statehood. Statehood within Goa's present boundaries will fulfil the age old desire of self rule as reflected in the Opinion Poll. It will pave the way for total control over our affairs to vest in our hands. The uniqueness of Goa will be maintained and its example of Communal Harmony will be projected to the Nation. The social and cultural fabric of Goa will be strengthened and economically we are confident that Goa will survive the test. Statehood will restore the honour and dignity of Goans too.

We hope you will use your good offices in making out a strong case for Goa's Statehood in your recommendations to the Central Govt. This is the only opportunity at present for Goa getting Statehood in view of the Mizo accord and the setting up of your Commission. We Goans will highly appreciate your gesture of recommending Statehood for Goa within the present boundaries with Konkani as its Official Language.

After all what better gift other than Statehood within present boundaries could be presented to Goans on the occassion of Silver Jubilee of Goa's Liberation?

SHIROMANI AKALI DAL

Shiromani Akali Dal's case on the Centre-State relationship as envisaged in the historic Anandpur Sahib Resolution

The Shiromani Akali Dal has remained consistently in the fore-front of the national forces that have been seeking systemic changes in Indian policy—the kind of systemic changes that would on the one hand provide full avenues and opportunities of self-development to various communities and regions, and on the other hand ensure a stronger united India. From this angle the restructuration of the Centre-State relationship on the federal lines and the consequential decentralization of power is imperative if the national system is to realize the Directive Principles of State Policy in an effective way. A basic change in the organisation of political power is a must if the nation is to resolve the crises in which it finds itself today.

It is in this context that the real essence and significance of the historic Anandpur Sahib Resolution becomes manifest. A comprehensive policy programme—social, economic, political etc.—drafted by a sub committee was approved by the Working Committee of the Shiromani Akali Dal in October, 1973 at Sri Anandpur Sahib the political part of the programme related to the provincial autonomy in a federalized set up. This has come to be known as the Anandpur Sahib Resolution, which was envisaged to be referred to this Hon'ble Commission in the Rajiv-Longowal Accord on Punjab. The theological language of the resolution approved by the Working Committee in 1973 lends itself to correct interpretation only if it is understood in the context of the Sikh lore. The political part of the policy programme approved by the Dal's Working Committee in 1973 at Sri Anandpur Sahib was drafted into a political resolution on the autonomy of the States in federalized setup, and was passed by the 18th All India Akali Conference held at Ludhiana in 1978. It is the Ludhiana version of 1978 that was authenticated by Sant Harchand Singh Longowal as the essence of the Anandpur Sahib Resolution (copy annexed). As is clear from the text, it pleads for stronger States, for corporate identities of different communities, as much as for "National unity and the integrity of the Country".

It is pertinent to recapitulate here that the Congress Party right from its inception and throughout the struggle for national independence had been pleading for a federal set up for free India. The Congress leaders including Pt. Moti Lal Nehru, Mahatma Gandhi, Pt. Jawahar Lal Nehru, Maulana Abul Kalam Azad on different occasions had interpreted

Swaraj as connoting grass-roots power for the people with greater authority vesting with the Provinces. A few instances to substantiate this point would suffice here. The criticism of the Government of India Act, 1935 by the Congress Party was mainly on the ground that it did not bestow sufficient powers on the Provincial Governments in the political dispensation as laid down therein. This stand of the Congress Party was formalised at its 51st Session held at Haripura in 1938 when federal system with autonomous Provinces as its constituents was strongly reiterated. Further, Cabinet Mission Plan also provided that only three subjects would vest with the Central Government—these being Defence, Foreign Affairs and Communications. Apropos of the Cabinet Mission Congress Party had "suggested that the future framework of the Country's Constitution be based on a federal structure with a limited number of compulsory central subjects such as defence, communications and foreign affairs; the federation would consist of autonomous Provinces in which would vest the residuary subjects". The Congress also suggested that there should be a list of "optional subject" in respect of which any Province or group of Provinces would be free to accept federal executive and legislative jurisdiction. It was proposed that on the completion of the constitution making process a Province could elect to stand out of Constitution altogether, or federate on the essential minimum subjects or federate on the essential as well as the optional subjects. ('Framing of India's Constitution', Editor B. Shiva Rao, Indian Institute of Public Administration, 1968 Page 65). It was in terms of this Cabinet Mission Plan that the Constituent Assembly came into existence with approval thereof by the Congress Party. In this context, it would be relevant to quote the views of Maulana Abul Kalam Azad who held extensive negotiations with the members of the Cabient Mission as representative of the Congress Party.

"I gave continuous and anxious thought to this subject. All over the world, the tendency was for the decentralisation of power. In a country so vast as India and with people so diverse in language, customs and geographical conditions, a unitary Government was obviously most unsuitable. Decentralisation of power in a federal Government would also help to allay the fears of the minorities. Ultimately, I came to the conclusion that the Constitution of India must from the nature of the case, be federal. Further, it must be so framed as to ensure autonomy to the Provinces in as many subjects as possible. We had to reconcile the claims of provincial autonomy with national unity. This could be done by finding a satisfactory formula for the distribution of power and functions between the Central and the Provincial Governments. Some powers and functions would be essentially central, others essentially provincial and some which could be either, provincially or centrally exercised by consent. The first step was to devise a formula by which a minimum number of subjects should be declared as essentially the responsibility of the Central Government. These must belong to the Union Government compulsorily. In addition, there should be a list of subjects which could be dealt with centrally if the provinces so desired. This might be called the optional list for the Central Government and any province which so wished could delegate its powers in respect of all or any of these subjects to the Central Government. ("India Wins Freedom" by Maulana Abul Kalam Azad; Orient Longmans; M.D.P.P. 140"). Maulana Azad further observes that "I have already mentioned that the Cabinet Mission published its scheme on 16th May. Basically, it was the same as the one sketched in my statement of 15 April. The Cabinet Mission Plan provided that only three subjects would belong compulsarily to the Central Government. These were Defence, Foreign Affairs and Communications, which I had suggested in my scheme".....149 *ibid.*

When on an appeal made by the Congress Party through a resolution the Sikh representatives of the Shiromani Akali Dal joined the Constituent Assembly it was on the basis of the Congress assurance that all avenues and opportunities would be provided to the Sikhs as a minority for their sef-development in a federal set up. The Akali Dal continued its crusade for realisations of the assurances given to them in the Constituent Assembly. When ultimately the pledges given to the Sikhs and other minorities by the Congress leadership were not redeemed while framing and adopting the Constitution, the representatives of the Shiromani Akali Dal declined to append their signatures to the Constitution of India to register their protest. This change of attitude becomes all the more conspicuous when one realises that Pt. Jawahar Lal Nehru while moving the objectives Resolution in the Constituent Assembly of India on Dec. 13, 1946, had said that various territories constituting independent India "shall possess and retain the status of autonomous units together with residuary power.....". Further the Congress Party manifesto for Central Legislative Assembly election in October, 1945, as drafted by Pt. Nehru declared as under :—

"The Congress has stood for the unity of all communities and religious groups in India and for tolerance and goodwill between them. It has stood also for the right of the Indian people as a whole to have full opportunities for growth and self-development according to their wishes and the genius of the nation; it has stood also for the freedom of each group and territorial area within the nation to develop its own life and culture within the larger framework. For those who suffer from social tyranny and injustice, it had stood for the removal of all barriers to equality and special help from the State and society in order to raise them from their backward and depressed state.

The Congress has envisaged a free, democratic State with the fundamental rights and civil liberties of all the citizens guaranteed in the Constitution. This Constitution, in its view should be federal one with a great deal of autonomy for its constituent units".

The Anandpur Sahib resolution which pleads for really autonomous States characterized by decentralisation of power, with the Centre retaining the federal functions in respect of Defence, Foreign Affairs, Communications & Railways and Currency, is in consonance with what Pt. Nehru had been urging for

before 1947. The Anandpur Sahib resolution is in a sense, a plea for fulfilling even at this belated stage the assurance given by Pt. Nehru and other national leaders of the independence struggle to the Sikhs and other minorities that they would be in their corporate being co-sharers in the political sovereignty of free India and that they would have full opportunities for preserving their identity as well as all avenues for autonomous self-development.

By way of elaboration and concretization of its Anandpur Sahib resolution, the Shiromani Akali Dal proposes *inter alia* the following definitive measures—

1. The Preamble to the Constitution should be amended so as to incorporate the expression "federal" to characterize the Republic of India as such. This is essential to underline that the Indian system is basically of federal nature; this would halt the gradual drift towards unitarian set-up.

2. There should be re-distribution of subjects among the Union List, the Concurrent List and the State List on the basis of federal principles, as sought by Shiromani Akali Dal in the Anandpur Sahib Resolution.

3. The residual powers should vest with the States.

4. The Centre should not have the power or competence to destroy or dilute the ethnic, cultural and linguistic self-identity of a federating, constituent unit.

5. The members of the Rajya Sabha should be elected on the principle of equality of the States as autonomous units with equal representation. In other words the Rajya Sabha should become representative of the States. The diversity of nationalities and religious, linguistic, cultural and ethnic minorities should be adequately reflected in the composition of Rajya Sabha.

6. While restricting the imposition of emergency only in the event of exceptional circumstances, (foreign aggression) it should be constitutionally ensured that during the proclamation of Emergency the federal set-up remains intact.

7. The legislature of a State should have exclusive power and competence to legislate over matters given in the re-drawn State List.

8. Executive power in respect of matters included in the Concurrent List, irrespective of the fact as to whether legislation is by the Centre or by the State, should vest with the States.

9. The institution of Governor, his powers, functions and duties should be brought in line with a federal polity so that the Governor does not remain an executive agent of the Centre but becomes a truly constitutional Head of the State.

10. Constitutional provisions which empower the Centre to dissolve a State Government and/or its assembly should have no place in a federal framework. In the event of constitutional break-down in a State, there should be a provision for immediate holding of elections and installation of a new democratic Government. If there is no provision for the President to take over the Central Government in the event of failure of constitutional processes, then, there is no justification for the Presidential powers when a similar contingency arises in a State.

11. The taxing powers should be federalised; the Union taxes/duties should be demarcated from the States' domain of taxation. Apart from statutory share in the Union Revenues, the State should have the exclusive power to levy, collect and retain the taxes/duties within their own sphere. For the purpose of uniformity of taxation in the States, the Centre may issue guidelines from time to time. Income tax should be provincialised; though it may be levied by the Centre for the sake for uniformity, the collection should be by and through the State Agencies.

The Finance Commission should be reactivated to discharge its constitutional duties, thus dispensing with the extraneous role of the Planning Commission which has not only imposed centralized planning but also made the States dependent on the discretionary funds provided by the Centre.

12. The present pattern of centralized planning should be decentralized and democratized enabling the States to draft their respective plans according to their own needs, imperatives and priorities. To ensure participation of the masses in the planning process, its decentralization is a "must".

13. To ensure executive autonomy of the State, it is essential that the vast directive powers vesting with the Centre should be dropped so that the States do not remain subservient to the Central Executive; in place of the directive powers there should be provision for coordination and consultative machinery among the States as also between the Union and the States.

14. The field of All India (federal) Services should be demarcated from the field of the St te Executive machinery. The executive machinery in the State should be under the direct control and discipline of the State Government itself.

The imperatives of pluralistic society of India characterised by the Nehru concept of unity in diversity demands a truly federalised set up which is essential for ethno-political development of the minorities as also for the growth of the grass-roots democracy which alone would ensure strong, prosperous and united India.

ANNEXURE

ANANDPUR SAHIB RESOLUTION.

Extract from the chapter on political goal as adopted by the working Committee of the Shiromani Akali Dal in its meeting held on 16-17 October, 1973 at Shri Anand Pur Sahib, which deals with the restructuring of the Constitution

Para 1(b): In this new Punjab and in other States, the Centre's interference would be restricted to Defence, Foreign relations, currency and general communications; all other departments would be in the jurisdiction of Punjab (and other States) which would be fully entitled to frame own Laws on these Subjects for administration. For the above departments of the Centre, Punjab and other States contribute in proportion to representation in the Parliament.

This was reiterated in the form of resolution No. 1 in the open session of 18th All India Akali Conference held at Ludhiana on 28-29 Oct., 1978:—

"Moved by S. Gurcharan Singh Tohra, President, Shiromani Gurdwara Prabandhak Committee and endorsed by S. Parkash Singh Badal, Chief Minister, Punjab. The Shiromani Akali Dal realises that India is a federal and republican geographical entity of different languages, religions and cultures. To safeguard the fundamental rights of the religious and linguistic minorities, to fulfill the demands of the democratic traditions and to pave the way for economic progress, it has become imperative that the Indian constitutional infra-structure should be given a real federal shape by redefining the Central and State relations and rights on the lines of the afore-said principle and objectives.

The concept of total revolution given by Lok Nayak Shri Jaya Pr kash Narain is also based upon the progressive decentralisation. The process of centralisation of powers of the States through repeated amendments of the Constitution during the Congress regime came before the country men in the form of the Emergency, when all fundamental rights of all citizens were usurped. It was then that the programme of decentralisation of powers ever advocated by Shiromani Akali Dal was openly accepted and adopted by other political parties including Janta Party, C.P.I.(M), A.D.M.K. etc.

Shiromani Akali Dal has ever stood firm on this principle and that is why after very careful consideration, it unanimously adopted a resolution to this effect first at All India Akali Conference, Batala then at Sri Anandpur Sahib which has endorsed the principle of State autonomy in keeping with the concept of federalism.

As such, the Shiromani Akali Dal emphatically urges upon the Janta Government to take cognizance of the different linguistic and cultural sections, religious minorities as also the voice of millions of a people and recast the constitutional structure of the country on real and meaningful federal principles to obviate the possibility of any danger to National unity and the integrity of the Country and further to enable the States to play a useful role for the progress and prosperity of Indian people in their respective areas by the meaningful exercise of their powers".

Supplement to the Memorandum of Shiromani Akali Dal

The Resolution of October, 1973 contained in para 1(b) passed by the Working Committee of the Akali Dal at Anandpur Sahib should not be interpreted in isolation from that part of the Resolution which is contained in paragraph 2. It should be read together with para 2 as well as its reiteration in the form of broad resolution No. 1 at the All-India Akali Conference held at Ludhiana in 1978. So interpreted it would be clear that the Anandpur Sahib Resolution is indicative of the broad principles on which the Akali Dal's substantive demand for having the Indian Constitution recast on real federal principles rests. The Anandpur Sahib Resolution does not say that the Centre should have no financial resources of its own. It will be incorrect to interpret the Resolution of 1973 in isolation with its para 2 and its reiteration at Ludhiana in 1978 as Resolution No. 1 and spell out a proposition that the Centre should have no financial resources whatsoever of its own. The Resolution in fact intends to emphasise that larger resources should vest with the States in view of their larger and increasing developmental responsibilities and that the balance in dividing the financial and fiscal power between the Centre and the States should lean in favour of the States. If due to increase in expenditure on Defence or on other Departments entrusted to the Centre, more funds are required by the Centre, the States should contribute the same. The system of financial contribution by the Provinces to the Central Government was not unknown in India. The Finance Enquiry Committee set up by the Constituent Assembly in October, 1948, under the Chairmanship of Shri V.T. Krishnamachari recommended such Contributions. Accordingly, the States of Pepsu, Rajasthan and Madhya Bharat were required to make contributions to the Centre for the transition period extending over several years.

The initial refusal of Central Government—as disclosed in the published White Paper—to refer the Anandpur Sahib Resolution to this Commission, was based on a misunderstanding of this Resolution. Its true meaning and inst nt was made clear by late Sant Longowal in the Punjab Memorandum of Settlement that it was a demand for restructuring the Constitution and Centre-State Relations in a manner which brings out its true federal principles and guarantees more autonomy to the States. The Memorandum submitted by our party i.e. Akali Dal (L) concretises that demand, and the memorandum submitted by the Akali Dal Government to the Commission, further spells out in detail the demand for restructuring of Centre-State Relations on true federal principles in accordance with the spirit of Anandpur Sahib Resolution, the essence of which was reiterated in Resolution No. 1 passed by All-India Akali Conference at Ludhiana in October, 1978.

GOVERNMENT OF PUNJAB

MEMORANDUM

MEMORANDUM

States as the Homelands of distinct peoples

1.1 The second half of the 19th Century was marked by growing anti-imperialist and anti-feudal sentiments in India. This became the basis of a widening and deepening patriotic unity of the country's diverse peoples in opposition to British rule. At the same time, there was also among a growing number of distinct peoples, each sharing a common language and forming a majority in a relatively large contiguous area, a growing urge to come together in unified territorial units. Prior to British rule, even though regional languages had existed for centuries and some of them had long back grown into literary languages, the sense of distinct identity based on community of langauge and urge for a separate compact territorial unit was not very noticeable except perhaps in the deep south and Bengal. The concept of nation-states had generally not yet percolated to this part of the world. For example, as late as the first half of the nineteenth century under Maharaja Ranjit Singh, the official language of the Lahore Durbar was Persian and not Punjabi in Gurmukhi script, and his domain was anything but a nation-state. Much of the scholarly literature produced in this period was in Persian.

Growing Urge among Distinct Peoples for Territorial Consolidation

1.2 During and after the second half of the nineteenth century, a sense of distinct identity and an urge for a separate compact territorial unit had begun to take root and grow among several linguistic groups, more so if they also shared a common culture. The factors that contributed to this trend included : adoption, under British rule, of local languages as a medium of instruction in schools so that people instructed in a common medium began to look upon themselves as a single entity, distinct from people using a different medium; the availability of newspapers, literature and other reading materials and rise of regional intelligentsia in Indian languages; concepts and modes of thought imported from Western Europe, where the nation-state had become the predominant form of State organisation; the fact that several Indian languages were spoken by much larger numbers than the total population of several nation-states of Europe, and that those speaking a common language generally lived in compact geographical area; the perception by the emerging middle class of small manufacturers, traders and professionals of different linguistic groups that distinct territorial units of the particular group could serve as a powerful defensive mechanism against the unequal competition and dominance by the more advanced middle class elements from other linguistic groups; the organisation by the Indian National Congress of its regional bodies generally on linguistic basis so as to facilitate greater access to the masses; and growth and politicisation of the popular literatrue in different regional languages under the impact of the freedom movement and the mass awakening associated with it.

1.3 The progress among the different linguistic and cultural groups in acquiring sense of distinct identity was uneven over the different parts of the country. The progress was slower among people where religious, cultural, caste, etc. differences cut across the identity of language, or the language was not developed enough for widespread use as a medium of instruction or communication, or for various considerations a language other than the mother tongue was adopted by a large section or even a majority of the people as a medium of school instruction, or where more than one script was used for the same language. The sense of distinct identity was most advanced among the Bengali, Marathi, Tamil, Telugu, Malyalam, Kannada, Gujarati and Kashmiri speaking peoples among the present Indian population, and among the Sindhi and the Peshtu speaking people in the present Pakistan population. This "legitimised the principle of reorganisation of the Indian provinces on a linguistic basis."*

1.4 How far the sense of distinct identity had advanced among the Bengali Hindus was brought home to all by the violent protests touched off by the Partition of Bengal in 1905. As a result, the British rulers were obliged to reunite Bengal into a single province. At that time, no one interpreted the violent protest as an anti-national movement, which distracted from the freedom struggle. Indeed the Partition of Bengal was considered as a British move to split and divide the freedom struggle and the reversal of this decision was adjudged a great victory not only of the Bengali people but also of the national freedom movement.

Emergence of Multi-National Society

1.5 The growth of a distinct sense of identity among different linguistic-cultural territorial groups has continued in India in the 20th century particularly since Independence when several new favourable factors appeared. These were : abolition of princely States which opened the way for unification of people speaking a particular Indian language into a single state; further politicisation of popular literature under the impact of the competitive politics of a political democracy based on universal suffrage; and accelerated spread of literacy and of newspapers, journal and other popular literature in Indian languages. By now several of these groups have each acquired the characteristics of a distinct nationality. This process has necessarily shown uneven development. The difference of religion, caste, level of development. etc. have not been an equally potent factor cutting across the emerging sense of distinct nationality among different linguistic groups.

*Misra, K. K. "Linguistic Nationalities in India," in Kurian, K. Mathew and Varghese, P.N., ed. Centre-State Relations, Macmillan, 1981, p. 44.

Nevertheless, Indian Society has increasingly acquired a multi-national profile. The same has been happening in the part of the country which broke away in 1947 to form Pakistan. Even though the overwhelming majority of the population of each constituent part of Pakistan shared a common religion, Islam, which admittedly provides a much more powerful common bond among its believers than most other religions do, the distinct sense of nationality among thse parts has continued to grow and assert. The Bengali speaking people of East Pakistan broke away in 1971 to form a separate state of Bangladesh. The sense of distinct nationality is now very poswerful also among the major linguistic groups of the present day Pakistan, namely the Sindhis, the Pakhtoons, the Baluchis and the Punjabis.

1.6 There is, however, an important difference between the two countries. In Pakistan, Punjabis have emerged as the dominant nationality. In India no such dominant and exploitative majority has yet arisen. But such a development seems to be only a question of time. Powerful social forces in India are working for a highly centralised unitary State under their own domination. These include, firstly, the supra-national big business who are determined to exploit India as one vast unified and thoroughly integrated market. There is, secondly, the powerful administrative elite of All India Services. They are determined to keep a tight grip over the administration of the country and very much desire to keep to the minimum the State Government's control over them. Thirdly, there are zealous Hindus-Hindi-Hind chauvinists who want to impose their religious, linguistic and political domination over the whole country, riding rough shod over the urges and aspirations of the emerging distinct nationalities as well as of the long existing ethnic, religious and cultural minorities. These hegemonistic social forces are already coming together and are likely to do more so in the future. The Hindi-speaking people who are by far the most numerous linguistic group in India, are the obvious emerging nationality which these anti-democratic forces must base themselves on. This seems to be the most likely perspective today.

1.7 After Independence, the sense of distinct identity of different linguistic groups and their urge for territorial consolidation continued to grow even more vigorously than it had done earlier. Under the pressure of the various linguistic-cultural groups, within three years of the commencement of the Constitution, the process of reorganisation of States on a linguistic basis was initiated. The Andhra State Act, 1953 carved out the Telugu speaking areas of the erstwhile Madras State into a separate Andhra State. Three years later, the States Reorganisation Act, 1956 reorganised the four southern States on a linguistic basis. The States of Rajasthan and Madhya Pradesh were also organised as Hindi-speaking States. The failure in 1956 to split the Bombay State into separate States of Maharashtra and Gujarat by a principled application of the linguistic criterion had to be rectified in 1960. The Bombay Reorganisation Act, 1960 created the States of Maharashtra and Gujarat on a linguistic basis. Likewise, the failure to apply the linguistic criterion to Punjab in 1956 was partially rectified in 1966. The Punjab Re-organisation Act, 1966 carved out of Punjab, Haryana as a separate Hindi-speaking State and Chandigarh as a Union Territory, and transferred extensive hill and sub-mountain areas of the State to the adjoining Himachal Pradesh. The grudging, half-hearted and far from principled application of the linguistic criterion to the reorganisation of Punjab has been the source of immense trouble in this part of the country. In the absence of a principled application of the linguistic criterion to the determination of the Punjab State's boundaries, taking contiguity and linguistic affinity with a Village as a unit as the basis, this trouble has little chances of being brought to a final end. In the North-East, Nagaland and Meghalaya were carved out of Assam in 1962 and 1971, respectively. In their case, the basis of creation was ethnic rather than linguistic.

1.8 With the reorganisation of the States on a linguistic basis, these are no longer more administrative sub-divisions of the country with their boundaries for the most part a historical legacy. These are now deliberately reorganised homelands of different linguistic-cultural groups. These groups are, in fact, growing into distinct nationalities, though the pace and level of development of this process, varies. This is a very healthy development provided it is handled correctly. Nationality is a secular concept. It embraces all people speaking a given language irrespective of their religion, caste and beliefs, indeed, all those who share the sense of common and distinct identity. It excludes only such of them who, though they share the common language of the group, do not yet share a sense of distinct identity related to the community of language. As they come to acquire the sense of distinct identity common to the rest of the particular linguistic group, they will also become an integral part of this nationality.

1.9 The growth of a multi-national society in India, which seems to be an irreversible historical process, need not alarm any one. This by itself poses no threat to the unity and integrity of the country. A multi-national society does not necessarily imply so many independent States. Several States in the world such as Switzerland, Yugoslavia, Soviet Union, China and Canada have within their borders a number of distinct nationalities. There are two basic alternative ways in which a multi-national society is contained within a single State. One is to have a genuinely federal form of Government where the federal level takes care of the common interests and aspirations of the united nationalities while the autonomous federating units cater to their distinct interests and urges. The other alternative is for the dominant nationality to oppress and assimilate the minority nationalities so as to smother their distinct character, urges and aspirations. In this case, unless the minority nationalities are much fewer in number at all points of time then the dominant nationality and the assimilation process can go on uninterrupted for decades, or even centuries, the States following the second alternative usually degenarate into a prison-house of nationalities and peoples, and under the stresses and strains thus generated, have a strong tendency to disintegrate. India, in keeping with the basic urges and aspirations of its peoples, must avoid this course and instead opt for the alternative of a genuine federal state structure. It may then be possible to ensure that the unity and integrity of the country rests on the rock-like solid

foundation of the will for it of the united Indian peoples. This Memorandum has been informed and inspired by this perspective.

The Constitution in Retrospect and Prospect

2.1 The Colonial Administration had a unitary character. This enabled the British Government to have a tight grip over the entire Indian Administration through the Governor-General who was the supreme boss of this administration. However, in the early years of this Century, the concept of a federal state structure came to be discussed. This concept was mooted not as a device to ensure that alongside fulfilment of the patriotic and other collective urges of the diverse peoples of this country, who had awakened also to a sense of distinct linguistic-cultural identity, there will be adequate satisfaction of their particular and specific aspirations. Instead, it arose in an attempt to reconcile the Muslim minority, who had become increasingly assertive at that time after the formation of the Muslim League, to the goal of a united free India.

(1) Evolution of the Federal Concept

2.2 When the freedom movement raised the demand for Swaraj, the British had sought to counter it with the argument that India was not a nation but a geographical expression and a conglomeration of castes, communities, tribes and linguistic groups. Withdrawal of British power, they had alleged, would touch off an endless strife among these groups and cause a brake up of India. The leaders of the freedom movement sought to rebut this insinuation by pointing out to the Maurya Gupta and Moughul empires as a proof that independent India could be united and strong. Thus the concept of free India in their mind was that of a united and a highly centralised India. The muslims, being a minority community, had their apprehensions about this concept. They thought that this would inevitably mean a Hindu-dominated India. Since they were in majority in some provinces and Princely States, they thought that they could minimise this danger by demanding a federal structure with a large measure of autonomy to the provinces. Such a structure, they expected, would enable them to dominate substantial parts of the country as well as to enjoy a subtantial influence at the Centre.

2.3 The Congress leaders, in their anxiety to draw the Muslims into the struggle against ene British conceded the federal concept. The Lucknow Pact (1916). Between the Congress and the League and all subsequent negotiations between the two over the next three decades, were based on this concept. However, there was always a marked difference of approach between the two sides in regard to the interpretation of this concept. While the Congress favoured maximum powers, including residuary powers, for the Centre, the League always fought for the largest measure of autonomy, including residuary powers, for the provinces.

2.4 When, in the late 1920s, the idea was mooted that at some stage the Princely States too would need to be brought into association with the rest of the country, the federal concept appeared as the obvious arrangement. The Simon Commission (1927-29) and the Butler Committee (1927-30) both visualised an eventual federal union for the whole of India. At the Round-Table Conference, London (1930-32), the delegates of both British India and Princely States unanimously endorsed the federal idea. The federal structure was formally accepted in the Government of India Act, 1935.

2.5 While the Act of 1935 came into force with regard to British India with effect from 1937, the Federation envisaged by it never materialised. It was to be effective only after the Indian rulers, representing atleast half of the population of Indian States, had agreed to accede to it. The negotiations towards persuading them to do so were interrupted by the outbreak of World War II (August, 1939) and soon after all preprations for the Federation were suspended. Even though the provisions of the Act in respect of the setting up of the Federation proved infructuous, the Act did influence the constitutional structure of independent India. The Constituent Assembly, which framed the Indian Constitution, substantially drew on the concepts and the provisions of the 1935 Act.

2.6 The (British) Cabinet Mission Plan, on the basis of which the Constituent Assembly was set up in 1946, provided for the following :—

(i) The Brtish Indian provinces and the Princely States would together constitute a Union of India.

(ii) The jurisdiction of the Union would be limited to Foreign Affairs, Defence and Communications and it will have the power to raise finances for the discharge of these functions.

(iii) All subjects other than Union subjects will be within the jurisdiction of provinces. They will also be vested with residuary powers.

(iv) The princely States will retain all subjects and powers other than those ceded to the Union.

2.7 In accordance with the above plan, in December, 1946, Mr. Nehru introduced in the Constituent Assembly a resolution which "envisaged a Republic of India wherein the various territories would possess and retain the status of autonomous units together with residuary powers, and exercise all powers and functions of Government and administration save and except such powers and functions as were vested in or assigned to the Union or as where inherent or implied in the Union or resulted therefrom".

2.8 There was a fundamental change in the situation following the British Government's announcement of 3rd June, 1947, at the demand of the Muslim League and with the active connivance of the British and the acquiescence of the Indian National Congress, regarding the decision to partition the country. There was immediately a strong swing in the Constituent Assembly in favour of a powerful Union and a strong Centre. Apart from the Partition and the bloody and distressing events that accompanied it, several other factors contributed to this change, namely: (i) the alleged inherent tendency to disintegrate in the Indian polity throughout history, (ii) the daunting problems inherited on independence, aggravated by the Partition, (ii) the Pakistan organised tribal incursions into Kashmir the resulting Indo-Pak hostility and the Western pressures on India in this connection, (iv) the problems and apprehensions connected with the integration of the Princely States into the

Indian polity, and (v) the upper-Class interest, the chauvinistic pre-dilections, the indifference to the urges and aspirations of the ethnic, linguistic, religious and cultural minorities, and failure to appreciate the significance of emergence of a growing sense of distinct identity among linguistic-cultural groups among the dominent majority of the Constituent Assembly.

2.9 The fact that at that time constituent parts of the Indian Union in most cases had no distinct and exclusive linguistic identity or individuality also strenthened the same trend.

2.10 In this background, the Constitution, framed by the Constituent Assembly and enforced with effect from 26th January, 1950, provided for alongside the basic federal structure of the State, several important unitary features. Indeed the word federation or federal does not occur any where in the Constitution. Instead, the Republic is described as a Union of States. Dr. Ambedkar had explained (November, 1948) that the word Union had been used deliberately to make it clear that the constituent parts would have no right to secede.

2.11 During the 36 years since the enforcement of the Constitution, the Indian polity has experienced two antagonistic developments. On the one hand, as described in the previous Chapter, under pressure from the concerned linguistic-cultural groups, several States were organised on a linguistic basis. As a result of this reorganisation, states have acquired a distinct identity and individuality and, with passing years, have become increasingly conscious of it. On the other hand, the Centre has been encroaching on the powers and functions of the States and has tried relentlessly to reduce the latter to subservience and complete dependence upon itself. The original unitary features of the Constitution, and the magnification of these over the past 30 years, in the context of increasing self-consciousness of their distinct identity and individuality by the various linguistic-cultural groups and the States dominated by them, lies at the root of the present controversies and bitterness with regard to Centre-State relations.

(2) Character of the Constitution

2.12 The most important question raised with regard to the character of the Constitution is : Is it at all federal Constitution? This question may be answered by (a) identifying the essential characteristics of a federal constitution, and (b) examining how far the Indian Constitution shows these characteristics.

2.13 The essential characteristics of the federal constitution are: (i) There is the supremacy of the Constitution, (ii) The division of sovereign powers between the national and regional levels of government is defined in the Constitution itself and is unalterable except by an amendment of the Constitution by a special procedure. This implies that the central and regional levels of Government exercise within their respective spheres an independent and coordinate, and not a delegated, authority, (iii) The Constitution is interpreted by the Judiciary.

2.14 The Indian Constitution meets conditions (i) and (iii), but condition (ii) is met substantially but not wholly. The Constitution makers in the circumstances prevailing at the time opted for a "Federation with a strong Centre". Towards this and, while designing a federal structure of government for the country, they vested the Union with certain powers and Control over the States which introduced elements of a unitary structure. These had the effect of somewhat whittling down the federal character of the Constitution even in normal times. On proclamation of Emergency by the President (read: Union Executive), the Constitution gets transformed into a largely unitary dispensation.

2.15 The Unitary features of the Constitution include :

(i) the Parliament's power to alter areas and boundaries of States; (ii) the constraints on the States' Legislative autonomy; (iii) the discretionary powers of the Governor; (iv) the constraints on States' administrative autonomy; and (v) the Centre-State financial imbalance inherent in the Constitution's financial provisions.

Parliament's Power to Alter Areas and Boundaries of States

2.16 Under Article 3 of the Constitution, the Parliament may alter, through the ordinary legislative procedure, the area or boundaries of States even without their concurrence. It is necessary to make a reference to the State legislatures concerned, but it is not necessary to secure their consent. The power to diminish the area of any State includes the power to carve out a Union Territory out of the territory of a State. Chandigarh was in fact carved out a Union Territory out of the territory of erstwhile Punjab. This implies that, if the Union so wills, a State can be reduced to a mere dot on the map of India, by turning the rest of its area into one or more Union Territories. The same treatment, presumably can be meted out to all the States so that the country even in peace time can be put under a unitary structure of Government with the exception of dots on the map to which the States may be reduced. However, even in this case, States as a level of Government shall still survive as these cannot be altogether wiped out as a category except by an amendment of the Constitution that changes its very character.

2.17 The powers conferred on Parliament under Article 3 will be normally regarded as inconsistent with the federal principle. But these powers were fully justified at the time when the Constitution was framed and put into effect. India was then a jumble of territories comprising erstwhile British Indian Provinces and Princely States. The name, territory, boundary and linguistic composition of the population of these territories was, in most cases, a product of history rather than of a sound underlying principle. The consolidation of the unity and integrity of the newly emerged Republic and creation of essential political and administrative prerequisites for the country's accelerated economic, social and cultural progress made it imperative to redraw the internal map of India at the level of States on the basis of a sound principle. It would have been impossible to do this in an orderly way and within a reasonable period except by vesting the Parliament with power to do this by an ordinary law, after obtaining the views of the legislature of the State, the area, boundary or name of which would be affected by the proposed bill, but not necessarily with

the concurrence of that State. Article 3 vested must this power with the Parliament. The fact that in the period since 1950 as many as 19 Acts have had to be enacted by Parliament on the subject of re-organisation, re-naming and re-determining the status of States, shows that there was ample justification in late 1940s for vesting the Parliament with this power. The 19 Acts are listed below :

1. The Assam (Alteration of Boundaries) Act, 1951.
2. The Andhra State Act, 1953.
3. The Chandernagore (Merger) Act, 1954.
4. The States Reorganisation Act, 1956.
5. The Bihar and West Bengal (Transfer of Territories) Act, 1956.
6. The Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959.
7. The Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.
8. The Bombay Reorganisation Act, 1960.
9. The Acquired Territories (Merger) Act, 1960.
10. The State of Nagaland Act, 1962.
11. The Punjab Reorganisation Act, 1966.
12. The Andhra Pradesh and Mysore (Transfer of Territories) Act, 1968.
13. The Madras State (Alteration of Name) Act, 1968.
14. The Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968.
15. The State of Himachal Pradesh Act, 1970.
16. The North-Eastern Areas (Reorganisation) Act, 1971.
17. The Mysore State (Alteration of Name) Act, 1973.
18. The Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973.
19. The Haryana and U.P. (Alteration of Boundaries) Act, 1979.

2.18 The justification for vesting with Parliament the power to legislate with regard to name, territory, and boundary of States, if necessary even without the concurrence of the States affected, will disappear after the territory and boundary of States have been finalised on the basis of principled application of the linguistic or ethnic basis of States' reorganisation. In the application of the linguistic principle, the criterion of "contiguity and linguistic affinity, with a village as a unit" agreed to in the Rajiv-Longowal (Punjab) Accord may be strictly applied. In case of a dispute as to the language of the majority of the population of a village, the issue may be decided objectively on the advice of linguistic experts appointed with the approval of the two States concerned and not through a census which, when emotions and fears of the local population have been aroused or there is large-scale outside interference, may not be a true guide in the matter. When the boundary between the two States has been finalised on this basis and the two States have made a joint declaration to that effect approved by their respective legislatures by two-thirds majority this boundary must henceforth by unalterable by Parliament except at the request or concurrence of the two States—Article 3 may be amended to provide for this. Every effort must be made during the next few years by the Central and State Governments and all political parties to help finalise all inter-State boundaries, and to merge Union Territories with the appropriate State(s) (except such of them as may be justifiably retained as Union Territories either permanently or till they are raised, at some future date, to the status of a separate State). The proposed amendment to Article 3 will then apply to all the States and all the inter-State Boundaries. In other words, the internal map of India, at the level of the States, would have assumed a final shape and in the future adjustments to inter-State boundaries will be minor, few and far between, and only at the request or concurrence of the States concerned. Likewise, thereafter any change in the name of a State shall be only on the request or concurrence of that State.

Other Unitary Features of the Constitution

2.19 The constraints on States' legislative autonomy with respect to their sphere of Constitutional responsibility have been discussed in Chapter 4. The discretionary powers of the Governor and other constraints on States' administrative autonomy have been examined in Chapters 5 and 6. The extent, nature and casual factors of States' Financial dependence on the Centre and its impact on their autonomy have been brought out in Chapters 7 to 9. The Centre's tight control over the planning process in the States also attributable to the latter's financial dependence on the former, has been described in Chapters 9 and 11.

Some Authoritative Comments on the Character of the Indian Constitution

2.20 Comments of Dr. B.R. Ambedkar and some observations of the Supreme Court bearing on the character of the Constitution have been reproduced below:

Dr. B. R. Ambedkar*

"The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any Law to be made by the Centre but by the Constitution itself. This is what the Constitution does....The Chief mark of federalism as I said, lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will after the boundary of that partition. Nor can the Judiciary."

Supreme Court

(i) Atiabari Tea Co. Ltd. *Vs.* the State of Assam@

"It is a federal Constitution which we are interpreting, and so the impact of Art. 301 must be judged accordingly."

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* Constituent Assembly Debates, Vol. VII, p. 33.

@ AIR 1961, SC 232.

(ii) **Automobile Transport (Rajasthan) *Vs.* State of Rajsthan@@**

"The evolution of a federal structure or a quasi-federel structure necessarily involved, in the context of the conditions then prevailing, a distribution of powers and a basic part of our Constitution relates to that distribution with the three legislative lists in the Seventh Schedule."

(iii) State of West Bengal *Vs.* Union of India.*

"**The Constitution of India is not truly Federal in character.**"

Justice Subha Rao in his dissenting view:

"The Indian Constitution accepts the federal concept and distributes the sovereign powers between the co-ordinate constitutional entities namely, the Union and the States."

(iv) Kesavananda Bharti *Vs.* the State of Kerala**

The majority held that Art. 308 does not enable the Parliament to alter the basic structure of the framework of the Constitution. Chief Justice Sikri while discussing what constitutes the basic structure of the Constitution mentioned five constituents, one of these was "Federal character of the Constitution."

(v) State of Rajasthan *Vs.* Union of India.***

(a) **Chief Justice Beg** :

"In a sense, therefore, the Indian Union is federal. But the extent of federalism in it is largely watered down...."

(b) **Justice Chandrachud** :

"I find it difficult to accept that the States as a polity is not entitled to raise a dispute of this nature. In a federation whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on the one hand and their own on the other."

(c) **Justice Bhagwati on his own behalf and on behalf of Justice A. C. Gupta** :

"Unconstitutional exercise of powers by the President under Art. 356 cl. (i) ..may infringe ....the constitutional right of the State to insist that the federal basis of the political structure set up by the Constitution shall not be violated by an-un-constitutional assault under Art. 356 cl.(i)."

Conclusion

2.21 **A** federation fully conforming to the "pure" concept of it in abstract theory, where Governments at the national and regional levels are "co-ordinate and absolutely indepenant" within their respective jurisdiction set apart by the Constitution, does not exist as an operating entity any where, at least not among the democratics. It follows that the fact that a Constitution has a number of features theoretically associated with a unitary Governmental structure does not necessarily warrant its characterisation as a unitary Constitution. The question has to be decided on the basis of whether the federal or the unitary elements of it dominate. On this criterion, the Indian Constitution except in very exceptional times—war, external aggression or armed rebellion—when an emergency has been proclaimed under Article 352 in respect of the whole country or a large part of it, functions essentially as a federal constitution even though it has several elements which, being more appropriate to a unitary constitution, to an extent detract from its federal character. It is, indeed, very suggestive that the character of the Indian Constitution is always discussed in terms of how federal it is and hardly ever in terms of how unitary it is. In other words, the issue is always discussed in terms of departures from the federal concept and never in terms of exceptions to the abstract unitary type.

2.22 Union's constitutional and extra-constitutional powers and controls over the States together constitute a serious limitation on the federal character of the Indian Constitution but do not altogether destroy that character. India's state structure essentially remains what the authors of the Constitution, in the circumstances then prevailing sought to establish, namely, "A Federation with a strong Centre" except that as a result of the tendencies inherent in the Constitution reinforced by a relentless centralisation drive by certain social forces and personalities, a serious internal imbalance has been created in the state structure, that between the Union and the States. In the meantime, the circumstances have greatly changed. The problem of integration of Princely States has been solved for good. Large States have been formed on linguistic basis. These states are not mere administrative units but are home-lands of distinct emerging and emerged nationalities.

2.23 At present the main threat to India's unity and integrity comes not from outside but from the real possibility that the present relentless centralisation drive and lack of due regard for the distinct sentiments, interests, and aspirations of the various minority nationalities, communities and ethnic groups may alienate millions and sap their will for a united India. An authoritarian and coercive approach to this perspective will inevitably erode political democracy. Thus, the very character of the Indian state will change. The long term consequences of this course of development are not difficult to foresee. The only sure way to avoid this disastrous scenario is to adjust the state's structure to the changing circumstances that has taken place over the last 36 years by moving firmly forward to the establishment of a genuinely federal structure by purging it of its present unreasonable and uncalled for limitations on the States. To set at rest all doubts about the character of the state structure, in the Preamble the expression "FEDERAL", may be added after the expression "DEMOCRATIC". The expression "Union" may be replaced by expression "Federation" or "Federal", as the case may be, wherever it occurs in the Constitution.

@@ AIR 1962-SC 1406.
* AIR SC 1241.
** AIR 1973-SC 1461.
*** AIR 1977-SC 1361.

(3) Greater Autonomy for the States

2.24 The case for greater autonomy for the States rests, not on the so-called "traditional" notion of federalism, but essentially on the fact that this alone provides an enduring basis for India's unity and integrity in a society that has since 1858 progressively acquired a multi-national profile. Several of the nationalities are far more numerous than the total population of many nation-States of Europe. India is too big and heterogeneous country to be governed on a highly centralised unitary basis.

2.25 The linguistic re-organisation of States in the post-Independence period was in response to the growing multi-national character of the Indian society. This was an act of great farsightedness and statesmanship on the part of the national leadership, particularly Mr. Nehru, who had a great sense of history. It is this step more than any other factor, which has saved India from going the Pakistan way. To the extent that the re-organisation of States on linguistic basis had remained incomplete or un-principled, the country still continues to be faced with several trouble spots and unresolved inter-state problems. This underlines the historic necessity of this measure.

2.26 The linguistic re-organisation of States, in turn has further quickened the trend towards evalution of India into a multi-national society. This is the most important change that has come about since the late forties when the Indian Constitution was framed. This makes it imperative not only to complete the process of linguistic re-organisation of States in principled way at the earliest possible towards eliminating the remaining irritants among the States and between the Union and the States, but also to further adjust the state structure of the Indian public to the reality of a multi-national society.

2.27 A multi-national society does not necessarily imply, as emphasised in Chapter 1, so many independent States. But the only realistic way in which a multi-national Indian society may be fully contained within a single state is to have a genuinely federal form of Government. It is too late in the day to try to find an alternative solution in an authoritarian Centre which may seek to suppress and smother the distinct character, urges and aspirations of the various nationalities in ways now commonly subsumed under the term "State terrorism". The experience in Nagaland, Mizoram, Assam and Punjab should be indicative enough of the very limited reach and effectiveness of coercive ways in suppressing in modern times the urges and aspirations of aroused and awakened peoples. The only satisfactory and lasting solution of the problem is a genuine federal system which creates a fair balance between the Union and the States. The case for greater autonomy of States rests primarily on the need to achieve a fair balance between the claims of diversity and the requirements of unity.

2.28 There are other considerations, too, that call for greater autonomy for the States. It will promote a congenial environment for vigorous competitive politics which is the very life blood of functioning democracy. It will also promote the revival and reinvigoration of democracy at the grass-root level. One fall-out of a relentless drive, particularly during the last 15 years, for concentration of power in the hands of the Union has been that many State Governments have followed suit vis-a-vis the local levels of Government. This has greatly weakened democracy at the grass-root level over the greater part of the country. generally the enthusiasm for Panchayati Raj institutions has, with a few exceptions, evaporated. These institutions increasingly have meagre powers, resources and authority. Elections are seldom held in time. These institutions are increasingly dominated by the bureaucracy and, at the higher levels of the structure, are many a time actually administered by officialdom. Similar is the plight of Municipal Corporations and Committees. In this respect, Punjab is no exception to the general national scenario. To re-invigorate democracy, it is necessary to strengthen it at the grass-roots. This will call for a reversal of the general centralisation trend now operative in the country for many years. Greater autonomy to the States is an essential step in this direction. This will inevitably build up pressure for the devolution of power, functions and resources from the State to the local level.

2.29 An argument sometimes advanced, particularly by the establishment "progressives", in justification of the centralisation drive is that the Centre is controlled by a more enlightened, progressive and patriotic leadership while at the State level feudal, parochial and ultra-conservative, if not downright reactionary, elements predominate. The Centre's domination of the Indian polity, therefore tends to give a more progressive patriotic and enlightened orientation to it. Facts, however, do not support this claim. A perusal of the bills passed by the State legislatures but reserved by the State Governors for President's (Union Executive's) assent shows that bills seeking to implement the directive principles of State Policy laid down in part-IV of the Constitution have been particularly subject to delay and denial of assent. Over the years, the Union Government has increasingly departed from the country's professed goal of economic self-reliance and socialist pattern of development. Indeed, in recent years the country has been suffering balance of payments deficits of a size never experienced before. The Centre's policy has become increasingly oriented to big business, foreign (transnational) companies and the owning classes in general, notwithstanding the Central Government's studied populist postures. In any case, the character, actual or insinuated, of governments at the Union or State level is not a valid justification for a unilateral, high-handed or surreptitious attempt by any of these Governments to after the basic balance between the two levels established by the provisions of the Constitution. Otherwise. law of the jungle will in fact take the place of the prescribed procedure for amendment of the Constitution.

2.30 In the light of the above perception, the proposals for re-distribution of legislative powers in the three lists of the 7th Schedule are given in Chapter 3. Proposals for deletion, revision or substantial modifications of provisions which give the Union a supervisory role over the States are discussed in Chapters 4 to 6. Measures for augmenting the States financial resources and minimising their financial dependence on the Centre form the subject matter of Chapter 10. Proposals for ensuring the States an effective control over the planning process relating

to their Constitutional sphere of responsibility have been elaborated in Chapter 11. Several of these proposals shall require Constitutional amendments. The view put forth by some circles that no amendments of the Constitution are necessary and that due reform of the Indian polity can be carried out merely by evolving healthy conventions and procedures, and by changing some objectionable regulatory laws does not meet the requirements of the existing situation. The need today is for a combination of (i) necessary constitutional amendments, (ii) adoption of healthy conventions and procedures, and (iii) reform, modification and, where necessary, abolition of regulatory laws and of various constitutional and extra-constitutional instruments and devices adopted by the Union since 1950 to exercise control and supervision over the States and to encroach on their jurisdiction.

2.31 Conventions are a potent force where (i) there is wide-spread awareness about them among the electorate and flouting of an important convention is likely to outrage public opinion and imperil the continuance of the offending Government, (ii) there is a long established tradition of respect for conventions, (iii) the information media are relatively free and very vigilant about any abuse of authority or departures from accepted norms by Government, and (iv) democracy is vigorous, truly multi-party, deep-rooted and unassailable by any political party. Neither of these conditions is adequately met in India at present. There is, therefore, no choice but to carry out the needed reform of the Indian polity and the State structure by appropriate constitutional reform. Healthy conventions and proper procedures would certainly re-inforce the constitutional changes in bringing about the needed adjustment of the State structure of the country to the present stage of evolution of Indian society, but it is doubtful if these could do it by themeselve.

(4) Safeguards for the Country's Unity and Integrity

2.32 There can be no two opinions about protection of independence and ensurance of the unity and integrity of the country. There can be different view points only with respect to what imperils these and how to avoid and overcome these perils. A number of provision in the Constitution have been presumably meant to safeguard independence, unity and integrity of the country. These are listed below :

(i) Part II of the Constitution establishing a common citizenship for all Indians and Entry 17 of List I in the Seventh Schedule making citizenship, naturalisation and aliens a Union subject;

(ii) Adoption of a common National Flag and National Anthem for the country;

(iii) Article 51-A laying down the fundamental duties of citizens of India, particularly clauses, (a), (c), (d) and (e);

(iv) Articles 352 to 360 laying down Emergency Provisions;

(v) Entries 1 to 5 of List I in the Seventh Schedule making defence of India, naval military and air forces, any other armed forces of the Union, cantonments and defence works and equipments an exclusive Union responsibility; Entry 7 making defence industries a Union subject;

(vi) Entry 2-A of List I making deployment of any Armed forces of the Union or any other force subject to the control of the Union in aid of civil power a Union subject;

(vii) Article 355 making it a duty of the Union to protect States against external aggression and internal disturbance;

(viii) Entry 8 of List I making Central Bureau of Intelligence and Investigation a Union subject;

(ix) Entries 10 to 21 of List I making foreign affairs and related matters including questions of war and peace, treaties and agreements with foreign countries and immigration and emigration an exclusive Union responsibility ;

(x) Entries 22 to 31 of List I making railways and rail transport, national highways, shipping, and navigation on inland national waterways, maritime shipping and navigation, lighthouses, major ports and port-quarantines, civil aviation and related facilities, and means of communication Union subjects;

(xi) Entries 36, 37, 38 and 41 of List I making currency, Reserve Bank of India, foreign loans, foreign trade and commerce a Union responsibility; and

(xii) Article 263 providing for the setting up of an inter-State Council by the President.

2.33 All the above provisions are in fact not indispensable for maintaining the country's unity and integrity. For instance, the Administrative Reforms Commission was of the view that under Article 355 the Union was competent to deploy armed and paramilitary forces of the Union in aid of civil power in any State even *suo motu*. It has been argued in Chapters 3 and 6 that this is not a valid interpretation, that it is neither necessary nor desirable for the Union to be vested with this power and that such deployment must be only at the request of the State Government, whether that Government is a populat Government of a Governor's administration under President's rule. Again, in Chapter 3 it has been argued that broadcasting and television should be a Concurrent subject, that is, it should be shifted from List I to List III. This is all the more necessary now that India has evolved into a multinational society. Still again, it has been emphasised in Chapter 6 that the circumstances and conditions of invocation of Article 356 must be clearly specified. And so on.

Economic and Political Measures for Consolidation of National Unity and Integrity

2.34 The Constitution provides adequate, or even excessive, safeguards against any threat to the country's unity and integrity. It is crucially important to reinforce the constitutional provisions and the coercive power of the Union by economic and political measures to consolidate national unity and integrity. While discussing the sanction, or the source of authority of the modern State, the political scientists no doubt invariably make a mention of

its overwhelming coercive power vis-a-vis individual citizens or their other associations as the obvious sanctions. But the liberals and the democratically inclined among them do point out that the ultimate sanction for State's authority is the citizens' "will to state", i.e. the citizens' determination to preserve the state and to protect it against any threat to its territorial jurisdiction, power and authority. In keeping with out democratic protestations, everything possible must be done to arouse and reinforce the citizens' will to the Indian Republic. To do this, it will be necessary to ensure the following :

(i) A flourishing economy;

(ii) Wide diffusion of prosperity and well-being;

(iii) Equal consideration for the interests and sensibilities of all nationalities, religious communities and ethnic groups;

(iv) Political fair-play;

(v) A climate of freedom where all shades of opinion can express themselves openly and freely;

(vi) A Scrupulous regard for citizens' fundamental rights as guaranteed in the Constitution;

(vii) Active promotion of common organisation and fraternal feelings, and just and speedy settlement of issues among the different States, nationalities, religious communities and ethnic groups;

(viii) Scrupulous regard for the letter and spirit of the Constitution and the usual conventions of the parliamentary government; and

(ix) Promotion of industrialisation and modernisation of the economy and, in the process, creating regional inter-dependence.

2.35 Adequate progress in all these directions may itself be an effective safeguard for the country's unity and integrity. This may largely reduce the emergency provisions of the Constitution to the role of a reserve instrument to be used only very rarely.

The Federal Concept in a New Role

2.36 The federal concept of state structure, because of its historical antecedents in India, arouses apprehensions among many, particularly in the heartland States, which the Chauvinists are quick to exploit. The British had come to show interest in a federal structure of Government for a united India primarily as a device to protect and buttress the position of the Princes in it, and because of the opportunities which in the then prevailing circumstances it was expected to provide to play the Hindus, the Muslims and the Sikhs against one another and the Princes against all of them, to keep a united India weak and dependent upon themselves. They also expected that the internal checks and balances of this structure, which they hoped it would inevitably have, would make it impossible for united India to touch British vested interests in this country.

2.37 Federalism is now being viewed in a totally new role, that is, as a device to meet the challenge of the situation that has arisen in the country. The pre-Independence context has readically changed. The Princely States have been consigned to the flames of history and are beyond resurrection. Their former population has been liberated from the Princely yoke and have merged indistinguishably with the rest of the Indian citizenry. The Muslim question no longer has the potential of growing into a threat to the country's integrity. It has become a part of the general problem of safeguarding the cultural and other legitimate interests of the country's religious minorities. There is no external force occupying a commanding position in the country and using it to fan conflicts and animosities among the Indian peoples.

2.38 The march of history has, however, thrown up new problems. The historical process based on diversity of language and ethnicity has created new forms of diversity, that of a multi-national society and of awakened ethnic minorities. The latter who are predominant in some parts of the country, are becoming increasingly conscious of their distinct identity and of ruthless exploitation by others, and are demanding a fair deal to themselves. These new forms of diversity are far more significant for the future of the country than what the older forms of it, which the new forms cut across, ever were. Federalism is now being viewed as a conceptual frame to accommodate the legitimate claims of the new forms of diversity and thus consolidate the unity and integrity of the country by developing India into a happy family of equal and fraternal nationalities and ethnic groups who are bound by indestructible ties of shared urges and aspirations, interests and endeavours, and weal and woe. This is an altogether different role of federalism than what the British sought. The danger to the country's unity and integrity lies not in going the federal way but in failing to do so and persisting with the present relentless all round centralisation drive. The letter course would suggest such uttar lack of sense of history as does not befit the peoples of Nehru's land.

The Legislative Lists

3.1 The suggested changes in List 1, List II and List III of the Seventh Schedule are given in Annexures I, II and III. The write-up giving the rationale of these changes is given below :—

(1) LIST I

Entry 2-A

3.2 The founding fathers of the *Constitution* made public order a State subject (Entry I List II). This implies that the use of armed forces of the Union in any State in aid of the civil power must be only at the request of, or with the concurrence of, that State and never *suo motu* by the Union. If, in a situation which obviously calls for intervention by the para-military or the armed forces of the Union in aid of the civil power, a popularly elected Government of a State fails to make a request or give its concurrence to such intervention, President may legitimately take over the Government of a State under Article 356 on the plea of complete breakdown of law and order, thereby clearing the way for intervention by Union's armed and para-military forces in aid of civil power at the request or concurrence of the Governor's administration. It is difficult to imagine a case where a State Government faced with a situation where indeed it cannot restore law and order with its own police force will not request or, or concur with, such intervention. Entry 2-A

has been modified to make it clear that the Union shall use its armed and para-military forces only at the request or concurrence of the State Government, whether that Government is a popularly elected Government, or it is the Governor's administration under President's rule. The suggested modification also stipulates that such deployment shall be on terms and conditions determined by the Union with the concurrence of the Inter-State Council. These terms and conditions shall be the same for all States.

Entry 24 :

3.3 There is no reason why the Union may have jurisdiction over shipping and navigation on inland water-ways other than inter-State rivers. The suggested modification limits the scope of Entry 24 accordingly.

Entry 30 :

3.4 The suggested modification to Entry 30 is in line with the suggested modification to Entry 24. The words "national waterways" have been substituted by "inter-State rivers".

Entry 31 :

3.5 In the past, the telephone facilities were departmentally run. But with effect from 1986-87, the Mahanagar Telephone Nigam, an autonomous body has taken over management and development of telephone facilities in Bombay and Delhi. It would be in line with this trend if autonomous bodies set up by the Union are responsible for telephone facilities in the metropolitan towns while in other towns and rural areas the autonomous authorities set up by the States are made responsible for management and development of telephone facilities. It is, therefore, proposed to shift telephones from List I to List III.

3.6 Overseas communications may best be managed by the Union as is being done at present. This item has been added to Entry 31.

3.7 The States which are responsible for a substantial chunk of development activity and have been in most cases reorganised on linguistic lines need to have adequate access to radio and television facility to propagate their language, culture, values, development programmes and different viewpoints with regard to their special problems and opportunities. They do not get reasonable access now, particularly the States which have Governments of parties other than the ruling party at the Centre. It is, therefore, proposed that broadcasting and television may be put in the Concurrent List as a new Entry 25-A of that List and the vague expression "other like forms of communication" may be deleted as the provision in respect of residuary powers can take care of this. It is assumed that there will be common guidelines for the radio and television facilities controlled by the Union and the States to prevent a misuse of these facilities by either level of Government.

Entry 40 :

3.8 The Union should have within its jurisdiction only lotteries organised by the Government of India. Likewise the State should have jurisdiction over the lotteries organised by the State Government. Entry 40 has been modified accordingly.

Entry 45 :

3.9 The monetary authority, namely, the Reserve Bank of India, ought to be in the jurisdiction of the Union. Entry 38 of List I provides for this. But why should commercial banks, financial institutions ect. also be wholly within the jurisdiction of the Union ? Banking represents too big a concentration of economic power. There is no reason why it should be the monopoly of a particular level of Government. It is, therefore, proposed that banking other than R.B.I. should be shifted from the Union List to the Concurrent List and shown as new Entry 32-A of the latter List.

Entry 48 :

3.10 Stock exchanges are of national significance and ought to be in the Union List. But the same is not true of futures markets, which are mostly of local or regional significance. These are deleted from the Union List and shifted to the State List.

Entry 52 :

3.11 The framers of the Constitution had put Industries mainly in the State List, the only exception being industries subject to provision of Entry 52 of List I. The Constitution (Seventh Amendment) Act, 1956 substituted "Entries 7 and 52" for "Entry 52". The obvious intention was that while the Union would have jurisdiction over key, basic and defence industries which are obviously of national or strategic importance, all other industries will be within the purview of the States. But the Union has grossly misused the expression "in public interest" and abused the power conferred on it by Entry 52. It has brought even in essential consumer goods within the scope of the Industries (Development and Regulation) Act, 1951 passed with reference to this Entry. Industries has become virtually a Union subject in substantial violation of the intentions of the framers of the Constitution. Entry 52 is accordingly proposed to be modified to limit Union's control to specified key, basic and strategic industries. Entry 7 providing for Union's control over defence industries has been retained as it is.

Entry 53 :

3.12 It is not necessary that everything concerning petroleum and petroleum products must be within the purview of the Union. It is necessary to identify the particular phases of the petroleum sector to which the jurisdiction of the Union ought to extend. These are : petroleum, oil and gas exploration, extraction, transport and marketing and petroleum refineries and gas processing units. Wholesale marketing of petroleum products and of LPG does not have to be the exclusive concern of the Union. The Concurrent List is considered the proper place for this activity. Retail marketing of petroleum products and LPG should be in the State List. There is also no sound reason why other dange ously inflammable substances should be the concern of the Union. Matters pertaining to these substances within the territory of a State should be the concern of that State as it will have to bear the consequences of any mishap relating to such substances. Entry 53 has been accordingly modified. To ensure a largely uniform approach to these substances on the part of the States, the Inter-State Council may frame guidelines

on the subject for consideration and adoption by the States, with modifications to suit local conditions.

Entry 54 :

3.13 The Union ought to be concerned only with key and strategic minerals. Even in the case of these minerals, unless genuine public interest such as security considerations for conservation of strategic materials requires otherwise, the Union should be concerned with only significant deposits. In order to promote also the mining of non-key and non-strategic minerals and small deposits of all minerals, mines and mineral development other than that specifically brought within the purview of the Union may be put on the State List. Suggested modification of Entry 54 is in line with this approach.

Entry 55 :

3.14 Regulation of labour and safety in oil-field ought to be, as it is at present, within the exclusive jurisdiction of the Union. But the Union's responsibility with regard to mines should be limited to such of the mines as are within the jurisdiction of the Union in terms of Entry 54. Entry 55 is suggested to be modified accordingly.

Entry 56 :

3.15 (i) Water has been considered as a precious and scarce, resource and has very great significance for vast numbers of the people living in the States. Land and water are the most important resources which provide a base for all development activities. The vital importance of this has been kept in view by the Federal/Central Government for the last over a century. All laws passed from time to time and the provisions of the Constitution of India are based on recognition of the above fact and these placed water that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power in the Provincial Legislative List. The above position which prevailed in the Government of India Act, 1935 was adopted almost entirely by including this subject in Entry 17 of List II of Seventh Schedule but added the words "subject to the provisions of Entry 56 of List I" at the end.

3.15 (ii) Entry 56 of List I reads as follows : "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." The only relevant law made by Parliament under Entry 56 of List I is the River Boards Act, 1956 to the limited extent of empowering the Central Government on a request made by a State Government or otherwise to establish a River Board for advising the Governments interested in the regulation or development of an inter-State river or river valley. This power can be exercised by the Central Government only after consultation with the State Governments interested. The functions of the River Board are advisory in nature. Section 22 of the Act provides for arbitration of any dispute or difference between two or more Governments with respect to the matters specified in section 22. No River Board has been established under this Act as yet. Thus, there is no law made by Parliament under Entry 56 of List I curtailing the powers of any State Legislature or State Government flowing from Entry 17 of List II. It follows, therefore, that only riparian States have exclusive jurisdiction with respect of waters of inter-State rivers in their territories. A nonriparian valley State of an inter-State river has no right to claim any share in such waters. Report of the Narmada Water Disputes Tribunal, Volume III (1978) pages 16, 17, 19-21, 26 and 30.

3.15 (iii) The State has full right to use water resources available within the State because the economy of the people of that area has been dependent on that resource for centuries. Exploitation of such resources available within the State can be possible if full powers vest with the State for exploiting these resources. The State Govt. is of the considered view that devolution of greater powers to the States for accelerating the process of development of the country is essential. In the crucial area of water resources use, the above concept of greater devolution of powers is equally important and should not be overlooked or diluted in any way.

3.15 (iv) Entry No. 56 of List I of the Seventh Schedule of the Constitution.

This gives the Union the power to make laws for the regulation and development of inter-State rivers and river valleys to the extent to which the regulation and development under the control of the Union is declared by Parliament by law to be expedient, in the public interest. To this extent, the jurisdiction of States over water resources conferred by Entry 17 in List II of the Constitution stands modified.

3.15 (v) Article 262 of the Constitution of India states that the Union Parliament may by law provide for adjudication of any dispute or complaint regarding the use, distribution or control of the waters of or in any inter-State river or river valley. Under this Article of the Constitution of India, the Union Government has enacted Inter-State Water Disputes Act, 1956 which provides the legal frame work under which State Disputes are to be settled. Doubts have been expressed about the scope of interpretation of the provisions as to who can arise a dispute and also about the meaning of Inter-State River or River Valley. Is any State which is not riparian entitled to raise a dispute in regard to a river which is Inter-State though such river does not pass through or border on such State ? Apparently, the scheme of the Constitution of India implies that rights are to be determined in accordance with Entry 17 of List II but in the absence of any specific words in the Inter-State Water Disputes Act, 1956, contrary arguments continue to be advanced. There is a need to settle such doubts by amending the said Act to make the above intention clear.

3.15 (vi) Whereas 3.15 (v) above is a useful provision in that special attention can be given to inter-State Water disputes as compared with other Inter-State Dispute which can only be adjudicated in the Supreme Court under Article 131 of the Constitution, the provision at 3.15 (iv) above, gives the Union jurisdiction over water resources in inter-State rivers and river Valleys even when there is no dispute between States. This confers a vast and unfettered power in the Union. This is particularly so in view of the much larger resources with the Union, which can use these in conjunction with its power under Entry 56, List I to encroach on an area which

is rightly within the jurisdiction of these States. This Entry therefore, needs to be removed from List I of the Constitution.

Entry 60 :

3.16 The suitability of cinematographic films for exhibition is intimately related to the culture, deeply-held beliefs and values of the particular population. In India there is a marked ethnic, linguistic, religious and cultural diversity. It is quite possible that a particular film which may be received very well by a predominant section in one State may provoke riots in another State where it deeply offends the sensibilities of a major section of the population. The number of films being turned out each year is also very large and is expected to grow further as the trend towards producing pictures also in languages other than Hindi gathers momentum. There is justification now for transferring sanctioning of cinematographic films from List I to List II. Accordingly Entry 60 has been deleted.

Entry 62 :

3.17 It will be unfair if Parliament brings another institution like the ones mentioned under Entry 62 within the jurisdiction of the Union by declaring it by law to be an institution of national importance even if the Government of India is financing this institution only partly. The suggested amendment to Entry 62 stipulates that this should be permissible only if the Government of India is financing the institution to the extent of a minimum of 75 per cent.

Entry 63 :

3.18 Establishment of more Central Universities is not in keeping with the view that education should be shifted back from the Concurrent List to the State List. All new Universities should be set up by the States. The Government of India could, in a particularly deserving case, give a grant to a State to set up the University. Entry 63 is proposed to be modified accordingly.

Entry 64 :

3.19 The suggested modification is in line with that suggested in respect of Entry 62.

Entry 66 :

3.20 Co-ordination and determination of standards in institutions for higher education or research, or scientific and technical education, is suggested to be modified in line with the proposed modifications to Entries 62, 63 and 64 and the suggested transfer of education from the Concurrent to the State List. In other words, it is proposed to be limited to such of these institutions as are financed by the Government of India wholly or to the extent of a minimum of seventy-five per cent and declared by law to be institutions of national importance. The implication is that co-ordination and determination of standards in respect of other such institutions will be made the responsibility of the States. Entry 66 is suggested to be modified accordingly.

Entry 76 :

3.21 There is no reason why the audit of the accounts of the States should also be within the purview of the Union. The suggested modification to Entry 76 is in accordance with this view. As a corollary to this, it will be necessary to have separate Federal and State Audit Services.

Entry 84 :

3.22 Excise Duties are the fastest growing source of tax revenue. At present, these duties are within the purview of the (Union) except those levied on alcoholic liquors and narcotics for human consumption. For bringing out a basic improvement in State finances, it is necessary to provide the States with adequate access to revenue from excise duties. This is now being done by allowing the States a share in the Union Excise revenue in accordance with the recommendations of the Finance Commission. Under the recommendations of the Eighth Finance Commission, the latest Commission so far, 40 per cent of the Union Excise revenue, after prescribed deductions from it, is distributed among all the States and 5 per cent of it among the States which still have a deficit on non-plan revenue account. *Inter-se* distribution among the States is to the serious disadvantage of the higher per capita income States. Since the burden of excise duties ultimately falls on the consumers of excisable items in the form of higher prices, the higher per capita income States, because of their higher per capita consumption of excisable items, contribute a relatively higher proportion of the excise revenue. But under the distribution criteria adopted by the Finance Commission, these States receive a much lower proportion than their contribution. For example, Punjab which contributes not less than 5 to 6 per cent of the Union excise revenue receives as its share only 1.2 per cent of the 40 per cent distributed to all the States and no share whatsoever in the 5 per cent distributed to the revenue deficit States. It is necessary to think of an alternative arrangement which would be fair to all the States and also provide them with a strong incentive to develop industrial production. Keeping this consideration in view, it has been suggested that excise duty of industrial units defined by Parliament by law as small-scale units may be excluded from the jurisdiction of the Union and shifted to the State-List.

3.23 In course of time as the definition of "Small scale" is liberalised by Parliament in line with the past practice so as to bring a growing number of units under this category, the States will get a growing revenue from this source. They will also have a strong incentive to promote a vigorous development of this sector as they will gain directly from the progress made in this direction. Entry 84 is suggested to be modified accordingly.

Entry 90 :

3.24 Since futures markets are proposed to be shifted to the State List, taxes other than stamp duties on transactions in these markets should also likewise be shifted out of the jurisdiction of the Union.

Entry 97 :

3.25 Residuary powers are proposed to be shifted to the Concurrent List so that any subjects not included in List I or List II could be dealt with, depending on its nature, by either the Union or the States without an amendment of the Constitution affecting the contents of the Seventh Schedule.

3.26 At present, under Entry 97, a new subject will necessarily have to be dealt with by the Union even if it is obvious that it may be dealt with best at the level of the States. It will not be possible to transfer it to the States except by a constitutional amendment or by the Union delegating it to the States. But mere delegation is not equivalent to a right conferred on the States by inclusion of residuary powers in the Concurrent List.

(2) LIST II

Entry 1 :

3.27 The rationale of the proposed changes in Entry 1 is given above in the write up on Entry 2-A of List 1.

Entry 1-A :

3.28 It is new Entry to accommodate Entry 3 of List III with the suggested modification. Since public order is a State subject, preventive detention for reasons connected with the security of a State, and the maintenance of public order, and the persons subjected to such detention, may be a State subject and not a Concurrent subject as at present. There may be no detention for reasons connected with the maintenance of supplies and services essential to the community Persons who endanger such supplies and services may be proceeded against only for violation of specific laws. The existing Entry on the subject has accordingly been modified.

Entry 3 :

3.29 The Constitution (Forty-second Amendment) Act, 1976 was pushed through during the very abnormal situation created by the Emergency. It reflected the extreme centralising tendency then prevalent. It not corrected in time, this tendency will endanger the unity and integrity of the country. This has been the basic approach underlying the suggested changes in the Entries, enumerated under different Lists, that were effected by the Forty-second Amendment.

3.30 One such change was to unjustifiably transfer "Administration of Justice; constitution and organisation of all courts, except the Supreme Court and High Court" from Entry 3 of List II to a new Entry 11-A in List III. It is suggested that this subject be transferred back to Entry 3 of List II.

Entry 6-A :

3.31 Population control and family planning is at present a Concurrent subject. The Forty-second Amendment inserted it as a new Entry 20-A in List III. The State activity in this direction is promoted and financed by the Union under a Centrally Sponsored Scheme and like all other such schemes in implemented by the State Governments. In spite of the very large amounts spent by the Centre on this scheme year after year, population control has made little headway as yet. Indeed, in the 1970s. the decadal growth rate of population has turned out to be marginally higher than in the 1960s, 25% as against 24·8%. Family planning facilities should be an integral part of the health facilities which is a State Subject. The present dichotomy between the two facilities hampers their adequate integration. Sponsorship and financing by the Centre prevents proper adjustment of the family planning programme to the specific circumstances of different States and the ethos and psychology of their people. In a vast country like India with great diversity, a programme like population control which necessarily depends on generating a strong motivation among the people and evoking a vigorous positive response on their part cannot possibly be run from a single point on a uniform schematic pattern. It must have due flexibility in its approach and methods. For these considerations it is proposed to transfer population control and family planning from List III to List II as a new Entry 6-A. There will need to be a corresponding transfer of resources from the Centre to the State.

3.32 Vital statistics including registration of births and deaths is an allied subject. It is suggested to be shifted from Entry 30 of List III to Entry 6-A of List II.

Entry 7-A :

3.33 Family law is at present a Concurrent Subject which in effect makes it a Union responsibility. Since India is a country of marked religious, cultural and ethnic diversity, the only way to ensure that family law fully takes into account the traditions, cultural mores, personal law and requirements of all sections & groups of population in each State is to make it exclusive a State subject. Again while admitted family law needs to be reformed, the task will be facilitated if, instead of the Union Government attempting it on a uniform all-India basis, the State Governments may undertake it is accordance with the level of consciousness and requirements of different sections and groups of their population. It is, therefore, suggested that family law may be transferred from Entry 5 of List III to List II as a new Entry 7-A.

Entry 8-A :

3.34 In order to deal effectively with spurious, substandard, adulterated and unnecessarily differntiated drugs, and to check spread of the use of intoxicating drugs, it is suggested that the States may be vested with exclusive responsibility for drugs and poisons, subject to the provisions of Entry 59 of List I (concerning opium). This may be done by transferring the provisions of Entry 19 of List III to a new Entry 8-A of List II.

Entry 9 :

3.35 Mental Health should be a State subject just as physical health already is. It is, therefore, suggested that the provisions of Entry 16 of the Conceurrent List may be transferred and added to entry 9 of List II.

Entry 9-A :

3.36 Vagrancy and nomadic and migratory tribes are obviously a local problem. It is suggested that the provisions of Entry 15 of List III may be transferred to List II and shown as a new Entry 9-A.

Entry 11 :

3.37 Education was unjustifiably transferred from List II to List III by the Forty-second Amendment. It is suggested that it may be restored to List II as Entry 11. This is the only way to promote the language, literature and culture of different Indian nationalities

on an equal footing, to undertake the needed reform of education, State by State, according to their respective circumstances, so as to raise its qualiy and make it more relevant to social needs and the development goals, and to achieve near universal literacy among the population of 10 + age. There is an urgent need to halt the present relentless drive to centralise education, accentuate its bias towards the better off strata, impose a dead uniformity on all the States, and to discriminate against the languages, literature and culture of minority nationalities and groups.

Entry 11-A :

3.38 In lines with the suggestion for transfer of education to List II, it is proposed that the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions located in a State, with the exception of institutions that are within the puıview of entries 63, 64 and 65 of List I, may be transferred from the Union list Entry 66 to State List and shown as a new Entry 11-A. The Centre has in fact been trying to encroach directly on the field of school education as well and to coordinate standards even in this segment of the education structure. The recently announced new Education Policy proposes to further intensify this drive. This trend in education policy needs to be reversed.

3.39 It is envisaged that after the suggested change in jurisdiction with regard to education has been effected, the necessary inter-State coordination in this subject may be effected through the medium of the Inter-State Council. It is also envisaged that the Centre will continue to coordinate and determine standards in the institutions that will continue to be under its jurisdiction under the provisions of Entries 63, 64 and 65 of List I.

Entry 12 :

3.40 Archaeological sites and remains other than those declared by or under law made by parliament to be of national importance should be a State subject according this subject is suggested to be transferred from Entry 40 of List III to List II as an addition to entry 12.

Entry 12-A :

3.41 Keeping in view the great religious, cultural, social and institutional diversity in the Country, and the very large and growing number and wide variety of charities and charitable institutions, charitable and religious endowments and religious institutions, it is proper that these institutions with regard to their operations in a State should be subject to the jurisdiction of the State. Since such institutions sometimes also acquire a covert, if not an overt, political role, there can arise serious inter-State complications if institutions controlled and managed in one state operate in other State without the latter having any jurisdiction in respect of their operations there. The States, of course, will be obliged to exercise their jurisdiction under Entry 12-A so as not to infringe the Fundamental Rights to Freedom of Religion (under Articles 25 to 28) and to Cultural and Educational Rights (under Articles 29 to 31).

Entry 13 :

3.42 The suggested modifications to Entry 13 follow from : (i) the modifications suggested in List I to Entries 24, 30 and 31; and (ii) the transfer of minor ports, traffic on inland waterways (other than inter-State rivers) and mechanically propelled vehicles suggested below from Entries 31, 32 and 35 of List III to List II.

Entry 13-A :

3.43 Printing presses is an industry. Since it is not a key, basic or strategic industry, it falls outside the suggested purview of Entry 52 of List I. The proper place for it is list II.

3.44 Newspapers and books are important information media. The party and the interests ruling at the Centre must not have monopoly control over these as is presently the case when this subject is included in List III, Entry 39. Towards ensuring genuine freedom of press and publication for all shades and colours of opinion, it is suggested that this subject be shifted to List-II and shown as Entry 13-A. This will also help to create a more congenial environment for publication of newspapers and books in all Indian languages. The States will of course be obliged to exercise their jurisdiction over these subjects in a manner consistent with the Fundamental Right to freedom of speech and expression (under Article 19).

Entry 15 :

3.45 It is difficult to understand why it has been considered necessary to let the Centre have an overriding jurisdiction over prevention of cruelty to animals by including this subject in List III as Entry 17. There is nothing to suggest that the power-wielders at the Centre would be inherently more concerned about cruelty, whether to humans or to animals, than those in the States, Moreover, the Union Government is too far removed from the man who grievously illtreats his buffalo (for milk) or his donky (for great speed or heavier load) to afford much protection to the victims. The subject of animal protection, like agricultural and allied activities in general rightfully belongs to List II. It has been suggested that it may be shifted to List II as an addition to Entry 15.

Entry 17 :

3.46 The rationale for giving the States full right to utilise water has already been given under Entry 56 List I in paragraph 3·15 above. Therefore, the world "subject to the provision of Entry 56 of List I" should be deleted from this Entry.

Entry 18 :

3.47 Reform of land tenure and protection of tenants, because of the importance of these subjects, needs to be expressly mentioned as a State responsibility. This has been done in the suggested redraft of Entry 18 of List II.

Entry 19 :

3.48 Forests are a subject allied to agriculture. Like agriculture it may be a State subject. It actually was so till the Forty-second Amendment transferred it to List III as Entry 17-A. Nothing in the past 9

years suggests that this has resulted in a big improvement with regard to planting care, conservation and development of forests. The steady loss of the country's already inadequate forests cover remains as ever a serious national problem. The remedy lies not so much in transferring forests to the Concurrent List as in creating a strong public awareness about their role in the country's economy and ecology and taking effecting measures against unauthorised exploitations. Furthermore, afforestation is eminently suitable for utilisation of voluntary labour and for useful deployment of manpower under the special employment programmes. The subject is proposed to be put back in List II as Entry 19.

Entry 20 :

3.49 Protection of wild animals and birds may be like agriculture, forests and protection of animals and for the same reasons, within the jurisdiction of the States. It may be transferred from List III, Entry 17-B to List II, Entry 20.

Entry 23-A :

3·50 The rationale for the new Entry in List II is given in the write-up on Entry 55 of List I.

Entry 24-A :

3.51 "Trade unions, industrial and labour disputes" is at present a Concurrent subject (Entry 22). The States should be vitally interested in growth of healthy trade unionism, speedy settlement of labour disputes and establishment of cooperative industrial relations as they will benefit the most from such an environment. These subjects may be the exclusive responsibility of the States. This explains the new Entry 24-A.

Entries 24-B and 24-C

3.52. Labour Welfare, employment and unemployment, social security and social welfare have a direct bearing on the quality of life. These are among the important areas for the different States to emulate one another. Progressive and efficient State Governments may like to take a part of the gain from their superior performance in the very desirable and politically rewarding form of fuller social security, healthier employment situation and superior labour welfare for there people. This will serve as a major incentive to State Governments to improve their performance. At present these subjects have been shown in the Concurrent List (Entries 23 and 24). This tends to hold back most States to a certain low level uniformity with regard to these subjects. To strengthen the motivation of the Governments and people of the States for superior economic and social performance, these subjects may be made an exclusive State responsibility. The employment programmes sponsored by the Centre are even today implemented through the agency of the States as Centrally sponsored Schemes on the basis of matching contribution by the Centre and the States for financing these. The divided responsibility stands in the way of planning and implementing these programmes on a long-term basis, taking into full account the peculiar circumstances and requirements of each State. Transfer of these programmes and the associated resources, exclusively to State responsibility may improve their effectiveness and relevance.

3.53. To give effect to the above suggestions, the subjects included in Entries 23 and 24 of List III may be transferred to List II and shown as new Entries 24-B and 24-C. The contents of the new Entries assume that social security includes social insurance. In Entry 24-B social welfare has been added to social security to make the Entry more comprehensive in scope.

Entry 25-A :

3.54. The entire field of electricity is at present a Concurrent subject. Taking advantage of this, the Centre is steadily taking over this sector. The States are greatly hampered in electricity development as all their projects, including even small projects, need Centre's approval. This often takes years and seriously delays development. This is an important contributory factor to varying degrees of chronic power deficit suffered by most States. It is suggested that the subject be divided into two parts. While electricity generation and high voltage transmission (110 Kv. and above) by public utilities may remain a Concurrent subject, low voltage transmission (below 110 Kv.), distribution and rural electrification and captive power plants may be made an exclusive State subject. Finance of electricity development may be a Concurrent subject. To give of fact to these suggestions a new Entry 25-A has been added to the State List and Entry 39 of the Concurrent List has been appropriately modified.

Entry 25-B :

3.55. Factories and boilers are currently a List III subject (Entries 36 and 37). In line with the suggestion that Industries other than those covered by Entry 7 and Entry 52 with the envisaged limitation in its scope, —vide the write up on this Entry of List I should be a State subject, it is suggested that factories and boilers may be shifted to List II and shown under a new Entry 25-B.

Entry 26 :

3.56. Inter-State trade and commerce is at present a Union subject and may remain so. But there is no reason why trade and commerce within a State may not be in the exclusive jurisdiction of that State. The only reasonable exception to this might may be the inputs of defence and war industries within the purview of Entry 7 of List I. The trade and commerce in these inputs may be put in the Concurrent List to ensure their uninterrupted flow to production units. But the items of intra-State trade and commerce which at present figures in the Concurrent List under Entry 33 cover a wide area comprising : (a) the products of any industry at present within the purview of Entry 52 and imported goods of the same kind as such products (b) foodstuffs including edible oilseeds and oils (c) cattle fodder, including oilcakes and other concentrates; (d) ginned or unginned raw cotton and cotton seed; and (e) raw jute. There is no justifiable reason why trade and commerce within the State in these items should not be within the exclusive jurisdiction of the State. Entry 26 of List II has accordingly been modified and Entry 33 of List III deleted.

Entry 26-A :

3.57. As explained in the write up on Entry 53 of List I, retail marketing of petroleum products and L.P.G. should be within the exclusive jurisdiction

of State Governments. A new Entry 26-A is inserted in List II to provide for this. This Entry also accommodates liquids and substances declared to be dangerously inflammable shifted from Entry 53 of List I.

Entry 26-B :

3.58. Establishments of standards of weights and measures had been correctly enumerated in List I. This was particularly necessary at the time of drawing up of the Constitution to facilitate introduction of uniform weights and measures all over the country and to end the then prevailing multiplicity in this respect. The introduction of a uniform metric system of weights and measures all over the country has been a major economic reform in the post-Independence period. But there is no reason why enforcement of weights and measures may also be put in the Concurrent List and not made an exclusive State responsibility. Hence the suggestion has been made that the subject "weights and measures excluding establishment of standards" may be shifted from Entry 33-A of List III to List II as an additional Entry 26-B.

Entry 27 :

3.59. It is proposed that the scope of Entry 27 List II may be enlarged to include procurement. Furthermore, it is suggested that production, supply and distribution of the items mentioned under Entry 33 of List III may also be brought within the scope of Entry 27 of List II by deleting from the latter the words "subject to the provisions of Entry 33 of List III". In line with this suggestion Entry 33 of List III is altogether deleted. The scope of Entry 27 of List II, however, has been limited so as to exclude the products of industries within the scope of Entry 7 of List I. Entry 27 has accordingly been modified.

Entry 28 :

3.60. Since future markets are suggested to be brought within the purview of the States (vide write up on Entry 48 of List I), the scope of Entry 28 of List II is enlarged to include these markets.

Entry 28-A :

3.61. Since the States are envisaged to control exclusively trade and commerce within the State, the subject of adulteration of foodstuff and other goods should also be put within their exclusive jurisdiction by deleting Entry 18 of List III and correspondingly inserting a new Entry 28-A in List II.

Entry 33 :

3.62. Sanctioning of cinematograph films for exhibition in a State has been suggested (vide write up on Entry 60 of List I) to be put exclusively within the jurisdiction of that State. This is considered necessary to enable each State to protect the dignity and distinct culture of its people against various forms of chauvinistic and cultural aggression by other Indian nationalities, religious communities and ethnic groups and by foreign cultures and nations.

Entry 34-A :

3.63. As mentioned in the write up on Entry 40 of List I, the States should have jurisdiction over the lotteries organised by them. Provision for this has been made by inserting a new Entry 34-A in List II.

Entry 36 :

3.64. As explained in the write up on Entry 33 of List I, it is suggested that States may have jurisdiction over acquisition and requisitioning of property for their own purposes. A new Entry 36 providing for this is inserted in List II while Entry 42 of List III is deleted.

Entry 37 :

3.65. At present while taxes on mechanically propelled vehicles are a State subject (Entry 57), the jurisdiction for determining principles on which such taxes are to be levied figures in the Concurrent List (Entry 35). This is an avoidable limitation on the States. The taxes on mechanically propelled vehicles as well as the principles on which these are to be levied may be within the jurisdiction of the States. The scope of Entry 57 has been enlarged to provide for this. At the same time Entry 35 of List III is proposed to be deleted. Any inter-State coordination with regard to principles on which such taxes are to be levied should be effected through the medium of the inter-State Council.

Entry 63-A :

3.66. Since it is proposed that future markets may be within the scope of the States, the taxes other than stamp duties on transactions in future markets may also be in the State list. Hence the new Entry 63-A.

Entry 64-A :

3.67. Inquiries and statistics for the purposes of any of the matters specified in List II and List III are at present in List III (Entry 45). There is no justification why inquiries and statistics for the purposes of any of the matters specified in List II may be in the Concurrent List. These need to be included in List II. This has been provided by insertion of a new Entry 64-A in List II. At the same time it is proposed that the scope of Entry 45 of List III may be limited to inquiries and statistics for the purposes of any of the matter specified in List III.

Entry 67 :

3.68. As pointed out in the write up on Entry 76 of List I, the audit of the accounts of the States may be their own responsibility and not that of the Union. The new Entry 67 provides for this.

(3) LIST III

3.69. The subjects enumerated in List III have been suggested to be mostly shifted to List II. Some Entries are proposed to be modified. One Entry is envisaged to be altogether deleted. Under two Entries enlargement of scope of the subject is suggested. Four new Entries (25-A, 32-A, 32-B and 48) are proposed. After the suggested changes, the Concurrent List would comprise only the following Entries :—

1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 25-A, 26, 27, (modified), 29, 32-A, 32-B, 34, 38, 41, 43, 44, 45. 46, 47 and 48.

Rationale of Transfer/Modification of subjects

3.70. The rationale of transfer of subjects from List III to other Lists and of any modifications effected in these is given in the write up on corresponding Entries in these Lists. The Lists and number of the corresponding Entry is given below :—

Entries in List III suggested to be shifted wholly or partly with or without modification	Write up reference for the rationale of the suggested change	
	List	Entry
3	II	1=A
5	II	7=A
15	II	9=A
16	II	9
17, 17-A, 17-B	II	15
18	II	28-A
19	II	8-A
20-A	II	6-A
22	II	24-A
23	II	24-B
24	II	24-C
25	II	11
28	II	12-A
30	II	6-A
31	II	13
32	II	13
33	II	26, 27
33-A	II	26-B
35	II	13, 57
36, 37	II	25-B
38	II	25-A
39	II	13-A
40	II	12
42	II	36
45	II	64-A

Relationale of Deletion

Entry 4 :

3.71. Preventive detention is suggested to be shifted to Entry 1-A of List II. The question of removal of detainees will not then arise. The detainees shall remain within the State that detains them. Entry 4 of List III which provides for inter State shifting of detainees is, therefore, proposed to be deleted.

Rationale of Enlargement/Addition

Entry 25-A :

3.72. A new Entry 25-A has been added to accommodate broadcasting and television shifted from Entry 31 of List I. The rationale of this shift has been given in the write up under the latter Entry (Paragraph 3.7).

Entry 27 :

3.73. Entry 27 has been modified to widen its scope to include displaced persons from their original places of residence in all foreign countries and territories as well as from other States and Union Territories. At present Entry 27 covers displaced persons from Pakistan only.

Entry 32-A :

3.74. A new Entry 32-A has been added to accommodate banking shifted from Entry 45 of List I. The rationale of this change is given in the write up under the latter Entry.

Entry 32-B :

3.75. The new Entry 32-B accommodates wholesale marketing of petroleum products and L.P.G. shifted from Entry 53 of List I. The rationale of shifting this subject to the Concurrent List is given in the write up under the latter Entry.

Entry 48 :

3.76. This is a new Entry which shifts residuary powers from the Union List to the Concurrent List. The rationale of this change is given in the write up on Entry 97 of List I.

ANNEXURE I

Suggested Modifications to List I (Union List)

Suggested deletaion indicted in underlined	Suggested substitution/addition indicated in underlined
1	2
2-A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.	2-A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power at the request of or with the concurrence of that State: determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels, the rule of the road on such waterways.	24. Shipping and navigation on inter-State rivers as regards mechanically propelled vessels; the rule of the road on such rivers.

1	2
30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.	30. Carriage of passengers and goods by railway, sea or air, by inter-State rivers in mechanically propelled vessels, or by pipelines.
31. Posts and Telegrahs, telephones, wireless, broadcasting and other like forms of communication.	31. Posts and Telegraphs, wireless and overseas communications.
40. Lotteries organised by the Government of India or the Government of a State.	40. Lotteries organised by the Government of India.
45. Banking	45. * * * * *
48. Stock-exchanges and future markets.	48. Stock-exchanges.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.	52. Key, basic and strategic industries specified in Appendix 'A' to this (Union) List.
53. Regulation and development of oil fields and mineral oil resources, petroleum, petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.	53. Petroleum, oil and gas exploration, extraction, transport and marketing; petroleum refineries and gas processing units.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest.	54. Regulation of mines and mineral development with regard to minerals specified in Appendix 'B' to this (Union) List to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.	55. Regulation of labour and safety in mines (within the jurisdiction of Union under the provisions of Enery Fifty-four) and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulations and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.	56. * * * * * * * *
60. Sanctioning of cinematograph films for exhibition.	60. * * * * * * *
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial and any other like institutions financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.	62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institutions of a minimum financed by the Government of India wholly or to the extent of seventy-five per cent. and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371-E; any other institution declared by Parliament by law to be an institution of national importance.	63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371-E.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.	64. Institutions for scientific or technical education financed by the Government of India wholly or to the extent of a minimum of seventy-five per cent and declared by Parliament by law to be institutions of national importance.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.	66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions financed by the Government of India wholly or to the extent of a minimum of seventy-five per cent. and declared by law to be institutions of national importance.
76. Audit of the accounts for the Union and of the States.	76. Audit of the accounts for the Union.
84. Duties of excise on tobacco and other goods manufactured or produced in India except— (a) Alcoholic liquors for human consumption; (b) Opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry.	84. Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alocholic liquors for human consumption, (b) Opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preprations containing alcohol or any substance included in sub-para (b) of this Entry ; (c) small-scale units defined by Parliament by law.
90. Taxes other than stamp duties on transactions in stock exchanges and future markets.	90. Taxes other than stamp duties on transactions in stock exchanges.
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either or these Lists.	97. * * * * * * * *.

LIST I

(Reference Entry 52)

1. Ferrous and non-ferrous metallurgy (pig iron, sponge iron, steel, aluminium, copper, zinc and lead).
2. Cement.
3. Newsprint.
4. Petroleum refining and natural gas processing.
5. Nitrogenous fertilizers.
6. Petro-chemical basic materials and intermediates.
7. Bulk Drugs.
8. Steam and hydro turbines.
9. Power boilers.
10. Transformers (33 KVA and above)
11. Locomotives.
12. Railway coaches and wagons.
13. Naval ships, oil tankers and cargo vessels above 10,000 tonnes DWT.
14. Communications equipment.
15. Defence weapons and materials.
16. Atomic energy materials and equipment.

LIST I—APPENDIX B

(Reference Entry 54)

1. Coal and lignite.
2. Petroleum and natural gas.
3. Atomic energy minerls.
4. Ferrous and non-ferrous metal ores.
5. Lime stone.
6. Dolomite.
7. Mica.
8. Precious stones, such as diamond, emerald garnet ruby, saphire, topaz, acqurmmine, etc.
9. Fertilizer minerals, e.g., rock phosphate, gypsum, apatite, etc.
10. Precious metals, e.g., gold, platinum, etc.
11. Refractory, paints & pigments minerals, i.e., pyrites, redocnre, yellow ochre, asbestos, celestite, ilimenite, magnesite, rutile, soap stone/ steatite, vermi, culite, zircon, etc.
12. Bese metals, i.e., tin, tungsten, etc.
13. Other industrial minerals i.e., Bantonite, Borax, Diaspore, Flourite, Wallastonite etc.
14. Building & Decorative stones i.e., Granites and Mignatitic gnaisses, basic dykes, marble etc.
15. Ceramic raw materials i.e., Ball clay, china clay, felspar, etc.

ANNEXURE II

Suggested Modifications to List II

(State List)

Suggested deletion indicated in underlined	Suggested substitution/addition indicated in underlined.
1	2
1. Public order (but not including the use of any naval, military or air force or any other armed force of the union or of any contingent or unit thereof in aid of the civil power).	1. Public order Subject to Entry 2-A of List I.
1-A. * * * * * * * * *	1-A. Preventive detention for reasons connected with the security of a State and the maintenance of public order; persons subjected to such detention.

1	2
3. Officers and servants of the High Court, procedure in rent and revenue courts; fees taken in all courts except the Surpeme Court.	3. Administration of justice, constitutional organisation of all courts, except the Supreme Court and High Courts; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
6-A. * * * * * * * *	6-A. Population control and family planning: vital statistic including registration of births and deaths.
7-A. * * * * * * * * * *	7-A. Marriage and divorce; infants and minors; adoption wills, intestacy and succession; joint family and partitions, all matters in respect of which parties in judicial proceedirngs were immediately before the commencement of this constitution subject to their personal law.
8-A. * * * * * * * * * * *	8-A. Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium.
9. Relief of the disabled and unemployable.	9. Relif of the disabled and un-employable; lunancy and mental deficiency; places for the reception or treatment of lunatics and mental deficients.
9-A. * * * * * * * * * * * *	9-A. Vagrancy ; nomadic and migratory tribes.
11. * * * * * * * * * * * *	11. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64 and 65 of List I vocational and technical education of labour.
11-A. * * * * * * * * * * *	11-A Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions located in the State, subject to provisions of Entry 65 of List I.
12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than these declared by or under law made by Parliament to be of national importance.	12. Libraries museums and other similar institutions controlled or financed by the State ancient and historical monuments and records and archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.
12-A. * * * * * * * * * * *	12-A. Charities and charitable institutions, charitable and religious endowments and religious institutions.
13. Communications, that is to say, road's bridges, ferries and other means of communication not specified in List I ; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.	13. Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I and List III; municipal tramways; ropeways; inland waterways and navigation and traffic thereon subject to Entry 24 and Entry 30 of List I with respect to Inter-State rivers; vehicles including mechanically propelled vehilces; ports subject to Entry 27 of List I .
13-A. * * * * * * * * * * * *	13-A. Newspapers, books and printing presses.
15. Preservation, protection and improvement of stock and prevention of animal diseases: veterinary training and practice.	15. Preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice: Prevention of cruelty to animals.
17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provision of Entry 56 of List I.	17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water srtoage and water power.
18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.	18. Land, that is to say, rights in or over land; land tenures and reform thereof; the relation of landlord and tenant, the collection of rents, and protection of tenant; transfer and alienation of agricultural land; land improvement; agricultural loans ; colonisation.
19. * * * * * * * * * *	19. Forests.
20. * * * * * * * * * *	20. Protection of wild animals and birds.
23-A. * * * * * * * * * *	23-A. Regulation of labour and safety in mines subject to provisions of Entry 55 of List I.
24-A. * * * * * * * * * *	24-A. Trade unins, industrial and labour disputes.
24-B. * * * * * * * * * * *	24-B. Social security and social insurance, employment and unemployment.

1	2
24-C. * * * * * * * * * * *	24-C. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25-A. * * * * * * * * * * *	25-A. Transmission (below 110kv) and distribution of electricity, rural electrification; captive power plants.
25-B. * * * * * * * * * * *	25-B. Factories, boilers.
26. Trade and commerce within the State subject to the provisions of Entry 33 of List III.	26. Trade and commerce within the State other than trade and commerce in the inputs of an industry falling within the scope of Entry 7 of List I and imported goods of the same kind as such inputs.
26-A. * * * * * * * * * * *	26-A. Retail marketing of petroleum products and L.P.G.; liquids and substances declared to be dangerously inflammable.
26-B. * * * * * * * * * * *	26-B. Weights and measures excluding establishment of standards.
27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.	27. Production, procurement, supply and distribution of goods other than the production, procurement, supply and distribution of the products of an industry falling within the scope of Entry 7 of List I and imported goods of the same kind as such products.
28. Markets and fairs.	Markets including future markets and fairs.
28-A. * * * * * * * * * * *	28-A. Adulteration of foodstuffs and other goods.
33. Theatres and dramatic performances; cinemas subject to the Provisions of Entry 60 of List I ; sports, entertainments and amusements.	33. Theatres and dramatic performances; cinemas; sanctioning of cinematograph films for exibition; sports, entertainments and amusements.
34-A. * * * * * * * * * * *	34-A. Lotteries organised by the State Governments.
36. * * * * * * * * * * *	36. Acquisition or requisitioning of property other than for the purposes of the Union.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram cars subject to the provisions of Entry 35 of List III.	57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including trams cars; principles on which taxes on such vehicles are to be levied.
63-A. * * * * * * * * * * *	63-A. Taxes other than stamp duties on transactions in future markets.
64-A. * * * * * * * * * * *	64-A. Inquiries and statistics for the purposes of any of the matters specified in List II.
67. * * * * * * * * * * *	67. Audit for the accounts of the State.

ANNEXURE III

Suggested Modification to List III

(Concurrent List)

Suggested deletion indicated in underlined	Suggested substitution/addition indicated in underlined
1	2
3. Preventive detention for reasons concerned with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community: persons subjected to such detention.	3. * * * * * * * * * * *
4. Removal from one State to another State of prisoners, accused persons and persons subjcted to preventive detention for reasons specified in Entry 3 of this List.	4. * * * * * * * * * * *
5. Marriage and divorce ; infants and minors; adoption; wills, intestancy and succession; joint family and partition; and matters in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law.	5. * * * * * * * * * * *
11-A. Admission of justice : constitution and organisation of courts, except the Supreme Court and High Courts.	11-A. * * * * * * * * * *

1	2
15. Vegrancy : nomadic and migratory tribes.	15. * * * * * * * * * *
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.	16. * * * * * * * * * *
17. Prevention of cruelty to animals.	17. * * * * * * * * * *
17-A. Forests.	17-A * * * * * * * * * *
17-B. Protection of wild animals and birds.	17B-. * * * * * * * * * *
18. Adulteration of food-stuffs and other goods.	18. * * * * * * * * * *
19. Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium.	19. * * * * * * * * * *
20-A. Population control and family planning.	20-A. * * * * * * * * * *
22. Trade unions : industrial and labour disputes.	22. * * * * * * * * * *
23. Social security and social insurance employment and unemployment.	23. * * * * * * * * * *
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's, compensation invalidity and old age pensions and maternity benefits.	24. * * * * * * * * * *
25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.	25. * * * * * * * * * *
25-A. * * * * * * * * * *	25-A. Boradcasting and television.
27. Relief and rehabilitation of persons displaced from their original place of residence by reasons of the setting up of the Dominions of India and Pakistan.	27. Relief and rehabilitation of persons displaced from the original place of residence in foreign countries and territories or in other States and Union Territories.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.	28. * * * * * * * * * *
30. Vital statistics including registration of births and deaths.	30. * * * * * * * * * *
31. Ports other than those declared by or under law made. by Parliament or existing law to be major ports.	31. * * * * * * * * * *
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.	32. * * * * * * * * * *
32-A. * * * * * * * * * *	32-A. Banking.
32-B. * * * * * * * * * *	32-B. Wholesale marketing of petroleum products and L.P.G.
33. Trade and commerce in, and production, supply and distribution of:— (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expendient in the public interest, and imported goods of the same kind as such products; (b) foodstuffs, including edible oilseeds and oils; (c) cattle fodder, including oilcakes and other concentrates: (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.	33. * * * * * * * * * *
33-A. Weights and measures except establishment of standards.	33-A. * * * * * * * * * *
35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.	35. * * * * * * * * * *
36. Factories.	36. * * * * * * * * * *
37. Boilers.	37. * * * * * * * * * *
38. Electricity.	38. Electricity generation and transmission (110 kv and above) by public utilities finance of electricity development.
39. Newspapers, books and printing presses.	39. * * * * * * * * * *
40. Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.	40. * * * * * * * * * *

1	2
42. Acquisition and requisitioning of property.	42. * * * * * * * * * *
45. Inquiries and statitics for the purpose of any of the matters specified in List II or List-III.	45. Inquiries and statistiscs for the purpose of any of the matters specified in List-III.
48. * * * * * * * * * * *	48. Any other matter not enumerated in List I or List II including any tax not mentioned in either of these lists.

Constraints on States' Legislative Autonomy :

4.1. In Chapter 3 suggestions were made for modification of the three lists of the Seventh Schedule (Article 246) towards a more appropriate distribution of legislative powers between the Centre and the States. But even within the area of legislative competence of the States, there are several constraints, some of these very irksome and onerous, on their legislative autonomy. These constraints include the following :—

(1) Inability of the State Legislative Assembly by itself to create or abolish the Legislative Council;

(2) Governor's power to summon and prorogue the House(s) of the State Legislature and to dissolve the Legislative Assembly;

(3) Over-riding jurisdiction of the Union with regard to matters enumerated in the concurrent List;

(4) Parliament's power to enlarge the legislative competence of the Union at the expense of the State's competence by declaring that this is expedient in the public interest or by making the prescribed declaration with respect to particular matters;

(5) Enlargement of legislative jurisdiction of the Union by Constitutional Amendments;

(6) Parliament's power to legislate with respect to matters in the State List;

(7) Governor's powers in relation to the Bills passed by the House(s) of State/Legislature;

(8) President's power in relation to the Bills reserved for his assent;

(9) The requirement in some cases of previous sanction of the President for introduction of a Bill in the House(s) of the State Legislature; and

(10) Power of Parliament to provide for the establishment of additional courts for better administration of laws made by Parliament.

Inability of the State Legislative Assembly to create or abolish the Legislative Council :

4.2. Under Article 169, only the Parliament is competent to create or abolish the Legislative Council of a State, if the Legislative Assembly passes a resolution to that effect by a majority of the total membership of the Assembly and two-third majority of the Members present and voting. The Legislative Assembly, the popularly elected House of the State Legislatives, has no power by itself to create or abolish the Legislative Council, no matter how strong is the support among the Assembly Members for this. The State Government is obliged to approach the Parliament for undertaking the necessary legislation to implement the Assembly resolution.

Governor's Power to Summon and Prorogue the House(s) of the State Legislature and to Dissolve the Legislative Assembly :

4.3. Under Article 174, the Governor has the power to summon and prorogue the House(s) of the State Legislature and dissolve the Legislative Assembly. If this power were to be invariably exercised on the advice of the State Council of Ministers that has the support of the majority of the Members of the Legislative Assembly, the power of the Governor under Article 174 would not in any way constrain or abridge the State's legislative autonomy. Generally, this is, in fact, the practice particularly with regard to summoning and prorogation of the House(s). But there have been instances , particularly with ragard to dissolution of the Legislative Assembly, where the Governor is reported to have exercised this power otherwise than at the advice of the State Council of Ministers, or even in opposition to this advice. Disregard in this case of the advice of a popular majority-supported State Government by an appointee of the Union Executive is a clear infringement of the legislative autonomy of the State.

Over-riding Jurisdiction of the Union with Regard to Matters Enumerated in the Concurrent List :

4.4. Though the States are competent to enact legislation on matters enumerated in the Concurrent List, the Union has the ultimate jurisdiction with respect to these matters. This is because if a law made by the Legislature of a State on a Concurrent matter contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law made by the State Legislature shall, to the extent of the repugnancy, be void (Article 254). But of the State law has been reserved for and received the President's assent it will prevail in that State [Article 254(2)]. Even in this case nothing shall prevent the Parliament from subsequently enacting any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the State Legislature [Proviso to Article 254(2)]. And the latter law shall become void to the extent of repugnancy to the new law enacted by Parliament (Article 254).

Parliament's Power to Enlarge the Legislative Competence of the Union at the Expesne of the State's Competence :

4.5. Several Entries in the three Lists in the Seventh Schedule are so worded as to empower the Parliament to enlarge the legislative competence of

the Union at the expense of the States competence by declaring by or under the law enacted by it that this is expedient in the public interest or by making the prescribed declaration with respect to particular matters including these Lists. A well-known example of enlargement of Union's jurisdiction in this manner, as explained above in the previous chapter in the write up on Entry 52 of List I, is Industries. Industries has become virtually a union subject in substantial violation of the intentions of the framers of the Constitution. Other Entries of List I under which Union's jurisdiction can be similarly extended by the Parliament include the following : 7, 23, 24, 27, 53, 54, 56, 62, 63 , 64, and 67. The affected Entries in the State List include 12, 13, 17, 22, 23, 24 and 50.

Enlargement of Legislative Jurisdiction of the Union by Constitutional Amendments :

4.6. The legislative competence of the Union may be enlarged at the expense of the State's jurisdiction by adding more matters to the concurrent list by shifting these from the State List or otherwise. This was done in a big way by the Forty-second Amendment undertaken in 1976 taking advantage of the abnormal situation created by the Emergency. The subjects shifted to or newly added to the Concurrent List under this Amendment included the following :—

(i) Administration of justice; constitution and organisation of all courts, except the Supreme Court and High Courts (Entry 11-A of List III).

(ii) Forests (Entry 17-A).

(iii) Protection of wild animal and birds (Entry 17-B).

(iv) Population control and family planning (Entry 20-A).

(v) Education etc. (Entry 25).

(vi) Weights and measures except establishment of standards (Entry 33-A).

4.7. In a few cases, the jurisdiction of the Union has been enlarged by adding to List I itself. The Forty-second Amendment (1976) added Entry 2-A to the Union List. This Entry covers the deployment of any armed force of the Union or any other force of the Union or any other force subject to the control of the Union in any State in aid of civil power. The Forty-sixth Amendment (1982) has put the consignment tax (in respect of a consignment that takes place in the course of inter-state trade or commerce) in the jurisdiction of the Union by the newly added Entry 92-B. Such additions to the Union List further accentuate the jurisdictional imbalance between the Union and the States.

Parliament's Power to Legislate with respect to the matters in the State List :

4.8. Parliament has power to legislate with respect to a matter in the State List :

(i) if declared to be necessary or expedient in the national interest by a resolution of the Council of States supported by two-thirds majority of the members present and voting (Article 249);

(ii) if a proclamation of Emergency is in operation (Article 250);

(iii) for two or more States by their consent (Article 252); and

(iv) to give effect to international agreements (Article 253).

4.9. In case (i) a resolution passed by the Council of States has initially a maximum validity of one year, but it can be renewed again and again without limit in the same manner for further one-year periods at a time [Article 249(2) with its proviso].

4.10. Article 249 and 250 do not take away the legislative competence of the State Legislature, but if any provision of a law made by a State Legislature is repugnant to any provision of a law made by Parliament which Parliament is competent to make under these Articles, the law made by the Parliament shall prevail and the law made by the State Legislature shall, to the extent of the repugnancy, be inoperative so long as the law made by Parliament continues to have effect, that is, up to six months after the resolution of the Council of States ceases to be in force or the Proclamation of Emergency ceases to be operative (Article 251).

4.11. In case (iii), an Act passed by Parliament shall not as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State. Only the Parliament may do this in the same manner in which it enacted it [Article 252(2)].

Governor's Powers in Relation to the Bills passed by the House(s) of States Legislature :

4.12. When, after being passed by the House(s) of the State Legislature, a Bill is presented to the Governor for his assent, he may (i) assent to the Bill, or (ii) withhold his assent, or (iii) if it is not a money Bill return it to the House (s) of State Legislature for reconsideration and recommend some amendments in it, or (iv) reserve the Bill for the consideration of the President. There does not seem to have been any instance of the Governor withholding his assent (case ii) as a final action on the Bill. Action (iii) would only delay the enactment of the Bill temporarily for if the Bill is passed again by the House(s) with or without amendments, the Governor shall not withhold assent from it (First Proviso to Article 200). It is the Governor's power to reserve the Bills for the consideration of the President, which if exercised otherwise than at the advice of the State Council of Ministers, involves a major effective constraint on the State's Legislative autonomy.

4.13. There are certain compulsions with regard to reservation of Bills for the consideration and assent of the President (in effect, the Union Council of Ministers). Firstly, it is obligatory for the Governor to so reserve a Bill, passed by the House(s) of State Legislature when, in his opinion, if it became law, it will so derogate from the powers of the High Court as to endanger the position envisaged for it by the Constitution (second Proviso to Article 200). Secondly, where the Bill pertains to a matter enumerated in the Concurrent List, it is normally reserved for the President's assent. This is to ensure that it gets the protection afforded by Article 254(2) mentioned above and does not become void to the extent of

repugnancy to the provisions of an earlier law made by Parliament or an existing law with respect to that concurrent matter. Thirdly, where the Bill provides for acquisition of estates or take over of management of any property for a limited period and other such matter, specified by (a), (b), (c), (d) and (e) under clause (1) of Article 31-A, it is normally reserved for President's assent to secure for it the protection afforded by Article 31-A. Under this Article to law providing for acquisition of estates etc. shall be deemed to be void on the ground of its being violative of the Fundamental Rights conferred by Article 14 and 19. But where such a law has been enacted by a State Legislature, the protection afforded by Article 31-A, clause (1) shall not be available unless such law has been reserved for and received the President's assent. All land reform legislation is reserved for the President's assent to secure protection under Article 31-A (1). Article 31-C affords similar protection to laws giving effect to the policy of the State towards securing directive principles of State policy laid down in Part IV of the Constitution. But, in this case too, this protection shall be available to a law enacted by a State Legislature only if it has secured the assent of the President (Proviso to Article 31-C). All such laws enacted by the State Legislature are also invariably reserved for President's assent.

4.14. Governor's powers in relation to the Bills passed by the House(s) of State Legislature will not be much of a constraint on State's legislative autonomy if, as the constitutional head of the State, he were to exercise all these powers always on the advice of the State Council of Ministers, just as the President does with respect to all matters including the Bills passed by Parliament. But this does not seem to be invariably the case.

In some cases, particularly when a party other than the ruling party at the Centre was at the helm of affairs in the State, the Governor is reported to have reserved the Bills for the President's assent without or even against the advice of the State Council of Ministers, even when these Bills were such as he would not be obliged, under the Constitution, to reserve for President's assent. Such actions of the Governor surely do constitute an unjustifiable constraint on the States' legislative autonomy.

President's Powers in Relation to the Bills Reserved for his Assent

4.15. The President may or may not assent to the Bill reserved for his assent. In the latter case, he may withhold his assent or, where the Bill is not a Money Bill, return it, through the Governor, and require that the House(s) of State Legislature shall reconsider it within a period of six months, particularly the amendments to it suggested by him. If the Bill is again passed by the House(s) with or without amendment, it shall be presented again to the President for his assent. This time too, the President may or may not give his assent to the Bill. The Constitution prescribes to time limit for the President to give his decision. Nor are there any guidelines, criteria or conventions relating to the disposal of the Bills reserved for President's assent. This gives the Union Council of Ministers the Power to delay and veto the Bills passed by the House(s) of State Legislature, thereby enabling the ruling party at the Centre to thwart and frustrate the policies and programmes of the ruling party in the State as reflected in the Bills passed by the House(s) of State Legislature. The worst affected have been the measures for progressive economic and social reform which impinge on powerful vested interests. This is an intolerable constraint on State's legislative autonomy in a situation where parties other than the ruling party at the Centre are in power in a number of States. This is a major issue of Centre-State relations.

The Requirement of previous Sanction of the President

4.16. Under Article 304(b), the State Legislature may impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest. But the Proviso to clause (b) lays down that no Bill or amendment for this purpose shall be introduced or moved in the Legislature of a State without the previous sanction of the President. The Proviso imposes an unjustifiable restriction on the legislative autonomy of the States. Clause (b) itself guarantees against arbitrary and unjustifiable State interference with the freedom of trade, commerce and intercourse with and within the State by requiring that only such restrictions may be imposed as are reasonable and required in public interest. There should be no need for further restriction on the State's legislative competence to undertake legislation providing for such restrictions.

Power of Parliament to provide for the Establishment of Additional Courts for Better Administration of Laws made by Parliament.

4.16-A. Under Article 247 Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament. Such special courts were set up in Punjab in the post-Blue Star Operation period under the Disturbed Areas Act. These Courts are a departure from the normal judicial structure envisaged by the Constitution where the same courts administer all laws whether made by Parliament or the State Legislature. There should be no justification for setting up such courts in normal non-Emergency times. But this is permitted under Article 247 which makes no such distinctions.

Measures for Fuller Legislative Autonomy of the States

4.17. In keeping with the requirements of a genuine federal state structure, measures are suggested below for fuller legislative autonomy of the States.

4.18. Article 169 may be amended to empower the Legislative Assembly, the popularly elected House of the State Legislature, to itself create or abolish the Legislative Council by 'law, passed by a majority of the total membership of the Assembly and by a two-third majority of the Assembly members present and voting.

4.19. Article 174 may be amended to provide that as long as there is in position in a State a popular Government which has majority support in the Legislative Assembly, the Governor shall exercise his power to summon and prorogue the House(s) of the State Legislature and dissolve the Legislative Assembly on the advice of this Government. The Governor may exercise his discretion in these matters only when this condition is not met, for example, in the following circumstances.

(i) When the Chief Minister is understood by the Governor to have lost majority suppor

in the Legislative Assembly and fails to summon this House within a reasonable period, when so required by the Governor, to establish his continued command of majority support.

(ii) When a Chief Minister, following a defeat in the Legislative Assembly on a substantive issue, advises dissolution of the House and a fresh general election.

(iii) When, as is most unlikely, the Chief Minister fails to advise summoning of the House(s) of State Legislature within six months of the last day of the previous session; and

(iv) When following a general election to the Legislative Assembly or the defeat of the existing State Government in this House, no party obviously seems to command majority support in the House and it is decided to summon the Assembly to indicate who, if any person, has majority support of this House and thus qualifies for appointment as Chief Minister. If in this case the House fails to indicate Majority support to any person, the Governor may on this own prorogue or dissolve this House and advise imposition of President's rule, to be followed by a fresh General election as soon as possible.

4.19 A The most effective way to minimise the abridgement of legislative outonomy of the States in the area of their competence implied in the overriding jurisdiction of the Union with regard to the Concurrent List is to limit this list to only those matters where with regard to the major aspects of these matters it is imperative to have a common law applicable to all the States, even if with regard to minor aspects of these matters the States may each enact its own legislation in the light of their special circumstances and requirements. All other matters now included in the Concurrent List may be transferred to the State List. It is this approach that has been followed in the previous chapter in suggesting modifications to the concurrent and other Lists.

4.20 The States' legislative competence with regard to the Concurrent List may be reinforced by providing, by a constitutional amendment, that whenever the Union proposes to legislate on a concurrent matter, it shall be obligatory for it to consult seriously, and not in a mere perfunctory manner, the States and to secure the approval of the majority of them to the proposal. If the majority of the States disapprove of the proposal, the Union will need to recast it taking into account the States' views so as to secure approval of a majority of States for it. Otherwise the proposal shall be dropped.

4.21 A possible alternative approach to safeguarding the competence of the States with regrd to the Concurrent List may be that, though prior genuine consultation is made obligatory, approval of the proposed legislation by a majority of the States is not insisted upon. Instead States which do not approve of it are excluded from the purview of this legislation. This approach is inappropriate as it goes against the very logic mentioned above of putting matters in the Concurrent List instead of the State List. For the same consideration it will be inadvisable as is sometimes suggested, to put a law enacted by a State on a Concurrent matter, which receives the President's assent under Article 254(2), outside the purview of the proviso to this clause. This will mean that a State law which has thus received President's assent under Article 254(2) shall prevail in that State not only against an existing law enacted by Parliament on the same matter, but even against a law which Parliament may enact in the future on this matter. This suggestion, if accepted, will mean that laws made by Parliament in the future on the same matter after consultation with the States and securing concurrence of a majority of them will be applicable to other States but not to the State where an earlier law enacted by the State legislature on the same matter had received President's assent under Article 254(2). This defeats the very logic of Union legislation on a concurrent matter.

4.22 The Parliament's power to enlarge the legislative competence of the Union at the expense of the States jurisdiction under several Entries of List I by making by or under law the prescribed declaration may be reduced to the minimum by redrafting the maximum number of such Entries so as to make them no longer subject to any such declaration. The modifications to several Entries in List I suggested in Chapter 3 above have kept this consideration in view. In this connection reference may be made to the suggested modification in respect of Entries 24 30, 52, 53, 54 and 63 of List I.

4.23 There will be nothing wrong it by a Constitutional Amendment a particular matter is transferred from the jurisdiction of the States to that of the Union when new developments in the Indian economy, society or polity fully justify this. But Constitutional Amendments of the Kind undertaken as part of the motivated drive of the country's dominant supra-national forces to undermine the jurisdiction and significance of the States as the homelands of different emerging and emerged Indian nationalities by converting the country increasingly into an essentially unitary state must be resisted and made more difficult. The ultimate safeguard against such amendments necessarily has to be the strong political awareness of the electorate with regard to the true significance of such amendments, reinforced by the prevalence of a climate of freedom, rule of law and cooperative federalism. But it will also be necessary to amend Article 368 to provide for greater say to the States in Constitutional Amendments. As Article 368 stands at present the Parliament can amend the Constitution in general by itself by each House passing the Bill for the purpose by a majority of the total membership of the House and a majority of not less than two-thirds of the Members of that House present and voting. The President shall give his assent to a Bill so passed. It is with regard to a few specified parts of the Constitution, including the Lists in the Seventh Schedule, that the Amendment also requires ratification by not less than one-half of the States. The States may be allowed greater say in Constitutional Amendments by providing, by Amendment of Article 368, that :

(i) The Constitutional Amendments in general shall require also ratification by not less than one-half of the States; and

(ii) The Amendment of specified Articles pertaining to the basic structure of the Constitution shall require ratification by not less than two-thirds of the States.

4.24 Article 249 which empowers the Parliament to legislate with respect to a matter in the State List if declared to be necessary or expedient in the national interest by a resolution of the Council of States by two-thirds majority must be omitted. The Council of States is, in fact, not a representative of the States as such in the manner the U.S. Senate is. Whereas all States in U.S.A., irrespective of their size or population, have equal representation (2 members each) the relative representation of States in the Council of States is heavily weighted by their respective population. U.P. alone has a larger representation (34 members) in this House than 10 other States (31 members) including Assam (7), Punjab (7), Haryana (5), J&K (4), Himachal Pradesh (3), M nipur (1), Nagaland (1) Tripura (1), Meghalaya (1) and Sikkim (1). In the event the relatively smaller States, which number almost one-half of the total St tes, count for little in passing such resolutions of the Council of States. Indeed, a resolution of the Council of States can be passed by two-thirds majority even if all the members from 14 States (almost two-thirds of the total number of States) including Kerala (9), Orissa (10), Rajasthan (10) and Gujarat (11) besides the 10 States mentioned above, unanimously vote against it. Such a resolution cannot truly be considered a decision of the States as such. If there is any aspect of a matter in the State List where the Council of States has to be called upon again and again to pass the requisite resolution to enable the Parliament to legislate on it, it would be preferable to shift it by constitutional amendment to the Concurrent List so that the Union or the States, as the situation may require from time to time, may legislate on it. The case for omitting Article 249 is, indeed, very strong. As a *sequel* to this, references to Article 249 in Article 251 shall need to be omitted.

4.25 In order that the Council of States may be broadly what its name suggests, its composition needs to be modified. It may be suggested that the 15 States with larger than ten million population in 1971 may be given equal representation in the Council of States, namely, 14 Members each. J&K and Himachal Pradesh, with a population between 3 and 10 million, may be given 5 Members each. Tripura, Manipur and Meghalaya with a population between one and three million may have 2 Members each. The representation of Nagaland and Sikkim who had less than one million population might be one Member each.Delhi, Pondicherry, Mizoram and Arunachal Pradesh may continue to have one Member each. The total membership will remain unchanged at 232.

4.26 Article 252 which empowers the Parliament to legislate for two or more States on a matter in the State List, with the consent of their legislatures must also be omitted. The States must not be encouraged or pressurised to surrender their legislative jurisdiction to the Union. They must themselves enact legislation on matters in the State List. If coordination between two or more States is necessary with respect to legislation on a particular matter, this may be arranged through the medium of the Zonal Council or the Inter-State Council. The Union might also help by framing model legislation on that matter for the guidance of the States.

4.27 A possible, though less satisfactory, alternative to omission of Article 252 may be to substitute the following for the present clause (2) of Article 252:

> "An Act so passed may be amended or repealed only by an Act of Parliament passed or adopted in like manner but as respects any State to which it applies it may also be amended or repealed by an Act of Legislature of that State".

4.28 As mentioned above, the Governor's powers in relation to the Bills passed by the House(s) of State Legislature will not be a significant constraint on the States' Legislative autonomy if he were to exercise all these powers, including those with regard to reservation of Bills for the President's assent, on the advice of the State Counil of Ministers. To this end, it shall be necessary to omit the second proviso to Article 200, and to put in its place, the following proviso :

> "Provided further that the Governor shall exercise his functions under Article 200 in accordance with the advice of the State Council of Ministers".

4.29 If a law inacted by the legislature of a State goes beyond the latter's powers under the Constitution, it is for the Courts to nullify this law by declaring it *ultra vires* of the Constitution. If, on the other hand it is a valid but improper law, it is for the electorate to protest against it and force an amendment or even repeal of it. There is no justification for empowering the Union to sit on judgement on it whether with regard to its validity or propriety by making it obligatory for the Governor to reserve it for the President's assent, who may withhold it on the advice of the Union Council of Ministers.

4.30 After the Amendment suggested above, the Governor shall not reserve a Bill passed by the House(s) of State Legislature for the consideration of the President except on the advice of the State Council of Ministers. The latter may itself advise reservation of a Bill for the President's assent if it pertains to a Concurrent matter, or to acquisition of estates etc., or to giving effect to the Directive Principles of State Policy, with a view to securing the protection for it that will be available, as mentioned above, under Article 254(2), or Article 31-A, or Article 31-C, respectively, if it receives the President's assent. These cases are on a different footing than the generality of Bills passed by the State Legislature in its area of competence. President's assent is not obligatory in these cases, but it is being sought to secure special protection for the validity of the particular legislation. If the State Government does not mind foregoing this special protection, it does not have to advise the Governor to reserve the Bill for the President's assent.

4.31 It is sometimes suggested that the above protection should be available even without the President's assent. The mere fact of adoption of the Bill by the State Legislature may be enough to secure it. The above suggestion has far reaching implications. If this suggestion is conceded with regard to State Legislation pertaining to Concurrent matters this

will in fact imply that under Article 254(2) the earlier legislation enacted by the Parliament on the same matter will become void to the extent of repugnancy with the States legislation now enacted. In other words the State Legislature and not the Parliament will have the over-riding jurisdiction with regard to concurrent matters even if, as suggested above, the concurrent List may be drastically reduced to the few matters with respect to the major aspects of which it is imperative to have a uniform law applicable to all the States. This will be contrary to the very logic of including a matter in the Concurrent List as against its inclusion in the State List.

4.32 The present provision is the other extreme position where progressive social measures mooted by some State Governments within the competence of the State Legislature have been greatly delayed and, in the end, even set at naught as a result of the President withholding his assent on the advice of the Union Council of Ministers dominated by, or under pressure from, powerful vested interests.

4.33 It is necessary to find a via media with regard to President's response to Bills reserved for his assent by the Governor under Article 31-A or 31-C so that valied legislation sponsored by a State Government, if it is not altogether out of line with the prevailing ethos, may secure without undue delay the protection under these Articles. Perhaps a reasonable and a widely acceptable way to ensure this would be to provide that President's assent shall continue to be necessary to secure protection for State Legislation under Articles 31-A and 31-C, but with respect to such legislation, the President shall be guided by the advice of the Inter-State Council and not that of the Union Council of Ministers. Furthermore, there shall be a set time limit, say one year, for the President to give a decision with regard to a State Bill reserved for his assent. If no decision is forthcoming within this period, the Bill may be deemed to have secured President's assent.

4.34 The proviso to clause (b) of Article 304 may be omitted so that no previous sanction of the President is required for introducing in the House(s) of State Legislature a Bill or amendment for the purpose of clause (b). This proviso imposes and unjustifiable restriction on the legislative autonomy of the States. Clause (b) itself guards against arbitrary and unjustifiable State interference with trade, commerce and intercourse within and with the State by requiring that only such restrictions may be imposed as are reasonable and required in public interest. If the Bill or amendment fails to satisfy these criteria, it will surely be open to the courts to set it aside as unconstitutional. There is no need for further restrictions on the competence of the State Legislature to undertake legislation for the purpose of clause (b).

4.35 Parliament's power under Article 247 to provide by law for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to matters in the Union List must be restricted to the period when a proclamation of Emergency is in operation, or some other very abnormal situation which, for the reasons that must be explicitly stated and formally accepted by the Inter-State Council as reasonable, necessitates establishment of the special courts. In normal times, none but the ordinary course must administer all laws whether made by Parliament or by the State/Union Territory Legislatures.

4.36. The State must have a say in all Constitutional Amendments under Article 368. In general, a Constitutional Amendment must require ratification by a majority of the States. Amendments pertaining to specified Articles, which must include in particular the Articles bearing on the Union-State Relations, must require ratification by at least two-thirds of the States.

ROLE OF THE GOVERNOR

5.1 It is generally held that smooth functioning of a Parliamentary system of government is facilitated if the Constitution provides for a constitutional head of the State. Since the Indian Constitution has opted for this system of government at the Union and the State levels a provision has been made for a constitutional head at both these levels, namely the President and the Governor, respectively.

Role of the Governor

5.2 The primary role of the Governor ought to be to function as the Constitutional Head of the State. Dr. Ambedkar described him as "an ornamental functionary". *The Supreme Court has also expressed a similar view of the Governor's Office. In Hargobind Pant versus Raghulal Tilak and others. **it held that the Governor's office is an independent constitutional office which is not subject to the control of Government of India. In Maru Ram versus Union of India, @ it described the Governor as the "shorthand expression" for the State Government.

5.3. In addition to this primary role as the Constitutional Head of the State, the Governor is (i) an integral part of the State Legislature (Article 168), (ii) a link between the State and the Union, and (iii) an agent of the President, for instance under President's rule in the State.

Functions as the Constitutional Head

5.4 As the Governor is the Constitutional Head of the State, the executive power of the State is vested in him [Article 154(1)] and business of the Government of the State is carried on in his name (Article 166). The executive power of the State is coextensive with its legislative power (Article 162). The Governor's executive power is exercised by him on the aid and advice of the Council of Ministers, who shall be collectively responsible to the legislative Assembly of the State, except in so far as he is by or under the Constitution required to exercise his functions in his discretion [Article 163(1)]. In case of doubt, the Governor is empowered to himself take the final decision whether any matter is or is not the one in which he is so required to act in his discretion [Article 163(2)]. Again, as the Constitutional Head of the State, the Governor appoints the Chief Minister and, on the latter's advice, the other Ministers (Article 164). The Chief Minister is required to keep

* Constituent Assembly Debate, Vol. III p, 468.
** AIR, 1979, SC 1109.
@ AIR, 1980, SC 2147 (p. 2169).

him informed of the decisions of the Council of Ministers and proposals for legislation, and provide any information on these that the Governor may require. The Governor may also require the Chief Minister to place any decision of an individual Minister before the Council of Ministers [Article (167)].

5.5 In keeping with his primary role as the Constitutional Head of the State, the Governor should act in completely non-Partisan manner. But the practice has often been at variance with this precept. The Governor, particularly if he has been in active politics previously, or if he intends to (re)enter active politics in the future, has in many cases transgressed his proper role and has functioned in a partisan manner. Allegations of partisan conduct have been particularly common with regard to Governors who had been actively associated with the political formation that has exercised power at the Centre almost throughout the post-independence period.

Usual Areas of Partisan Conduct :

5.6 The allegations of partisan conduct by the Governor usually pertain to his following actions :

(i) appointment of the Chief Minister in a situation when no single political party commands majority support in the Legislative Assembly;

(ii) adoption of very questionable methods, which are in keeping with neither the dignity of the elected representatives of the people nor with the role of the Governor as the non-partisan constitutional head of the State, to verify claims of majority support advanced by different persons to secure appointment as Chief Minister;

(iii) dismissal of Council of Ministers without giving the Chief Minister a reasonable opportunity to establish his majority support in the Legislative Assembly on the floor of the House;

(iv) summoning and prorogation of the House(s) of State Legislature and dissolution of the Legislative Assembly;

(v) reservation of bills passed by the House(s) of State Legislature for the assent of the President (under Article 200);

(vi) making a report to the President under Article 356 to the effect that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution;

(vii) the action recommended in the above report, particularly whether the Governor views it as a temporary break, with the Legislative Assembly kept in suspended animation, or as a rather extended go by to responsible Government, involving an immediate dissolution of the Assembly without an indication as to the timing of the fresh elections to this House;

(viii) conduct of State administration, as an agent of the President, under President's rule;

(ix) appointment of the Vice-Chancellor of a State University;

(x) allowing the Raj Bhavan to become an office, a Committee room and a guest house of the ruling party at the Centre for hatching, organising and executing plots and actions aimed at embarrassingy discrediting, subverting and eventually dismissing the State Government for the benefit of that party; and

(xi) in general, functiong primarily as an agent of the Union Executive rather than as an independent Constitutional Head of the State who in accordance with the letter and spirit of the Constitution offers due cooperation to the State Government irrespective of its party complexion.

5.7 Partisan conduct by the Governor in violation of the spirit of the Constitution has been by far the most important factor for the widespread misgivings, and in some cases even bitter hostility, which individual Governors as well as the office of the Governor has aroused among the non-congress political parties. Cooperative federalism requires that effective constitutional safeguards must be provided to ensure that the Governor's office is altogether free from political controversy.

Appointment and Tenure of the Governor

(a) The Existing Provisions :

5.8 The Governor is appointed by the President. In this, as in almost everything else, the President is guided by the advice of the Union Council of Ministers. Thus the Governor is, infact, an apointee of the Union Executive. For some years after the commencement of the Constitution, the Chief Minister of that State was usually consulted on the matter, but after Mrs. Indira Gandhi became the Prime Minister this practice was given up. A possible explanation for the discontinuance of this practice seems to be that in the earlier years when the Congress Party was in power at the Centre as well as in almost all the States, such consultation was essentially an entra-party affairs, but it took on a different complexion when non-Congress parties came to power in several States. In the changed circumstances, the Centre began to observe only the letter of the Constitution, which did not require prior consultation with the Chief Minister of the State, and abandoned the healthy convention that had been developed in this respect.

5.9 A Governor is appointed for a five-year term [Article 156(3)] but holds office during the pleasure of the President [Article 156(1)]. In other words, he can be removed by the President (read : Prime Minister) at his pleasure before the expiry of this term. At least in one case, the Governor was in fact virtually removed prematurely by the President.

5.10 It is permissible for a person to be appointed a Governor of more than one State (Proviso to Article 153). This provision is rather inappropriate. It suggests that the States are mere administrative subdivisions of a unitary state structure and not Constituent states of an essentially federal polity. In several cases, the Governor of a State has been

transferred from one State to another for the rest of his five-year term more or less as a Deputy Commissioner may be transferred at any time from one District to another. This practice detracts from his primary role as an independent Constitutional Head of a State. It also connotes that the States are essentially administrative divisions of a unitary State.

5.11 It is permissible to combine the office of Governor of a State with that of administrator of an adjoining Union Territory. In this case he shall exercise his functions as administrator independently of his Council of Ministers [Article 239(2)]. The Governor shall not hold any other office of profit or be a member of any House of Union or State Legislature (Article 158).

(b) The suggested Provisions :

5.12 The mode of appointment of the Governor is generally considered a crucial factor towards ensuring that he functions in a non-partisan manner in keeping with his primary role as the constitutional head of a State. The fact that, under the Constitution, the Governor is in fact an appointee of the Union Council of Ministers (rather of the Prime Minister) and holds office during their (rather Prime Minister's) pleasure is not conducive to his functioning in a non-partisan manner, more so when most often the person chosen is a former or a would be active politician. It is sometimes suggested that to minimise the probability of the Governor functioning primarily as an agent of the Centre rather than as the Constitutional Head of a State, the Constitution may be amended to provide that the Governor shall be appointed by the President on the advice of the Chief Minister, or out of a panel submitted by the Chief Minister. But under this provision, the probability of the Governor functioning in a partisan manner, this time in favour of the ruling party in the State, is as high as under the present position except that now it is the ruling party at the Centre that is favoured. Perhaps, the most appropriate course would be to provide that the Governor shall be appointed by the President out of three names submitted by the Chief Minister of the State chosen from a panel of names considered suitable for this office maintained by the Inter-State Council and up-dated annually by it. To conform to the Constitutional requirement under Article 74 that the President shall go by the advice of Union Council of Ministers in the exercise of his functions, the modality of involving the Inter-State Council may be that on the receipt of the three names submitted by the Chief Minister out of the panel maintained by the Inter-State Council, the Union Executive may refer these names to the Inter-State Council and invariably go by the advice received from the Council in advising the President with regard to the appointment of the Governor. Thus the Union Executive, through both the President and the Inter-State Council (which will have the Prime Minister as its Chairman), the States collectively, and the Chief Minister of the concerned State will all be assoiciated with the appointment of the Governor. Article 155 relating to the appointment of the Governor may be amended to the extent necessary.

5.13 It is of the utmost importance that only persons of high calibre, integrlty and public stature usch as could be relied upon to rise above party and political affiliations and discharge their functions as Governor strictly in accordance with the letter and spirit of the Constitution may be included in the panel. Political awareness and propensity to political fair play may be considered essential qualifications for this office. Persons who have been active in politics need not be debarred from inclusion in the panel if they have the requisite qualifications, character and personality. There is no case for making the Governor's office, as it sometimes suggested a monopoly of persons who have distinguished themselves in the professions.

5.14 The Governor's terms of appointment must be such as should free him from both temptation and intimidation from any quarter. To this end, he should not normally be disturbed before the expiry of his five-years term. There should be no transfer to another State. The President shall not remove him except on the recommendation of Inter-State Council. If the Union Government or the State Government feel that his conduct as Governor shows him to be unequal to, or unsuitable for, this high office, they may move the Inter-State Council for his removal, but the Council alone should be competent to advice the President in this regard. There should be no second term for a Governoer whether in the same State or in another State.

Exercise of Discretion by the Governor :

5.15 Article 163 requires the Governor to go by the aid and advice of State Council of Ministers headed by the Chief Minister in the exercise of his functions "except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion". There was a strong demand in the Constituent Assembly that in clause 143 of the Draft Constitution (which later became Article 163 of the Constitution) the provision quoted above providing for exercise of discretionary power by the Governor be deleted. In defence of this provision Shri T.T. Krishnamachari, Shri Alladi Krishanswami Ayyar and Shri B.R. Ambedkar clarified that the scope for exercise of discretion under this clause was limited to only such matters where, under some other Article of the Constitution, the Governor was specifically empowered to Act in his discretion. Dr. Ambedkar explicitly clarified that "It is not a general clause giving the Governor power to disregard the advice of his ministers in any matters in which he finds he ought to disregard." He said that he would have very readily agreed to mention under this clause the specific Articles which come within the scope of this Article but, as the consideration of the Draft Constitution had not at the time been completed, this was not possible.

5.16 There are, indeed, very few provisions in the constitution where the Governor is specifically required to exercise his discretion. These mostly relate to the north-eastern States. Article 371 1(A)(b) makes the law and order in Nagaland the special responsibility of the Governor of that State. Article 371A(1)(d) pertains to making of rules for the Regional council for the Tuensang District of Nagaland. Article 371A (2)(b) relates to allocation of any money provided by the Government of India to the Government of Nagaland for the whole State between the Tuensang District and the rest of the State. Article 371A(2)(f)

relates to final decision for all matters relating to the Tuensang District. Schedule VI, Para 9(2) covering the States of Assam, Meghalaya, Tripura and the Union Territory of Mizoram pertains to sharing of royalty on minerals between the State Government and the District Council (of an Autonomous District). In all these matters the Governor is specifically required by or under the Constitution to exercise his discretion. If the scope of Governor's discretion were limited to only these cases, it would not have been an issue of national importance.

5.17. The discretionary power of the Governor under Article 163(1) has become a major issue of Centre-State relations because in practice, in disregard of the clarification given by the Constitution makers to the Constituent Assembly, the scope of this power has been given a wider interpretation. It has been claimed that the expression "by or under this Constitution" in Article 163(1) covers "all situations in which the power to exercise discretion is either expressly mentioned or necessarily implied in the relevant Articles". Governors have been actually acting on this wider interpretation. This was made possible by the fact that under clause (2) of Article 163, the Governor is empowered to decide himself finally in his discretion whether or not any matter is one with respect to which he is by or under this Constitution required to act in his discretion and this decision cannot be challenged in any court of law. The Supreme Court has also upheld the wider interpretation. In Shamsher Singh *versus* State of Punjab (AIR 1974 SC. 2192) it held that in some cases the Governor has power to act in his discretion as a matter of necessary implication. The Supreme Court has, however, interpreted 'at his discretion' to have the same meaning as was attached to it "in his individual judgement" under the Government of India Act 1935. In other words, with respect to matters which come within the scope of exercise of discretion by the Governor, whether by express provisions or by necessary implication, the Council of Ministers are not excluded from giving advice but the Governor is not obliged to follow this advice. Some of the important matters where the Governor is commonly considered to be competent to act in his discretion are : appointment of the Chief Minister [Article 164(1)] dissolution of the Legislative Assembly [Article 174(2)(b)], reservation of bills for the consideration of the President (Article 200): promulgation or ordinances during recess of Legislature (Proviso to Article 213); and imposition of President's rule on the State in case of failure of constitutional machinery there [Article 356(1)].

5.18. The wider interpretation of the scope of discretionary power by the Governor, particularly, when he is protected in this by Article 163(2), necessarily implies a potential threat to the autonomy of States in their specific sphere and the right of their people to be governed by a democratic responsible Government. The potential threat has become an actual attack on States' autonomy and democratic Government on many occasions. It does not seem feasible to remove this threat by just omitting the provision "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" as there may be some occasions when it will be necessary and legitimate for the Governor to exercise his discretion. There may then be two ways to safeguard States' autonomy and responsible Governments against misuse of discretionary power by the Governor whether on his own or at the behest of the Central Government. These are :—

(i) The Courts, and not the Governor himself, may be empowered to determine finally whether or not a matter is one with respect to which the Governor is empowered, whether by express provision or by necessary implication, to act in his discretion; and

(ii) Under all the Articles where there is an apprehension of the Governor unjustifiably exercising his discretion on the ground that the Article empowers him to do by necessary implication, the particular Article may be amended to expressly exclude the exercise of discretion by the Governor. This is the approach adopted with respect to the matters discussed below.

5.19. Article 163 should expressly provide that the Governor must always exercise his discretion in public interest. Discretionary power must never be construed as arbitrary power or be exercised *mala fide*. It must be so exercised as to subserve the purpose for which discretionary power has been conferred. The Governor must not interpret his discretionary power as the authority to set up a sort of parallel regime with regard to functions that are within the purview of this power. Instead, he should strive even with regard to these functions to act in harmony with his Council of Ministers to the maximum extent it might be possible consistant with due discharge of these functions.

Appointment of Chief Minister

5.20. The Constitution as well as the political practice in India must unambiguously emphasize that, as the Constitutional head of a State , the Governor's function under Article 164 is to secure a Council of Ministers which commands majority support in the Legislative Assembly and not to manoeuvre a particular party into office. The ruling party at the Centre must itself actively discourage any such predilections on the part of the Governor. Indeed blatant indulgence in such partisan activity should be considered by the Inter-State Council a sufficient ground for requesting the President for removal of the errant Governor. To the same end , Article 164 may lay down a specific procedure for appointment of the Chief Minister somewhat on the following lines :

(1) When a single political party or a reasonably stable grouping of political parties unquestionably commands majority support in the Legislative Assembly, the leader elected by this party or grouping of parties shall be appointed the Chief Minister by the Governor. Other Ministers shall be appointed by the Governor on the advice of the Chief Minister.

(2) When no single political party or a grouping of political parties unquestionably commands majority support in the Legislative Assembly, the Governor shall, acting on his own, summon this House for indicating whether any

person has majority support in the House. The House may do this by approving a formal motion of confidence in a person by absolute majority of the members present and voting. The person thus shown to have majority support in the House shall be appointed the Chief Minister by the Governor. Other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The Governor shall not under any circumstances take on himself the task of determining the veracity of claims of majority support in the Assembly that may be put forth by different persons to secure appointment as Chief Minister. In case of doubt, the issue of majority support in the Assembly must always be decided by a vote of the Assembly taken by the Speaker.

(3) If, in case 2, the Legislative Assembly fails to indicate majority support for any person by absolute majority of the Members present and voting within a prescribed period, the Governor may on his own dissolve the Legislative Assembly towards holding a fresh election to this House. The existing Council of Minister if any, shall act as a care-taker Government till, after the election, a new Council of Ministers take Office.

5.21. If a fresh election is not feasible in the near future, or no Council of Ministers is in office at the time, the Governor may recommend President's rule on the ground that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution [Article 356(1)]. A fresh election to the Legislative Assembly shall be held as soon as possible towards restoring popular Government in the State.

Dismissal of the Chief Minister

5.22. The Governor shall not dismiss a Council of Ministers under Article 164 on the ground that it no longer has majority support in the Legislative Assembly without giving the Chief Minister a reasonable opportunity to establish his continued majority support by securing a vote of confidence in the Assembly. In this matter, the Governor shall not act on his own subjective judgement. Nor shall he adopt any other method to ascertain whether or not the Council of Ministers continues to have majority support in the Assembly.

5.23. A Minister shall be dismissed on, and only on the advice of the Chief Minister.

Reports to the President (a) Under Article 356 (1)

5.24. With regard to the Governor's report to the President under Article 356(1), it is necessary to provide by amendment of the Constitution that, before submitting his report to the President, he shall communicate to the Chief Minister the grounds which suggest to him that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution and give him a reasonable opportunity to give his comments on the points raised. If the Governor is not satisfied with these comments, he may forward his report to the President, enclosing with it the comments offered by the Chief Minister. The Governor's report to the President (together with its enclosure) shall be made public along with the announcement of the President's decision on this report. These provisions should go a long way towards restraining the Governor from making a biased report to the President and preventing the Union Executive from meeting out an unwarranted and high-handed treatment to a popularly elected State Government.

5.25. The President is not obliged to take action under Article 356(1) only on receipt of the report from the Governor. He may do this also when he is otherwise satisfied that a situation of costitutional breakdown has arisen in a State. In other words he may take action *suo moto*. The obligation to communicate to the Chief Minister in advance of action under Article 356(1) the grounds which suggest that a situation of a Constitutional breakdown has arisen should also apply to this case.

5.26. The procedure suggested above is in line with the law laid down in some of the recent decisions of the Supreme Court such as : Mohinder Singh Gill *Vs.* Chief Election Commissioner,* S.L. Kapur *Vs.* Jagmohan, **and A.K. Roy *Vs.* Union of India.@

5.27 These decisions seem to imply that the principle of natural justice should be applicable also to cases of suppression of the State Government and the State Legislature under Article 356(1). In order to remove any doubt in this respect, it will be necessary to make an express provision for the above procedure under Article 356(1). The right of the people of a State to be governed by their representatives must not be taken away except when it can be fully established that it is altogether impossible to carry on government in accordance with the Constitution.

(b) **The Fortnightly Report**

5.28 The Governor's fortnightly report to the President must be a truthful unbiased account. He must scrupulously avoid reporting as if he was a supervisor appointed by the ruling party at the Centre to keep, for the benefit of that party, a wary eye on the State particularly if a rival political party is in power there. If any lapses of the State Government come to his notice, rather than acting as a C.B.I. official and shooting off a report to the President, he must first take up these with the Chief Minister. He may report to the President only if these lapses persist. For creatting mutual trust between the Governor and the Chief Minister, it should be made obligatory for the Governor to make a copy of the fortnightly report available to the latter. The Chief Minister will then feel assured that nothing is being cooked behind his back. The Governor, in his role as a link between the Centre and the State, can play a very effective and constructive part in promoting cooperative federalism if he offers an objective advice to both of them and does his best to remove misunderstandings and resolve differences between them.

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* AIR 1978 SC 851.

** AIR 1981 SC 136.

@ AIR 1982 SC 710.

Conduct of State Administration as Agent of the President under President's Rule

5.29 Under President's Rule, the Governor should strive to conduct the State Administration in as efficient and non-partisan a manner as may be possible under the circumstances. If he allows the State Administration to be dominated by the ruling party at the Centre, or by its State organisation, a good opportunity for remedying the factors which led to the imposition of President's rule might be lost, thus prejudicing the chances of a stable return to popular Government in the near future. As a result the State may be pushed further into endemic political instability. A non-partisan State administration under Governor's direct rule is so rare an experience that the President's rule has come to be commonly regarded more of a device to get rid of a State Government run by rival political parties or by other political inconvenients than a weapon of last resort to be deployed in national interest in case of a grave situation of a constitutional break down in a State. Its frequent use is generally attributed to the abuse of this device for narrow party ends. If the provision for President's rule is to serve the purpose presumably visualised by the framers of the Constitution, it must imply a non-partisan efficient administration which provides the State with an opportunity for house cleaning as a necessary preparation for restoration of popular Government, as even good government is no substitute for responsible government. The desired change will have to be brought about as much by developing appropriate conventions regarding conduct of State Administration under President's rule as by undertaking Constitutional Amendments for instance, one requiring that, under President's rule, Governor's Advisors shall be appointed out of a panel of names of retired senior personnel with a reputation for honesty, independence and integrity maintained (by the Inter-State Council).

Appointment of Vice-Chancellor of a State University

5.30 Appointment of Vice-Chancellor of a State University by the Governor in his capacity as Chancellor of the University has been in some cases—West Bengal, Andhra Pradesh, etc. a cause of controversy between him and a State Government mostly when a non-Congress party is in power. In these cases, the Governor seems to have claimed that, in his capacity as Chancellor, he is empowered to act in his discretion. Actually the Governor is the Chancellor of a State University only in an ex-officio capacity, that is only by virtue of his being the Head of the State. It follows that, like his other executive functions, he must exercise his function as Chancellor to appoint the Vice-Chancellor also on the advice of the Council of Ministers, unless the State Act providing for the establishment of the University and defining the basic features of its management structure expressly requires him to exercise his discretion in this matter. Even in the latter case, he should try, to the extent possible, to carry the State Government with him. In the prevailing circumstances in the country, the Vice-Chancellor has little chance of running the University successfully and efficiently if he does not enjoy full support and confidence of the State Government. It will do no good to the University if the Chancellor, whether to assert his right to exercise his discretion in the matter, or at the bidding of the ruling party at the Centre, insists on appointing as Vice-Chancellor a person who is a *persona non grata* with the State Government. Exercise of discretionary power must subserve and not subvert, the purposes for which it has been conferred.

The Administrative Issues

6.1 The major administrative issues in Centre-State relations are : (i) the imposition of President's rule in a State; (ii) the All-India Services, (iii) the deployment of Union's armed and para-military forces in the States, (iv) the activities of Central Government agencies with regard to matters in the Concurrent and State Lists; and (v) inter-State coordination. Among the minor issues mentioned may be made of (a) issue of Directions to the States under Articles 256 and 257; and (b) delegation of Union functions to the States.

President's rule in the States

6.2 Under Article 356, if the President, on receipt of a report from the Governor or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may by Proclamation (a) assume all or any functions of the State Government, or powers of the Governor, or of any body or authority in the State other than the State Legislature (b) declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament, and (c) make required provisions for carrying out the objectives of the Proclamation. But the President shall not assume the powers of the High Court or suspend any provision of the Constitution relating to high Courts [Clause (i)]. Every such Proclamation normally requires approval by Parliament within two months of its issue [Clause (3)]. The Proclamation is valid for six months but can be renewed for a further period of six months, that is, in all for a period of one year*. Beyond this period, the Proclamation can be kept operative if (i) a Proclamation of Emergency is in operation and (ii) the Election Commission certifies that such extension of the validity of the proclamation is necessary on account of difficulties in holding general elections to the State Legislative Assembly. But in no case shall such Proclamation remain in force for more than 3 years [Clauses (4) and (5)].

6.3 The States take exception to Article 356 mainly on the following grounds :—

(i) It constitutes a serious discrimination against the States. There is no analogous provision for President's rule at the Centre. If no Union Council of Ministers with majority support in the present Lok Sabha is possible, the solution will be sought in dissolution of this House and a fresh general election to it. The existing Government will continue in a caretaker capacity

*This was extended by the Constitution (Forty-eighth Amendment) Act, 1984 to 2 years in the case of Punjab in respect of the proclamation issued on 6-10-83.

till, following the elections to the Lok Sabha, a new Council of Ministers with majority support in this House assumes Office. Article 74 provides that the President shall exercise his functions in accordance with the advice of the Council of Ministers. The Constitution does not at all visualise any circumstances in which there may be no Council of Ministers at the Centre or that the President may disregard its advice. There is no justification for making a different provision for the States. It is argued that in the case of the States too it should be possible to follow the same democratic process. A caretaker Council of Ministers may carry on the State administration while elections are held to the Legislative Assembly to secure a new Council of Ministers with majority support in that House.

(ii) Article 356 has been more often brazenly used by the ruling party at the Centre to serve its partisan interests than to safeguard national interest in a truly grave situation arising from constitutional breakdown in a State. This is the principal reason why the provision, though conceived by the Constitution makers as a drastic remedy for a really grave situation, has been administered almost as a daily food.

(iii) Whereas the circumstances under which the President may issue a Proclamation of Emergency under Article 352 have been specified namely, "war or external aggression or armed rebellion", Article 356 does not give any indication with regard to the circumstances in which the President may justifiably feel satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution and may proceed to take action under this Article. The undefined scope of this Article makes it liable to abuse by the Union Executive. A blatant instance of this was when in 1977 and again in 1980 Governments of several States were dismissed at one go and their Legislative Assemblies dissolved even though in most cases there was nothing to justify the conclusion that a constitutional breakdown had occurred.

(iv) The principle of natural justice has not been applied to dismissal of State Governments under Article 356(1) as these Governments were not given a reasonable opportunity to show that the conclusion that a situation had arisen in which the Government of the State could not be carried on in accordance with provisions of the Constitution was unwarranted. The right of the people of the State to be governed by their representatives was thus unjustifiably violated.

Remedial Measures

6.4 The above criticism of Articles 356 leads some to the conclusion that Articles 356 should be altogether omitted. There should be no provision for President's rule in the States just as there is none for it at the Centre. It is argued that in a genuine federal structure, the States and the Centre must be treated alike. The Constitution should make a similar provision at the two levels of Government to cope with a threatened or an actual constitutional breakdown.

6.5 Towards evolution of a genuine federal structure, the proposal that Article 356 may be omitted has considerable merit. Such a proposal indeed ought to figure as an important goal in a long-term perspective of constitutional reform. But its immediate implementation will be fraught with great dangers. The country's unity and integrity is not yet fully consolidated and has occasionally to face threats of various sorts.

6.6 These threats have their roots mainly in two basic factors which by their interaction tend to breed widespread alienation and political instability in several States. The threat to the Country's unity and integrity is compounded when the situation is exploited by hostile foreign Governments to pursue their destabilisation aims here.

6.7 The basic factors of instability include, firstly, the growing dominance of the upper class supranational forces over the Union Government and Administration. These forces, comprising the big business and those linked with it, the power-wielders at the centre and a large section of the elite All-India Services and the upper strata of professionals, in their narrow class and selfish interests, are going against the basic urges and aspirations of the Indian people. The Congress(I) increasingly represents this dominant combination.

6.8 These forces are increasingly adopting and brazenly promoting Hindi-Hindu-Hind chauvinism as their main ideological weapon and political plant to further tighten their grip over the country. This poses a threat to the distinct identity and legitimate interests of the non-Hindi nationalities and the religious minorities who are thus roused to stand up to it. The resulting conflict could grow into a serious threat to the unity of the country, and hence to its integrity, even though many millions may for the time being be brain-washed by a modern propaganda blitz to the point of accepting this aggressive chauvinism as the only effective guarantee of the country's unity and integrity. In this connection, it needs to be recalled that Nazi racism, jingoism and aggressiveness led to the ruin and division of Germany and not to its emergence as the metropolis of a world empire, which the millions of goose-stepping dupes of Nazism had been made to believe was the Fatherland's ordained destiny.

6.9 The second basic factor of instability is that no alternative dynamic perspective has yet opened up in India. A nation-wide united front based on a firm commitment to national unity and integrity as well as to the legitimate interest of non-Hindi and non-Hindu minorities, the Scheduled castes and Scheduled tribes and the dis-advantaged classes, castes and groups of all people, including the

Hindi-speaking people has yet to take shape. In some States, parties opposed to Congress(I) have emerged, built up a large following and even formed the State Government. These parties mainly reflect the urges and aspirations of the non-Hindi people which have acquired varying degree of sense of distinct identity. But in the absence of firm acceptance of the other essential commitments required of a dynamic alternative political force, these parties have generally failed to consolidate their political power even at the State level. Sooner or later they are either drawn into an unequal conflict with the Central Government run by Congress (I) or their followers get disillusioned with the party's lacklustre performance. In either case, a period of political instability ensues. This sometimes leads to a situation when a resort to Article 356 by the Centre would be inevitable. Even at the Union level the real test has yet to come as to how the Constitution may cope with a situation when (i) elections to the Lok Sabha fail to throw up a political party or front with a stable majority in the House or (ii) there is a serious and prolonged breakdown of law and order over an extensive part of the country. Perhaps, in such a situation it may become necessary to amend the constitution to provide for imposition of some sort of President's rule for a limited period to cope with these contingencies.

6.10 While it does not seem practicable for the time being to omit Article 356, safeguards such as the following may be provided against its abuse by the Union Executive.

6.11 Article 356 shall not be invoked except when (i) it has been demonstrated on the floor of the Legislative Assembly by failure of this House to approve by a majority of the total membership a motion of confidence in any person that no person with majority support in that House is available to form a Council of Ministers and that fresh elections to this House under a caretaker Government are not feasible in the prevailing circumstances, or (ii) there is a serious and prolonged breakdown of law and order and the State Government obviously lacks the will or capability to restore it within a reasonable period, or (iii) the State Government is undoubtedly engaged in or is conniving at, sabotage of national defence in case of actual or impending war. Article 352 specifies the circumstances in which the President may issue a Proclamation of Emergency, namely a threat to the security of India or any part of it by war or external aggression or armed rebellion. Likewise, towards safeguarding against misuse of Article 356, it may be specified that a situation in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution shall have the meaning that at least one of the situations (i) to (iii) mentioned above in this paragraph exists.

6.12 The invocation of Article 356 it shall be governed by principles of natural justice. In other words, the Chief Minister shall be given a reasonable opportunity to show that neither of the above conditions is met and action under Article 356 is not justifiable.

6.13 When invocation of Article 356 under contemplation, the Inter-State Council shall also be given an opportunity to examine whether or not such a course will be justified. The opinion of the Inter-State Council may not ordinarily be disregarded by the President even though it may not be made binding on him.

6.14 Article 356 shall not be invoked, as has been done several times in the past, to resolve a ministerial crisis in the State ruled by the Party in power at the Centre caused by disputes and dissensions in the State Organisation of the Party or on the plea that it is necessary to do so to deal with the alleged maladministration in a State. Other means have to be found for these purposes consistent with preservation of State autonomy and operation of responsible Government in the States.

6.15 It will be equally unjustified to invoke Article 356(1) on the ground that the ruling party in the State has been defeated in the elections to the Lok Sabha. The elections to the Lok Sabha, particularly when these are held at a different time than that of elections to the State Assembly, might be fought on issues which bear little relevance to the conduct of State affairs. The defeat of the ruling party in a State in the elections to the Lok Sabha therefore might not mean that the electorate has lost their confidence in it even with regard to the matters within he purview of the States. For instance, the Congress(I) won an unprecedented majority in the 1985 general election to Lok Sabha, but showed a much poorer performance in some States, for example in Karnataka, in the Assembly elections which were held a few month later. The following observation of Justice P. N. Bhagwati in the case of State of Rajasthan *Vs.* Union of India* is very valid:

> "....merely because the ruling party in a State suffers defeat in the elections to the Lok Sabha ....by itself can be no ground for saying that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The federal structure under our Constitution clearly postulates that there may be one party in power in the State and anoher at the Centre".

6.16 The dissolution of several State Assemblies by the Janata Government in 1977 was completely unjustified and probably also bad in law as this had been done by a Presidential Proclamation. The dissolution of several Assemblies by the Congress(I) in 1980 was also unjustified in several cases.

6.17 The provision [Article 356(3)] that every proclamation issued under Article 356(1) shall be placed before each House of Parliament and shall be approved by it within two months, if it is not to cease to operate at the expiry of this period, must be honoured in accordance with both the letter and the spirit of this provision. The avoidance, evasion or circumvention of this provision

* AIR 1977 SC 1961.

by such means as the following must be prevented by suitable amendment of clause (3) of the Article :

(a) Dissolution of Legislative Assembely of the State concerned before the expiry of two months : West Bengal (1970), Mysore (1971) and Gujarat (1974);

(b) Refusal to place the Proclamation before Parliament : the Proclamation dissolving several State Assemblies in 1977;

(c) Rescinding the first Proclamation before the expiry of two months and reissue of the same : Orissa (1971; Bihar (1971)*.

6.18 The letter of clause (3), though surely not its spirit, implies that a Proclamation issued under Article 356(1), even if it is not placed before Parliament or is not approved by it, shall cease to operate only at the expiry of two months, but till then it shall operate. This is in fact the view taken by the Supreme Court in the State of Rajasthan *Vs.* the Union of India.**

6.19 In order to ensure that the letter of Article 356(3) corresponds to its spirit, it may be amended to provide for the following :

(1) The State Legislative Assembly shall be prorogued, but shall not be dissolved till such time that the Proclamation issued under Article 356(1) has been approved by both Houses of Parliament.

(2) If the proclamation is not placed before Parliament or is not approved by it, it shall be deemed to be inoperative from the time of issue and any action which, but for the powers flowing from the Proclamation, would have been void, would be deemed to be void from the very time it was taken.

6.20 The view that even within the existing framework of the Constitution the President can rightly insist that he will not take any irreversible action (such as dissolution of the Assembly) unless he is assured of the approval of Parliament within two months is of doubtful validity in view of the clear stipulation under Article 74 that the President, shall, in the exercise of his functions, act in accordance with the advice of the Council of Ministers. Furthermore, there will be no conclusive way to assure the President of the approval by Parliament till it is actually approved by the two Houses. The only way to provide the necessary safeguards in this matter will be to amend clause (3) of Article 356 as suggested above.

6.21 President's rule for an extended period is highly undesirable and will result in an erosion of both democracy and federalism. The existing time limitations on the validity of a Proclamation under Article 356 are reasonable and may be retained unchanged. In an extreme case, when there is a general consensus on the need for further prolongation of President's rule in a particular State beyond the period allowed by clause (4) and (5) of Article 356, a special provision for this could be made in respect of that State by an amendment of the Constitution as was done in the case of Punjab by the Constitution (Fortyeighth Amendment) Act, 1984. It may also be provided that everytime a resolution is moved in the Parliament for approving the continuance in force of a Proclamation under Article 356, the President shall ascertain the opinion of the Inter-State Council afresh and place it before the two Houses.

6.22 Under President's rule, the State Government must be conducted on non-party lines. Some suggestions to this end have been made in the previous chapter.

The All-India Services

6.23 Article 312 empowers the Parliament to create by law one or more All-India Services common to the Union and the States and regulate the recruitment and conditions of service of such Services. This Article declared the Indian Administrative Service and the Indian Police Service which had been created prior to commencement of the Constitution as services deemed to have been created by Parliament under this Article. Under Article 312, the Parliament enacted the All-India Services Act, 1951 which provided for joint control of the Union and State Governments in respect of regulation of the recruitment policies and conditions of service of these services, but vested in the Parliament ultimate authority with regard to all rules framed under the Act. Indian Forest Service is the only All-India Service created since the commencement of the Constitution. Suggestions were made from time to time for creating other All-India Services but all these fall through mainly because of opposition by the State Governments.

6.24 The All-India Services are a unique feature of the Indian Constitution. In no other country, the services recruited by the Federal Government and under the joint control and discipline of the federal and the State Governments exist. In creating these services the framers of the Constitution were heavily influenced by their perception of the immediate problems of politico-administrative management of the country as well as the need for stability. Rehabilitation in the aftermath of Partition, the need for postwar reconstruction and restoration of the economy, building up of administrative support for the nascent institutions for democratic self Government, integration of the princely States and a change-over from a policy of *laissez-faire* to that of a increasing role for Government in economic development and management were some of the tasks which weighed with the contemporary leadership in devising this dispensation.

6.25 Sufficient time has elapsed since then for taking a fresh look at the concept of All-India Services along with other constitutional relations. On the whole, at the State and national level adequate political, administrative and managerial experience has been generated. Political awareness has increased. There is a growing opinion in favour of democratic decentralisation not only

* All these cases have been mentioned by the Sarkaria Commission in Supplementary Questionnaire No. 9.

**Ibid.

from the Federal to the State level but also from the State level to the District and Block levels. This itself will require corresponding modifications at the administrative level.

6.26 It is often argued that in order to sustain national unity and promote integration the device of All-India Services cannot as yet be dispensed with. It needs being appreciated, however, that the unity and integrity of the country must rest on a wider and more durable basis through diffusion of economic prosperity, full employment, the strengthening of elective institutions and promotion of people's participation. Universal will to unity and integrity of the country is a far stronger sanction for the security and integrity of the country than a particular administrative apparatus.

6.27 It follows from the above that the time is now ripe for having separate Union and State Services and that this separation is a feasible proposition. Such a measure would be one of the steps towards giving a greater federal bias to the State structure in India. Ideally, therefore, the All India Services should be wound up, if necessary, in a phased manner. In the transitional period, the scheme of All India Services may be operated in mutual consultation with the State so as to avoid the trend to manage them unilaterally from the Federal level.

Deployment of the Union's Armed and Para-Military Forces in the States

6.28 The Constitution had originally made public order and police a State responsibility exclusively. Over the years this responsibility has been encroached upon by the Union on account of (i) creation and expansion of various police forces of the Union and (ii) insertion of Entry 2A in the Union List and amendment of Entries 1 and 2 of the State List by the Constitution (Forty-second Amendment) Act, 1976. These amendments together with the fact that all key positions in the State police forces are held by the Indian Police Service (IPS) officers have whittled down the responsibility of the State with respect to maintenance of Public order, thereby further eroding the latter's limited autonomy. Some States, particularly those ruled by parties who are in opposition at the Centre, are taking exception to this trend.

6.29 In this area of Centre-State relations, an issue has been raised in recent years with regard to the deployment of the armed and para-military forces of the Union in the States in aid of the civil power. The above mentioned amendments to the Union List and the State List by the Constitution (Forty-second Amendment) Act, 1976 provide an explicit constitutional sanction for such deployment. The question, however, has been raised whether such deployment has to be only at the request or concurrence of the State Government, or the Union might also undertake it *suo moto*. The Administrative Reforms Commission (ARC) has expressed the view that Article 355 empowers the Centre to take this action *suo moto*. Article 355 makes it a duty of the Union to protect States against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. The ARC's view on this issue seems to be of doubtful validity. It may be noted that Entry 2A of List-I provides sanction for deployment of the Union's armed and para-military forces in the States only "in aid of the civil power". This stipulation connotes that such deployment must be at the request or concurrence of the recipient of the aid, namely, the civil power, in this case the State administration. How can something forced and imposed on a person or an authority against its will be considered aid, using the term in its normal meaning? The Constitution nowhere stipulates, whether explicity or implicity, that in this case the word aid is being used in any but its normal meaning. Any interpretation of the word aid which includes within its purview something imposed by force will have very dangerous implications for the third world in the sphere of international relations. In its normal, reasonable sense, aid is not imposition, it necessarily implies voluntary acceptance. *Suo moto* deployment of its forces by the Union could not therefore be reconciled with a reasonable interpretation of the stipulation "in aid of civil power".

6.30 It has been argued in Chapter 3 above that if there is a serious and prolonged breakdown of law and order in a State which obviously calls for deployment of para-military or armed forces of the Union in aid of civil power, but the popularly elected Government of that State for some reasons neither makes a request for, nor gives its concurrence to, such deployment, the President may legitimately take over the Government of the State under Article 356 on the ground that breakdown of law and order makes it impossible for the government of the State to be carried on in accordance with the Constitution. The way would then be clear for deployment of Union's forces in the State in aid of Civil power at the request or concurrence of the Governor's Administration. This course of action will obviate the need for *suo moto* deployment of forces by the Union, which measure is of doubtful validity.

6.31 Article 355 does not in any way invalidate the conclusion regarding the doubtful validity of *suo moto* deployment of its forces by the Union. This Article does not in any way add to the powers and responsibilities of the Union vis-a-vis the States. It confers only such duties on the Union as are in any case implied in other provisions of the Constitution. For instance, "Defence of India and every part thereof" is a responsibility of the Union under Article 246 (Entry 1 of the Union List). Since every State is a part of India, it is certainly implied in this provision that, as stipulated in Article 355, "It shall be the duty of the Union to protect every State against external aggression....". Again the fact that Article 356 empowers the President to take remedial action when "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution" implies as stipulated in Article 355 that "It shall be the duty of the Union.... to ensure that

the Government of every State is carried on in accordance with the provisions of this Constitution". Finally, since serious and prolonged breakdown of public order in a State is generally considered in our view, this should be specifically stipulated in the Constitution—as a valid justification for the conclusion that a situation of Constitutional breakdown has arisen. Article 356 may be taken to imply that it is the responsibility of the Union to take remedial action in case of such a breakdown. Article 355 puts on the Union a similar responsibility and stipulates that "It shall be the duty of the Union to protect every State against .... internal disturbance ....". Compared to "serious and prolonged breakdown of public order", the expression "internal disturbance" is a rather vague expression and is liable to misuse. In this connection it may be mentioned that Article 352 originally provided that the President may proclaim a state of grave emergency when war or external aggression or internal disturbance threatened security of India or any part of it. Following the misuse of this provision by Mrs. Indira Gandhi to proclaim such an emergency in 1975, the Constitution (Forty-fourth Amendment) Act, 1978 substituted in Article 352 the expression "armed rebellion" for "internal disturbance". If Article 355 is to be retained, the expression "internal disturbance" should be substituted by "serious and prolonged breakdown of public order". The powers and responsibilities of the Union vis-a-vis the States will not be any less if Article 355 is omitted. This Article is at best a sort of preamble to Article 356. It confers no powers and responsibilities on the Union other than those already implied in other Articles. If the other Article cannot be shown to provide sanction for *suo moto* deployment of its forces by the Union, it is no use citing Article 355 as a sanction for such deployment.

6.32 Responsibility for public order and police was a major pillor of the status and autonomy originally bestowed by the Constitution on the States. It is necessary to reverse the prevailing persistent trend towards erosion of this responsibility. To this end :

(i) further build up of the Union's para-military forces for the purpose of aiding the civil power in the States may be stopped and, instead, the State police forces should be built up to the requisite strength, morale and efficiency;

(ii) *suo moto* deployment by the Union of its armed and para-military forces in the States in aid of the civil power may be explicitly prohibited in the Constitution;

(iii) the Indian Police Service may be gradually wound up and the police forces of the States must be commanded exclusively by officers belonging to the State Police Service; and

(iv) legislation such as the Disturbed Areas Act must not be extended to any State except at the suggestion or concurrence of the State Government.

Central Government Agencies

6.33 The Central Government has created, since the commencement of the Constitution, a number of agencies whose activities relate to Concurrent and State matters. These agencies have resulted in the Union Government making inroads into the State autonomy. In the interest of orderly and harmonious Centre-State relations, it is necessary that the proper role of these agencies may be rationally defined and their activities may be limited to the assigned role.

6.34 Several factors and considerations have led the Central Government to establish these agencies. Firstly, the predominant view has been that the country cannot rely solely on the market forces for realising its professed goal of economic growth with stability and social justice, and that the unfettered operation of market forces is not in its best interest. In other words, there is need for intervention in the market. The Central Government has been considered the most suitable level of Government to take on this responsibility and to establish institutional arrangement for it so that uniform and consistent interventionist policies may be followed all over the country. This seems to have been the principal consideration for the establishment of agencies such as the Agricultural Prices Commission (now the Agricultural Costs and Prices Commission) the Food Corporation of India, the Director-General of Technical Development, the Monopolies and Restrictive Trade Practices Commission, the Bureau of Industrial Costs and Prices, and the National Savings Organisation. Secondly, with respect to some aspects of employees welfare, where uniform policies and arrangements all over the country, were considered highly desirable, the Central Government took the initiative to set up necessary institutional arrangements. The Employees State Insurance Corporation and the Employees Provident Fund seem to have had their origin in this consideration. Thirdly, with regard to activities and projects which involved inter-State implications, the Central Government set up high level technical agencies such as the Central Water and Power Commission (now the Central Water Commission and the Central Electricity Authority) to undertake the regulatory function.

6.35 Economic and social development being a closely knit process, it is not always possible to precisely demarcate the responsibility for various aspects of it between the Centre and the States. This problem has arisen in delimiting the sphere of responsibility of several of the above agencies. Some of the activities of these agencies are of considerable concern to the States and to some extent even impinge on what ought to be their legitimate sphere of responsibility. Since these agencies have been established with different considerations, it is not possible to suggest a uniform approach to defining their role from the standpoint of rational and harmonious Centre-State relations. Suggestions with regard to some individual agencies have been offered below. In general, towards minimising States' misgivings about a Central Agency set up under an Act of Parliament on a concurrent

subject, the nominees of the Governments of the States mainly concerned with the activities of this agency may be duly represented on it.

Food Corporation of India :

6.36 The Food Corporation of India (FCI) has been conceived primarily as an instrument of efficient and fair food management. Notwithstanding the frequent and generally valid public criticism about widespread corruption, wastage and inefficiency in its operations, the F.C.I. has played an important role in stabilising the food situation, preventing violent fluctuations in foodgrain prices and ensuring a reasonably fair deal to the producers and the consumers. The Corporation now annually procures and distributes huge quantities of foodgrains. The annual procurement is now close to 20 million tonnes, public distribution is of the order of 13-14 million tonnes and stocks at the close of 1985 were 24 million tonnes.

6.37 Punjab which accounts for more than 50% of the total contribution to the Central Pool of foodgrains (Punjab contributed in 1985-86 more than 10 million tonnes of wheat and rice) is vitally concerned that procurement of foodgrains must be efficient with least harassment and exploitation of the growers; that the stocks procured by the State Agencies* are taken over by the F.C.I. within a reasonable time, and that these agencies must be fully compensated for the procurement and storage costs and other incidental expenses incurred by them. Punjab has major grievances against the Government of India and the FCI in these respects.

6.38 The FCI takes long time, , sometimes as much as 2 to 3 years, to takeover the stocks procured by the State Agencies. During this period, inspite of good care, there is some deterioration in the quality of grain through sheer passage of time. At the time of takeover of grain the FCI imposes "quality cuts" on the price paid to the State Agencies. On its own part, the FCI sells all this grain at the prescribed issue price. The "quality cuts" thus become a source of income to the FCI. The State Government has been urging the Government of India that the State procurement Agencies must not be penalised for quality deterioration attributable to sheer passage of time and not to any lapses in storage of grain on their part. To this end, the State Government has suggested that the FCI should take over the stocks within 6 months. If physical takeover of stocks within this period is not possible, the FCI should in this period at least identify the stocks procured for it by the State Agencies. No quality cuts should be applied in respect of any deterioration that occurs, after the identification. This arrangement has not yet been agreed to. This is a clear case of discrimination against Punjab. In U.P. which also now makes a substantial contribution to the Central Pool, the FCI takes over the stocks procured by State Agencies within 48 hours and makes the payment for these immediately.

*The Punjab State Civil Supplies Corporation (PUNSUP), the Punjab State Cooperative Supply and Marketing Federation (MARKFED) and the State Food and Supplies Department.

6.39 The State Agencies are not compensated fully for the procurements and storage costs and other incidental expenses incurred by them. The State Government has urged that these Agencies may be allowed the same costs as actually incurred by the FCI in similar operations. The State Agencies have been giving detailed item-wise breakdown of these costs but the FCI persistently evades giving a comparable breakdown of its costs. This reinforces the State Government's suspicion that the FCI's own costs are much higher and that the State Agencies are being denied equal treatment with respect to the reimbursement of these costs. The State Government demands nothing but parity of treatment between the two. Besides remedying unfair treatment of State Agencies, equal treatment will encourage competition between the FCI and the State Agencies for economy in these costs.

5.40 A reorganisation of food management operations is now overdue for greater efficiency and for associating the States with these. The reorganisation may be undertaken on the following lines.

6.41 The FCI may be made the apex organisation of the food management structure. As such it may be entrusted with the following functions :

(i) procurement of surplus food stock from the State agencies which may be entrusted with procurement from growers/traders/millers;

(ii) supply of food to State agencies to enable them to meet the requirements of the public distribution system;

(iii) import and export of food;

(iv) maintenance and operation of the buffer stocks of food;

(v) conclusion of advance contracts with the State agencies for procurement and supply of food; and

(vi) undertaking consultations with the State agencies for greater efficiency in food management operations.

6.42 Procurement and supply of food within a State may be the exclusive responsibility of State agencies. They shall sell their surplus food stocks to the FCI at the prescribed procurement price for purchases from State agencies and meet their additional or allocated food requirements by purchase from the FCI at the prescribed issue price for these agencies. The FCI must take over the surplus stocks from the State Agencies within a reasonable period and pay for these promptly. No unreasonable quality cuts must be applied, for instance, with respect to deterioration which is solely attributable to sheer passage of time. The FCI must allow parity of treatment between the State agencies and itself with respect to procurement, storage and incidental costs admissible. The reasonable credit requirements of State agencies must be met by the banking system. The Central Government may enact legislation to provide the legal framework for reorganisation of the food management institutional structure on the above lines.

6.43 The Union Government may set up, under the Chairmanship of Minister of Food and Civil Supplies, an Advisory Committee on Food Management with concerned States' Ministers as its members. The Committee may periodically review the food management policies and institutions and suggest improvements.

The Agricultural Costs and Prices Commission :

6.44 An assured minimum price for farm produce serves as a powerful incentive for increased agricultural production. In India, besides the new farm technology based on fertiliser responsive high-yielding varieties, this incentive has been an important factor for the spectacular increase in wheat and rice production since the mid-1960s. India now (1986) operates three variants of the concept of assured minimum price for farm produce. There is the procurement price for wheat, paddy and coarse grains, the minimum support price for barley, gram, arhar, moong, urad, mustard, groundnut, sunflower seed, soyabean and cotton, and the statutory minimum price for sugarcane and jute.

6.45 The assured minimum price must be fixed keeping in view the cost of cultivation and the need for a fair balance between the interests of the grower and the consumer. Since there is an inherent conflict of interest at least in a narrow and short term sense between the surplus and the deficit States with regard to the level of the assured minimum price for different commodities, it is rational to entrust the price fixation function to the Union Government. The Agricultural Price Commission (now the Agricultural Costs and Prices Commission) was set up by the Union Government in 1965 to render expert advice in the discharge of this function. Its terms of reference were expanded in 1980 to give it an enhanced role in agricultural price policy. Price control, it may be mentioned, is a concurrent matter. It may be desirable to associate the representatives of States with the Commission, at least in an advisory capacity. Advisory panels may be set up for each commodity or group of commodities which may include in each case the representatives of the major producing and consuming States.

Bureau of Industrial Costs and Prices :

6.46 While prices of most industrial products are left to be determined by the market forces of supply and demand, prices of some important industrial products are fixed by the Union Government. The Bureau of Industrial Costs and Prices was created to render expert advice to the Government in the discharge of this function. The Bureau also took over what remained of the erstwhile Tariff Commission. As long as the country retains a system of Government administered prices for some industrial products, there will be need for an expert body like the Bureau to study industrial costs and to work out fair prices for these products for the guidance of the Government.

6.47 The price fixation function for industrial products has necessarily to be performed by the Union Government. It is of concern not so much to the States as to the principal producers and consumers of these products. If the production or consumption of some of these products is largely concentrated in some States, the representatives of these States may be associated with the Bureau by forming consultative panels for different products.

Monopolies and Restrictive Trade Practices Commission :

6.48 The Monopolies and Restrictive Trade Practices Commission was conceived as an instrument to curb the concentration of economic power and its abuse in the form of unfair trade practices. It was concerned with the regulation of the big business and hardly involved any questions of Centre-State relations.

6.49 The Commission was foredoomed due to ineffective modern industrial development which necessarily results in emergence and growth of a predominantly oligopolist industrial structure. India has been no exception to this trend. Curbs on monopolies and oligopolies generally would be either ineffective or an impediment to industrial growth. The MRTP Commission operations have been marked by both these characteristics. Now that a policy of progressive liberalisation of the economy has been adopted, the role of the MRTP Commission is very much on the decline. The Commission must not be allowed to become an impediment to industrial growth. In particular, the large houses which command the requisite resources and enterprise should be allowed to take up projects in areas classified as industrially backward whether by the Centre or the States.

Director General of Technical Development :

6.50 This agency was conceived primarily as a technical organisation to advise the Central Government (Ministry of Industry) with respect to industrial licensing and protection and promotion of Indian industry and indigenous technology. The working of this agency has been the subject of widespread public criticism on grounds of inefficiency and corruption. With liberalisation of industrial licensing and imports, particularly of capital goods and industrial inputs, and reduced emphasis on the indigenous angle of which the DGTD was the custodian, this organisation is losing its former importance. It has been suggested in Chapter 3 in the comments on Entry 52 of List I, that to prevent the abuse of this Entry by the Central Government, its scope should be limited to specified key, basic and strategic industries. If this is accepted, many industries will go out of the purview of the controls instituted under the Industries (Development and Regulation) Act, 1952. There will then be a further decline, in the DGTD's role and the capacity of its personnel to harass and exploit the industrialists. This organisation primarily concerns the manufactures. Their representatives as well as also of the States should be associated with it in a consultative capacity.

Employees' Provident Fund Organisation :

6.51 The Employees' Provident Fund has been set up under the Employees' Provident Fund Act, 1961 for the benefit of the non-Government industrial and commercial employees. The employees

and employers contribute to the Fund at the stipulated rates. The fund also earns income on its investments. Now that the number of subscribers has increased to around 18 million and the Fund's earnings on its investment are a large and growing amount, it has become a principal source of development finance. The investment policies of the Fund are at present determined solely by the Union Government. Under the present investment policies, the greater part of the Fund's investible resources flow to the Central Government by way of market borrowings, special deposits (around Rs. 1450 crores* in 1985-86) and small savings. In order to tap this resource to an even greater extent, the Central Government has permitted the EPF, with effect from 1986-87, to invest 85% of its annual net accretion of funds in Special Deposits as against 30% previously. Besides, the amount received by the Fund on maturity of Special Deposits can be fully reinvested in these Deposits.

6.52 Now that the EPF has a vast coverage in terms of activities and subscribers, and has become a major and rapidly growing source of long-term development finance, there is a strong case for transferring the responsibility for running the Fund to the States. Under an enabling legislation to be undertaken by the Union Government, each State may set up an independent EPF to be managed by a State E.P.F. Organisation. The Union Government may have its own EPF and the organisation to manage it to cover the subscribers in the Union Territories as well as in such States as may be unable or unwilling to set up an independent EPF and prefer to entrust this responsibility to the Union Government. There may be set up under the Union Finance Ministry a coordination committee of all the EPF organisations to deliberate on policy issues and to evolve, as far as possible, a commmon policy approach. Decentralisation of E.P.F. in the above manner will provide the States with an important new instrument for raising finance for this development programmes.

Employees' State Insurance Corporation :

6.53 The Employees' State Insurance Corporation provides usual social security benefits to insured non-Government industrial and commercial employees. An eligible worker makes through his employer, a compulsory weekly contribution to the Corporation related to his wages. The employer's contribution to the Corporation is also related to the worker's wages. The Corporation's income goes to finance the various benefits. This corporation may also be reorganised on the same lines as suggested above for the E.P.F. Each State may have its own Employees' State Insurance Corporation. The Corporation under the Union Government may operate in the Union Territories and such States as may entrust this function to it.

National Savings Organisation :

6.54 The Small Savings have become, particularly since the introduction of the 6-Year National Savings Certificates VI and VII Issues, a major and rapidly growing source of funds for the Central and State Plans. The net collections (collections less withdrawal and repayments) in 1985-86 have been around Rs. 4210 crores. Two-thirds of the net collection in a State is given back to it as a long-term loan from the Centre. Besides, a State which achieves a higher percentage of net collections to gross collection than the All India average is given an additional loan as an incentive. In 1986-87, the States have been budgeted to receive a total of Rs. 3200 crores while the balance Rs. 2100 crores is to be retained by the Centre. The National Savings Organisation has been set up to promote Small Savings collections. It is a Central Government Organisation headed by the National Savings Commissioner with head office at Nagpur. It has set up its Regional Offices in all the States and Union Territories. In Punjab, under the Regional Director who is located at Chandigarh, there are 5 Assistant Regional Directors and 15 District Savings Officers.

6.55 The present arrangements with respect to Small Savings may continue with the following modifications. While the National Savings Organisation may be concerned with policy issues and the review of existing and introduction of new Savings Schemes and instruments, autonomous organisations in the States may bear the full responsibility for promotion of Small Savings and may be paid a small commission related to net collections for these services. The State Organisations will also provide the National Savings Organisation the feedback on different schemes and instruments.

6.56 The States' share in net collections may be raised to 80% for higher income and 95% for lower income States. The repayment period on Small Savings loans to States may be increased to 50 years from the present 25 years with an initial moratorium of 10 years as against the present 5 years. The Small Savings loans to States, it may be noted, are related to net collections. This means that out of the gross collections the Centre first appropriates the full amount required to meet the withdrawals and repayments on small savings. It is only out of the balance that a proportion is passed on to the States as loan. Since the repayments to subscribers have already been taken care of out of gross collections, States' repayments to the Centre on small savings loans are wholly available to the Centre for its own use. In other words, these repayments constitute a resource transfer from the States to the Centre. The States, therefore, demand that to put an end to this perverse resource transfer, the loans to States may be granted in perpetuity.† The Seventh Finance Commission had in fact recommended this.** Though the Central Government did not accept this recommendation, there is a considerable substance in the States' demand. The suggested increase in the repayment and the initial moratorium period would be a step in the direction of fulfilment of this demand while avoiding too sharp an immediate break with the present practice.

*This amount also includes the Special Deposits of other recognised non-government provided, superannuation and gratuity funds.

†Report of the Eighth Finance Commission, 1984, Paragraph 14.27, p. 102.

***Ibid*, Paragraph 14.25.

Central Water Commission and Central Electricity Authority :

6.57 The Central Water Commission (CWC) and the Central Electricity Authority (CEA), which are successor organisations to the erstwhile Central Water and Power Commission, are statutory bodies created by the Centre. Over the years these bodies have been dealing with too many matters of minor detail and even very small projects have had to be submitted to them for clearance. At present all irrigation and multi-purpose schemes costing more than Rs. 5 crores are required to be technically cleared by the Central Water-Commission and the Planning Commission. In the case of power projects, clearance of the Central Electricity Authority is required for all generation and transmission projects, costing more than Rs. 5 crores. These are obviously too low limits, particularly in the case of power. In many States, the engineering and professional personnel concerned with irrigation and power development have by now acquired the necessary competence and experience for preparation, evaluation, execution and appraisal of projects. In such cases, scrutiny of proposals, projects and designs by the Central organisations causes avoidable irritation, delay and cost escalation. Thus instead of being an aid to efficient water and power development they become a considerable roadblock in the way of such development.

6.58 The technical and regulatory role of these organisations must now be limited to the Inter-State projects or those with Inter-State implications. With regard to other projects which are above a prescribed size in term of investment involved or the physical potential to be created, they may have only an advisory or a consultancy role. This limit may be set at a minimum of Rs. 20 crores for irrigation and multi-purpose projects, Rs. 25 crores for transmission projects and Rs. 100 crores for generation projects. At the same time a time limit must be set in each case for the Central Agency concerned to complete the scrutiny. State projects below the prescribed minimum size may be altogether outside their purview. Of course nothing would bar a State consulting CWC/CEA of its free will in the case of any project. There must be a time limit for these Agencies to complete examination of the projects which come within their purview.

Bhakra Beas Management Board

6.59 (i) The Centre has been extending jurisdiction over State subjects by creating certain organisations like Bhakra Beas Management Board and thus appropriating to itself vast and unfettered powers. A case in point is the provision regarding the Bhakra Beas Management Board in Part-VIII of the Punjab Reorganisation Act, 1966. These presumably get their sanction from Entry-56, List-I of the Constitution. In this section 79 (6) states that the Bhakra Management Board shall be under the control of the Central Government and shall comply with such direction as may from time to time, be given to it by that Government. This vests the Union Government with unfettered power over the Board which practically controls most of the Punjab Water Resources and a large proportion of its power resources.

(ii) The main Central Act which affects the irrigation supplies in Punjab is the Punjab Reorganisation Act, 1966. Under Section 78 and 79 of the Act, the entire assets of the Bhakra Nangal Project have been transferred to the Bhakra Beas Management Board which is constituted by the Central Government and also controlled by it. Under section 80 of the Act, the assets of the Beas Project are also transferred to the control of the Central Government, i.e., Beas Construction Board to be subsequently transferred to the Bhakra Beas Management Board. Both these projects were originally undertaken by an agreement between erstwhile Punjab and Rajasthan and were being executed by the erstwhile Punjab State. The imposition of Central control over the assets of these projects is an unnecessary intrusion into the rights and responsibilities of the Punjab State. The continuance of the Bhakra Beas Management Board is not necessary. The benefits of water and power are determined under the Punjab Reorganisation Act in accordance with the purposes of the project though there have been diputes about the correct determination of these rights by the Centre, the regulation of supplies of water and power in accordance with the decision of the Government of India taken from time to time or in accordance with the agreements, arrived at between the parties, have continued to be delivered to the partner States in the past and can be continued in future without the need of Bhakra Beas Management Board. Even before the Reorganisation, these benefits were being delivered by Punjab to Rajasthan and the reorganisation of the State in 1966 has only made the addition of one more partner namely Haryana and two territories as beneficiaries namely territory of Chandigarh and transferred territory of Himachal Pradesh. It is, therefore, not at all necessary to take away the rights and responsibilities of the State of Punjab by the Central Government under the pretext of reorganisation. The constitution of Bhakra Beas Management Board and Beas Construction Board are only infringement of the functions and responsibilities which are to be discharged by the State of Punjab. These Boards should be dissolved and the position as it was prior to 1966 needs to be restored in respect of control over the Bhakra and Beas Projects. To this extent sections 78, 79 and 80 of the Punjab Reorganisation Act, 1966 need to be amended. Similarly, section 79(1) of the Punjab Reorganisation Act which deals with the control over the Headworks at Ropar, Harika and Ferozepur and stipulates that this control should be transferred to Bhakra Beas Management Board is a serious infringement of the Punjab State's rights to administer the canals and regulators within its territories. The control over the Headworks has been with Punjab and should continue to be with Punjab. These Headworks do not find any mention in the definition of Bhakra Nangal Project as described in section 78(4)(b) of the Punjab Reorganisation Act. Again under section 79(6), the Government of India have assumed the control of Bhakra Beas Management Board which is bound to comply with such directions as may be issued by them from time to time. This provision has made the functioning of the constitutional provision of constitution regarding control and regulation of water for irrigation by the States totally

ineffective. There have been instances when Bhakra Beas Management Board on unjustified and arbitrary directions (sometimes verbal) release extra quantities of water for power generation to meet the shortage of power even outside the areas of the partner State i.e. Delhi or elsewhere, to the disadvantage of partner States.

University Grants Commission :

6.60 Over the years, the University Grants Commission (UGC) has been exercising an ever increasing control over the working of Universities and colleges in the States. This was so even before 1976 when Education was not yet a Concurrent subject. The State Governments have virtually lost any direct influence on determination and implementation of higher education policies. The States strongly resent this. This highly centralised direction of higher education policies is not in the interests of a vast country like India that shows all manner of diversities among different States and regions.

6.61 Some of the points of criticism against the UGC working are given below :

(i) Most of the funds of the UGC have gone to the Central universities. The State universities have been getting very limited funds compared to their needs. The flow of UGC funds to colleges, particularly to those located in the rural areas and catering to weaker sections, has been very meagre.

(ii) The UGC criteria for grants are inelastic and do not take into account the specific needs of States, universities and colleges.

(iii) The UGC finances new posts only for the duration of the particular Plan period. After the completion of this period, the posts become the liability of the State Government. The State thus soon have to bear the additional financial burden without having any say in determining the policies underlying the creation of these posts.

(iv) The UGC in determining and implementing its policies does not take into account the specific circumstances of different States. Its decisions, therefore, often create considerable difficulties for individual States. For instance, its decision in 1985 that henceforth the universities must grant the first degree only after 15 years of education has created a very difficult situation for Punjab and some other States which are only now (1986) introducing the 10+2 pattern of school education. Decisions taken without taking into account the views and peculiar circumstances of State often result in poor or even improper implementation.

(v) The frequent new interpretations by the UGC of the prescribed qualifications for university and college teachers have created unnecessary complications for academic institutions concerned and the State Governments.

6.62 It has been suggested in Chapter 3 that education should be made, as originally, a State subject. Any educational bodies set up by the Centre should be, as far as States are concerned, only a forum for exchange of views and experience towards arriving at common educational policies to the extent possible. These bodies must have no regulatory role with respect to educational institutions in the States, nor otherwise be in a position to influence their working in a manner as to thwart the policies adopted by the different States.

Inter-State Coordination :

6.63 Disputes arise between States particularly those sharing a common border. There should be an institutional arrangement for resolving these disputes. There may also be subjects in which several or all States may have common interest and it may be very desirable to evolve a common approach to this subjects. This will be facilitated if there exists a common institutional arrangement for the study of such subjects and for coordinating State Policies and actions on these. Article 263 provides for the establishment of such an arrangement. It empowers the President to appoint, whenever necessary in public interest, an inter-State Council to serve as a forum for consultation and coordination among the States. The Council has not yet been set up.

6.64 The State's Reorganisation Act, 1966 provided for the establishment of Zonal Councils with the object of providing an institutional mechanism for collectively pursuing States interests. In the years immmediately following their establishment, the Zonal Councils met regularly and did some useful work. But for the last many years there has been a visible loss of interest in these councils. Their meetings have been few and far between and they have played an insignificant role in studying and resolving inter-State disputes and coordinating State Policies and actions.

6.65 There is an urgent need for the establishment for the Inter-State Council as functioning institutional mechanism for inter-State and Centre-State coordination. The Council may also act as a watch dog on States' interest vis-a-vis the Centre. The Council may comprise the Prime Minister (Chairman), the Union Home and Finance Ministers and all the Chief Ministers. This makes a total of 25 members. The decisions of the Council may require approval by the Prime Minister and at least two-thirds of the other members, i.e., 17 positive votes in all including that of the Prime Minister. The Council may meet regularly, at least once each quarter. But provision may be made for summoning emergency meetings of the Council to take up urgent questions of national importance. The Council may have a permanent Secretariat. It may set up standing and ad-hoc committees.

6.66 In order to ensure due cooperation between the Zonal level and the All-India Inter-State coordination machinery, the Zonal Councils may be replaced by Zonal Committees of the Inter State Council. The Membership of Zonal Committee may include the Union Home Minister (Chairman) and the Chief Ministers of States included in the Zone. The decisions of the Zonal Committee may

require unanimity. The Zonal offices of the Secretariat of the Inter-State Council may service the Zonal Committees.

6.67 The decisions of the Inter-State Council and of its Zonal Standing or *ad hoc* Committees may have the force of recommendations and not of binding directives. The Council must serve primarily as a coordinator and a conciliator and not as an arbitrator. Its strength will be primarily in the popular support which its decisions may generate and win. The advice of Inter-State Council shall be communicated to the President through the Union Council of Ministers and not directly.

Issue of Directions to the States:

6.68 Under several Articles of the Constitution, the Union Executive has been empowered to give directions to one or more States:

(i) Under Article 256 such directions may be given as are considered necessary to ensure compliance with the laws made by Parliament and any existing laws applicable to that State.

(ii) Under Article 257(1) such directions may require a State not to impede or prejudice the exercise of the executive power of the Union. Under Article 257, directions may also be given to a State with regard to (i) construction and maintenance of means of communication declared to be of national or military importance [Clause (2)], and (ii) measures to be taken for the protection of railways within the State [Clause (3)].

(iii) Under Article 339, directions may be given to a State as to the drawing up an execution of schemes specified as essential for the welfare of scheduled tribes.

(iv) Under Article 350(A), directions may be issued to a State for providing facilities for instruction in the mother tongue at the primary stage to children belonging to linguistic minority groups.

6.69 The penalty for the failure of a State to comply with or give effect to, any directions given in the exercise of the executive power of the Union is laid down in Article 365. Under this Article, in case of such failure, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. This will clear the way for action under Article 356.

6.70 The power of the Union to issue directions to the States under Articles 256, 257, 339 and 350(A) is an avoidable irritant. There is a strong case for removing this irritant on the following grounds :—

(1) States are bound to comply with laws made by Parliament and any existing laws applicable to that State. If there are any doubts about the Constitutional validity of any such law, the matter can be taken to the courts. Definance of valid laws by the State will be just impermissible. It will make the State Government liable to dismissal under Article 356 on the ground of breakdown of public order. Likewise, deliberated actions of the State Government to impede or prejudice the exercise of executive power by the Union shall attract on the same ground action against it under Article 356.

(2) It is difficult to understand why normally a State Government may be unwilling to do the needful with regard to construction and maintenance of means of communication declared to be of national or military importance or protection of railways when under Article 257(4) provision has been made for reimbursement by the Union to the State of the extra cost involved. If a State Government refuses to do the needful in these respects with a view to disrupting national security and national defence, it makes it liable to dismissal under Article 356.

(3) The underlying assumption for the provisions made under Articles 339 and 350(A) is that the Union would be more sagacious than the States about the welfare of the Scheduled Tribes and a fair deal to the linguistic minorities. Actual experience does not substantiate this assumption. The Union has hardly made any use of its power under these provisions for the benefit of the tribes and the minorities. Moreover, it is time that the Union stops treating the States as probationers in responsible Government. The States should be trusted to learn from their own experience that both morality and political considerations require that the due care be taken of disadvantaged sections of their populations.

(4) Article 365 add nothing to the powers available to the Union under Article 356 to proceed against the errant States. That is the reason why Article 365 has hardly ever been invoked while Article 356 has been used and abused much too often.

6.71 Amendment of the Constitution to omit all provisions that empower the Union to issue directions to the States will be a positive step, even if a very nominal one, towards restoring a more even balance between the Union and the States.

Financial Dependence of the States on the Centre

7.1 The financial relations are today the least satisfactory aspects of the Centre-State relations. These relations grievously violate the basis principle of federal finance that each level of government must be substantially, if not wholly, self-reliant with regard to financial resources required for due discharge of its responsibilities under the Constitution. Inordinate financial dependence of one level of Government on the other inevitably erodes over time the authority and role of the former, eventually bringing about a basis change in the state structure. Indeed, this process has been very much under way

in India for the last thirtyfive years, more so in recent years. The States have become heavily dependent upon resource transfers from the Centre for financing their revenue and capital expenditure. As a result there has been a marked erosion of States' authority, responsibility and freedom of action with regard to the subjects originally assigned to them by the Constitution. The State's role in the Indian state system as envisaged in the Constitution has been increasingly undermined. India is visibly moving further away from the federal concept of state structure. The dimensions of States' finanacial dependence on the Centre have been brought out below.

7.2 The States depend on resource transfers from the Centre for financing a substantial proportion of their revenue and capital expenditure. This dependence is altogether overwhelming in the latter case. The resource transfers from the Centre are partly by way of Devolution in accordence with the recommendations of the Finance Commission and partly as discretionary grants and loans. Central Assistance for State Plans belongs to the latter category. The States' financial dependence on the Centre, overall as well as separately with respect to the financing of their revenue and capital expenditure, is brought out in this chapter.

States' Overall Financial Dependence :

7.3 The States' overall financial dependence on the Centre in recent years has been brought out in Table 7.1.

7.4. Table 7.1 shows that resource transfers from the Centre, including both Devolution and discretionary transfers, now finance over 45% of the States' overall expenditure and this percentage has been rising in recent years. States' own receipts finance a little over 50% of the total expenditure. The balance expenditure, a sizeable proportion, is deficit financed. In the past even the accumulated deficit has had to be financed to a large extent initially by the Centre by periodically granting medium-term loans to the States to clear their unauthorised overdrafts from the R.B.I. The Centre extended such loans in 1972-73 (Rs. 421 crore), 1978-79 (Rs. 555 crore), 1982-83 (Rs. 1743 crore), 1983-84 (Rs. 400 crore) and 1985-86 (Rs. 1628 crore). The resource transfers from the Centre to the States on Capital Account shown in Table 6·1 exclude the loans for clearance of overdrafts. If the Centre, as it is doing at present, strictly adheres to its scheme for the elimination of States' unauthorised overdrafts introduced in 1985-86, there would be no more Central loans to States to enable them to clear the overdrafts from the R.B.I. This will effectively choke off the main source of funds for financing the States' overall deficit. Unless the States make up for this by augmenting their own receipts, they will have to either further restrain their expenditure or depend even more heavily on resource transfers from the Centre. Even as it is the States' financial dependence on the Centre has reached unacceptable proportions with far reaching consequences for the country's state structure and the body politic.

TABLE 7.1

States' Overall Financial Dependence on the Centre

	1983-84 (Accts.)		1984-85 (R.E.)		1985-86 (B.E.)	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
	1	2	3	4	5	6
A. Expenditure	31157.43	100.0	36919.87	100.0	39920.56	100.0
1. On Revenue Account	23803.29	76.4	28585.68	77.4	31625.35	79.2
2. On Capital Account	7354.14	23.6	8334.19	22.6	8295.21	20.8
B. Financing of Expenditure	31157.43	100.0	36919.87	100.0	39928 56	100.0
1. State own Receipts	17023.28	54.6	18508 71	50.1	20668.19	51.8
(1) On Revenue Account	14913.24	47.8	16956.42	45.9	18885.36	47.3
(2) On Capital Account, ne'	2109.94	6.8	1552 29	4.2	1728.83	5.4
2. Resource Transfers from the Centre	13573.26	43.6	16451.72	44.6	18308.76	45.8
(1) On Revenue Account	9100.48	29.2	10718.10	29.0	12470.64	31.2
(2) On Capital Account	4472.78	14.4	5733 62	15.6	5838.12	14.6
(3) Deficit financed by :	560.89	1.8	1959.44	5.3	943.61	2.4
(i) Drawing down of cash balances	112.09	0.4	1898.06	5.2	1070.54	2.7
(ii) Withdrawals from cash balances Investment Account net	211.37	0.6	13.91	..	1.86	
(iii) Increase in ways and means abvances and overdrafts from the R.B.I. net	237.43	0.8	47.47	0.1	(—)128.79	(—).3

SOURCE : Compiled from data available in "Finances of State Governments during 1985-86", *R.B.I. Bulletin* November 9815 pp. 790-963

Dependence for Financing Revenue Expenditure :

7.5 With regard to financing of States revenue expenditure, the dependence on resource transfers from the Centre is now closed to 40 per cent. This brought out in Table 7.2

TABLE 7.2

Financing of States' Revenue Expenditure

	1983-84 (Acctts.)		1984-85 (R.E.)		1985-86 (B.E.)	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
	1	2	3	4	5	6
A. Revenue Expenditure	23803.29	100.0	28585.68	100.0	31625.35	100.0
1. Development	16941.24	78.5	20067.58	77.01	21495.07	78.50
2. Non-Development	6872.05	21.5	8518.1	22.99	10130.28	21.50
B. Financing of Revenue Expenditure	23803.29	100.0	25885.68	100.0	31625.35	100.0
1. States' own Revenue Receipts	41913.34	62.7	16956.42	59.3	18885.38	59.7
(1) Tax Revenue	10753.11	45.2	12239.07	42.8	13787.76	43.6
(2) Non-Tax Revenue	4160.23	17.5	4517.35	16.5	5097.60	16.1
2. Resource Transfers from the Centre	9100.48	38.2	10718.10	37.5	12470.64	39.4
(1) Share of taxes	5007.82	21.0	5737.98	20.1	6551.73	20.7
(2) Grants	4092.66	17.2	4980.12	17.4	5918.91	18.7
(i) Non-Plan	756.83	3.2	854.61	3.0	1227.96	3.9
(a) Devolution	*	*	*	*	*	*
(b) Others	756.83	3.2	854.61	3.0	1227.96	3.9
(ii) State Plan Schemes	1848.35	7.8	1823.70	6.4	2118.08	6.7
(iii) Central and Centrally Sponsored Plan Schemes.	1487.48	6.2	2301.81	8.0	2572.87	8.1
3. Deficit	(—)210.53	(—) .9	911.16	3.2	269.35	0.9

SOURCE—*Ibid.*

*Included in "Others", i.e. (b).

7.6. Table 7·2 indicates that States' own revenue receipts financed only 62·7%, 59·3% and 59·7% of their revenue expenditure in 1983-84, 1984-85 (R. E.) and 1985-86 (B.E.), respectively. The resource transfers from the Centre financed 38·2%, 37.5% and 39·4% of this expenditure in the corresponding three years. States' share of Central Taxes financed 21·0%, 20·1% and 20·7% of this expenditure. The balance 17·2%, 17·4% and 18·7% of the expenditure in the three years respectively was financed by grants from the Centre.

7.7. The R.B.I. study does not give the amount of the Devolution grants separately. The full contribution of Devolution of financing of States' revenue expenditure cannot, therefore, be worked out from this study. The breakdown between Devolution and the discretionary transfer to the State is, however, available in the Government of India's Budget documents. This breakdown is given below :

TABLE 7.3

Devolution and Discretionary Transfers from the centre to the states

	1984-85 (R. E.)		1985-86 (B.E.)		1985-86 (R.E.)		1986-87 (B.E.)	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
1. Devolution	6318.35	58.2	7941.09	61.0	8569.13	59.7	9432.83	61.3
(1) Share of taxes	5776.92	53.2	6726.39	51.7	7490.26	52.2	8260.10	53.7
(2) Grants	541.43	5.0	1214.70	9.3	1078.87	7.5	1172.13	7.6
2. Discretionary Grants	4538.16	41.8	5086.46	39.0	5784.52	40.3	5965.16	38.7
(1) Non-Plan	425.81	4.2	348.13	2.6	580.30	4.0	376.31	2.4
(2) State Plan Scheme	1831.51	16.9	2357.66	18.1	2537.39	17.7	2556.06	16.6
(3) Central and Centrally Sponsored Plan Schemes	2231.79	20.5	2355.15	18.1	2645.51	18.4	2997.44	19.5
(4) N. E. Council Plan Scheme	22.05	0.2	25.52	0.2	21.32	0.2	35.36	0.2
3. Total Transfers	10856.51	100.0	13027.55	100.0	14353.65	100.0	15397.99	100.0

7.8 The resource transfers to States shown in the Central Budget documents are, as may be expected, some what different from those worked out from the State Budgets but this discrepancy is not of an order as to significantly modify the broad conclusions. Table 7.3 indicates that Devolution accounts for about 60 per cent of the total transfers and the balance of around 40 per cent consists of discretionary grants including the grant portion of the Central Assistance for State Plans. Table 7.2 above had shown that in recent years resource transfers from the Centre had financed around 40% of the total revenue expenditure of the States. Breaking this percentage into 60:40 ratio, the contribution of Devolution and discretionary transfers to financing of States' revenue expenditure may be estimated at 24% and 16% respectively.

7.9 The above is the average picture for the totality of States. The position varies with individual States. The data on Punjab are given in Table 7.4.

7.10 The contribution of Devolution transfers (that is, share of Central taxes and Devolution grants) to financing of Punjab's revenue expenditure has been as follows : 1984-85, 13.0%, 1985-86 (B.E.), 10.4%, 1985-86 (R.E.), 10.9%, and 1986-87 (B.E.), 11.7%. This is far below the estimated national averge of around 24%. The contribution of discretionary transfers has been : 1984-85, 8.2%, 1985-86 (B.E.), 16.0%, 1985-86 (R.E.), 17.7% and 1986-87, 11.3%. There were some exceptional discretionary transfers in 1985-86 on both Plan and Non-Plan accounts which inflated their contribution to financing of revenue expenditure. The 1986-87 Budget Estimates (11.3%) give a more normal picture. The contribution of normal discretionary transfers might be estimated as of the order of 11% which is substantially below the estimated national average of 16%. Taking together both devolution and discretionary transfers, the normal resource transfer from the Centre may be estimated to be financing around 23% of Punjab revenue expenditure as against the national average of around 40 per cent.

TABLE 7.4

Financing of State Revenue Expenditure—Punjab

	1984-85 (Accounts)		1985-86 (Budget Estimates)		1985-86 (Revised Estimates)		1986-87 (Budget Estimates)	
	Rs. Crores	Per cent	Rs. Crores	Per cent	Rs. Crores	Per cent	Rs. Crores	Per cent
A. Revenue Expenditure	941.34	100.0	1096.72	100.0	1183.92	100·0	1229.70	100.0
1. Development[1]	615.17	65.4	707.84	64.5	786.99	66.5	768.74	62.5
2. Non-Development	326.17	34.6	388.88	35.5	396.93	33.5	460.96	37.5
B. Financing of Revenue Expenditure	941.34	100.0	1096.72	100.0	1183.92	100.0	1229.70	100.0
1. State's own Revenue receipts	731.90	77.3	869.12	79.2	831·39	70.2	996.22	81.0
(1) Tax Revenue	566.51	60.2	671.51	61.2	646.50	54.6	788.03	64.1
(2) Non-Tax Revenue	165.39	17.6	197.61	18.0	184.89	15.6	208.19	16.9
2. Resources Transfer from the Centre	200.08	21.2	289.28	26.4	338.19	28.6	283.12	23.0
(1) Share of Taxes	121.62	12.9	107.16	9.8	121.89	10.3	133.49	10.8
(2) Grants	78.46	8.3	182.12	16.6	216.30	18.3	149.63	12.2
(i) Non-Plan	4.76	0.5	52.33	4.8	73.64	6.3	52.88	4.3
(a) Devolution	0.88	0.1	6.69	0.6	6.69	0.7	10.69	0.9
(b) Others	3.88	0.4	45.64	4.2	66.95	5.6	42.10	3.4
(ii) State Plan Schemes	24.49	2.6	58.28	5.3	77.29	6.5	15.47	1.3
(iii) Central and Centrally Sponsored Plan	49.21	5.2	71.51	6.5	65.37	5.5	81.28	6.6
3. Deficit	9.36	1.0	(—) 61.68	(—) 5.6	14.34	1.2	(—) 49.64	(—) 4.0

SOURCE : Punjab Government Budget Papers for 1986-87

Dependence for Financing Capital Expenditure

7.11 The States' dependence upon the Centre for financing their capital expenditure is much greater than for financing their revenue expenditure. This is brought out in Table 7.5.

7.12 Table 7.5 shows that in recent years States' own net capital receipts, after meeting repayment obligations on past loans from the Centre, could finance no more than a very modest proportion of their capital expenditure : 1983-84, 28.7 per cent, 1984-85 (R.E.) 18.6 per cent and 1985-86 (B.E.), 21.5 per cent. A very high and rising proportion of the total capital expenditure had to be financed by new loans from the Centre : 1983-84, 68.8 per cent, 1984.85, 68.8 per cent and 1985-86 (B.E.), 70.4 per cent. In addition a considerable deficit was incurred. As a ratio of the total capital outlay, the deficit was as follows : 1983-84, 10.5 per cent 1984-85 (R.E.), 12.6 per cent and 1985-86 (B.E.), 8.1 per cent. The above shows that the States are, with regard to financing of Capital Expenditure, even more, indeed far more, dependent on resource transfers from the Centre than they are with respect to their Revenue Expenditure.

7.13 All loans and advances from the Centre to the State are discretionary. This is the case even with the loans granted to the States against net

collections of Small Savings. At present the States are given loans equivalent to two-thirds of the net collection from Small Savings. In recent years these loans (Sometimes described as States' share in Small Savings) formed some 40 per cent of the States' total loans from the Centre (excluding ways and means advances). These loans are given not under any constitutional obligation but as a result of the Central Government's own decision to provide an incentive to the States for promoting Small Savings collections. The Constitution does not in any way bar the Centre from altering the two-thirds ratio in either direction or from altogether discontinuing grant of loans to States on this account. Articles 293(2) only enables the Government of India to make loans to any State, subject to any limits or conditions laid down by Parliament but it does not in any way oblige it to do so. Under the provisions of the Constitution all loans from the Centre to the States are discretionary.

7.14 Likewise, the Central Assistance for State Plans including both its loan and grant component, is a discretionary resource transfer by the Centre. Its quantum is determined by the Union Government (Ministry of Finance) with some discrete prodding by the Planning Commission. The Centre is not obliged under the Constitution to set up a planning Commission. It is entirely the creation of the Union Government by an executive decision and is dominated by the latter in a variety of ways. The Planning Commission has the responsibility for *inter se* distribution of Central Assistance among the States. The Scheme of distribution is formally approved by the National Development council but is in fact worked out by the Planning Commission with the concurrence of the Ministry of Finance. The Central Assistance for State Plans is an entirely discretionary arrangement.

7.15 A substantial proportion of the States' capital receipts classified in Table 7.5 as the States' own receipts is, in fact, subject to the consent of the Government of India. While Article 293(1) enables the States to borrow within the territory of India upon the security of the Consolidated Fund of the States subject to any limits imposed by their respective State Legislatures. Article 293(3) actually makes all borrowing by the States subject to the consent of the Government of India. This clause lays down that a State may not without the consent of the Government of India raise any loan if any previous loan to it granted or guaranteed by the Central Government was still outstanding. Since all States are now heavily indebted to the Centre, the approval of Government of India is now necessary for all borrowing by the State Governments. In other words, the receipts under internal debt, are not strictly speaking, the States' own capital receipts. Article 293(3) confirms that the Constitution makers were seriously lacking in realistic anticipations about the likely profile of Centre-State financial relations after the commencement of the Constitution. Only the States' receipts from recovery of loans and advances and under the Public Account can be considered truly their own capital receipts. All this shows how near total is the States' dependence on the Centre for financing their capital outlays.

Factors for Financial Dependence of States

8.1 States' heavy financial dependence on the Centre has been the result of factors that have, during the last 35 years, either required them to incur expanded revenue and capital expenditure, or have prevented a commensurate increase in their own revenue and capital receipts. Some of the principal factors of these categories have been discussed below.

(I) Factors for Growth of State Expenditure

8.2 The Constitution entrusted the States with exclusive or major responsibility for extensive areas of economic, social and cultural development. These include ; agriculture and allied services ; irrigation, drainage and flood control; electricity; roads and bridges ; road transport ; water supply and sanitation ; education, art and culture ; medical and public health; housing and urban development office and other buildings for expanding State administration; social security and welfare; and development of local bodies and Panchayati Raj institutions. Discharge of States' development responsibilities, even if very limited and inadequate so far, has involved rapid growth of revenue and capital expenditure. A contributory factor for this trend has been the generally low efficiency of public expenditure in India so that larger than reasonable outlays have been needed to obtain the desired physical results.

8.3 The provisions of the Constitution relating to State finances strongly suggest that the Constitution makers severely under-estimated the public expenditure requirements implied in the development responsibilities entrusted to the States. In particular, they seem to have had little preception of the large capital outlays required of the States. It looks that the large majority of the Constitutent Assembly either did not seriously believe in planned development or had little awareness of its implications, in the Indian context, with regard to growth of public expenditure. They probably failed to foresee that whatever pattern of development the country might adopt, the State would need to play a very active role in promoting and assisting development and that, even if the country choose to follow a capitalist pattern of development, the Centre and the State Governments, in their respective areas of responsibility under the Constitution would need to undertake and assist investment in a big way, basides incurring; growing maintenance and development expenditure on revenue account on State and State-aided services, over a long period of time as a sort of extended pump-priming to enable the Indian economy to pick up the critical minimum of dynamism. This is, in fact, what has been happening during the last thirtyfive years. Rapid growth of States' revenue and capital expenditure is a direct consequence of this course of development.

8.4 There has also been a rapid growth of States' non-development expenditure. Interest payments, police, collection of taxes and duties, pensions and other retirement benefits, secretariat general services and district administration, compensation and assignments to local bodies and Panchayati Raj Institutions, and maintenance of government buildings (public

works) are the principal items that have shown a high rate of growth of non-development revenue expenditure and now account for the bulk of this expenditure. On capital account, the principal items of non-development expenditure are repayment of debt (mainly of loans from the centre) and loans advances to Government Servants. The details are given in Table 8.1.

TABLE 7.5

Financing of State's Capital Expendture

	1983-84 (Accounts)		1984-85 (Revised Estimates)		1985-86 (Budget Bstimates)	
	Rs. Crores	Per cent	Rs. Crores	Per cent	Rs. Crores	Per cent
A. Capital Expenditure	7354.14	100.0	8334.19	100.0	8295.21	100.0
1. Development	7030.68	95.6	7995.97	95.9	7907.56	95.3
2. Non-Development	323.46	4.4	338.22	4.1	387.65	4.7
B. Financing of Capital Expenditure	7354.14	100.0	8334.19	100.0	8295.21	100.0
1. States' own capital Receipts, net	2109.94	28.7	1552.29	18.6	1782.83	21.5
2. Consolidated Fund*	1547.06	21.0	1635.89	19.6	2048.01	24.7
(i) Internal debt, net	864.11	11.7	832.03	10.0	1020.71	12.3
(a) Market Loans, net	563.06	7.6	727.29	8.7	831.87	10.0
(b) Other items, net	301.05	4.1	104.74	1.3	188.84	2.3
(ii) Recovery of Loans and Advances	784.98	10.7	1064.87	12.8	834.55	10.1
(iii) Other items	(—) 102.03	(—) 1.4	(—) 261.01	(—) 3.1	192.75	2.3
2. Contingency Fund, net	62.57	0.9	240.86	2.9	(—) 183.42	(—) 2.2
3. Public Accounts, net	1941.80	26.4	1559.19	18.7	1776.52	21.4
(i) Provident Funds, net	797.32	10.8	905.57	10.9	888.71	10.7
(ii) Reserve Funds, net	231.80	3.2	317.42	3.8	373.19	4.5
(iii) Deposits and Advances net	764.42	10.4	217.28	2.6	297.76	3.6
(iv) Suspense, Misc. and Remittances, net**	148.26	2.0	118.92	1.4	216.87	2.6
4. Less—Repayment of Loans to the Centre@	(—) 441.49	(—) 19.6	(—) 1883.65	(—) 22.6	(—) 1858.28	(—) 22.4
2. New Laons from the Centre@	4472.78	60.8	5733.62	68.8	5838.12	70.4
1. Non-Plan	1738.91	23.6	2425.70	29.1	2374.29	28.6
(i) Small Savings Loans	1378.86	18.7	1782.67	21.4	2037.39	24.5
(ii) Others	360.05	4.9	643.03	7.7	336.90	4.1
2. State Plan Schemes	2632.78	35.8	3114.28	37.4	3206.77	38.7
3. Central and Centrally Sponsored Plan Schemes	101.09	1.4	193.64	2.3	257.06	3.1
4. Deficit	771.42	10.5	1048.28	12.6	674.26	8.1

SOURCE : R.B.I. Bulletin, November, 1985, op. cit.

*Excluding : (i) New Loans and Advances from the Centre, and (ii) repayment of loans and advances to the Centre.

**Includes net appropriation to Contingency Fund.

@Exluding receipts/repayments of ways and means advances from the Centre which are assumed to be repaid within the same year.

TABLE 8.1

States' Non-Development Expenditure

	1983-84 (Accts.)		1984-85 (R.E.)		1985-86 (B.E.)	
	Rs. Crore	Per cent	Rs. Core	Per cent	Rs. Crore	Per cent
A. On Revenue Account	6862.05	77.3	8518.18	75.0	18130.28	78.1
1. Interest payments	1963.54	22.1	2677.01	23.6	3186.09	24.7
(1) On loans from the Centre	1195.94	13.5	1594.66	14.1	1931.81	15.0
(2) On other debts	767.60	8.6	1082.35	9.5	1254.28	9.7
2. Police	1396.96	15.7	1569.14	13.8	1684.71	13.0
3. Pensions and retirement benefits	630.00	7.1	775.00	6.8	950.00	7.3
4. Collection of taxes and duties	649.96	7.3	744.84	6.6	811.35	6.3

	1983-84 (Accts.)		1984-85 (R. E.)		1985-86 (B. E.)	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
5. Secretariat general services and District Administration.	379.47	4.3	421.11	3.7	614.25	4.7
6. Compensation and assignments to local bodies and Panchayati Raj Institutions.	303.77	3.4	304.59	2.7	343.81	2.7
7. Public Works*	208.09	2.4	248.27	2.2	294.87	2.3
8. All other items	1330.26	15.0	1778.14	15.6	2245.20	17.4
B. On capital Account (gross of debt repayments)	2009.50	22.7	2832.56	25.0	2783.65	21.6
1. Repayment of debts@	1686.04	19.0	2494.34	22.0	2396.00	18.6
(1) Loans from the Centre@	1441.49	16.2	1883.65	16.6	1858.28	14.4
(2) Market Loans	177.01	2.0	523.74	4.6	446.17	3.5
(3) Other debts	67.54	0.8	86.95	0.8	91.55	0.7
2. Loans and Advances by State Governments	186.82	2.1	206.06	1.8	208.54	1.6
(1) To Government servants	160.10	1.8	175.51	1.5	176.14	1.4
(2) To others	26.72	0.3	30.55	0.3	32.40	0.2
3. Non-Development Capital Outlay	136.64	1.6	132.16	1.2	179.11	1.4
C. Total Non-Development Expenditure	8871.55	100.00	11360.66	100.00	12913.93	100.0

SOURCE : "Finances of State Governments during 1985-86", op. cit.
*Mainly maintenance of Government buildings.
@Excluding repayment of ways and means advances from the Centre.

8.5 Interest payments and debt repayments are now by far the largest item of States non-development expenditure. These accounted for 41.1%, 45.6% and 43.1% of such expenditure during 1983-84, 1984-85 (R.E.) and 1985-86 (B.E.) respectively. This item reflects the States growing indebtedness, particularly to the Centre. An idea of the rapid gowth of this debt during the 15 years ending 1985-86 is given in Table 8.2.

TABLE 8.2

Debt Position of the States

(Rs. in crores)

	Outstanding as on March 31				
	1971	1981	1984 (B.E.)	1985 (R.E.)	1986 (B.E.)
1. Loans and advances from the Central Government	6365	17071	28691*	30831*	35347*
2. Internal Debt	1847	4443	6318	7197	8089
(1) Market Loans	1143	2983	4278	5005	5837
(2) Loans from banks and other Institutions	239	919	1212	1366	1509
(3) Ways and Means Advances from R.B.I.	375	482	592	639	510
(4) Compensation and other bonds	90	59	55	54	55
(5) Internal debt for which details are not available	..	..	181	133	178
3. Provident Funds etc.	537	2463	4453	5358	6247
(1) State Provident Funds	471	2815	3805	4575	5282
(2) Others	66	278	648	783	965
Total Debt.	8749	23977	37752	43386	49683

SOURCE : R.B.I. Report on Currency and Finance 1984-85, Vol. II; Statement 92, p. 124.
*Includes Centre's medium-term loans to enable the States to clear their overdrafts with the R.B.I.

8.6 Over a period of 15 years. States debt has grown 5.7 times rising to a total of Rs. 49683 crores. At the end of 1985-86, States loans and advances from the Centre worked out to over 71% of their total debt. A major factor for rapid growth of States' indebtedness has been that as much as 70% of the Central Assistance for States is being given as loans. Since a large proportion of these loans has been invested in social and economic infrastructural facilities – schools, hospitals, roads, social housing, Government administrative and residential buildings, irrigation, soil conservation, area develop-

ment, river multipurpose projects, etc. It never directly yields the surplus needed to meet the repayment obligations on these loans and the States indebtedness to the Centre mounts. The States interest liabilities have increased even faster than the growth in their indebtedness on account of the marked increase in interest rate in India as a consequence of the tight monetary policy deliberately adopted by the Centre to curb and control inflation. The Government of India has persisted in this policy and high interest rates have been maintained even though in the international capital market the interest rates have markedly come down during the last year or two.

8.7 Public order is a State subject. The States are required to spend a growing amount on police towards discharging this responsibility. The increasing expenditure on pensions and other retirement benefits is the result of a growing number of pensisners and higher and more liberal pensions and benefits. The increasing total cost of tax collection is a concomitant of the growing tax revenue. The State Administration has cost the exchequer an increasing amount on account of the growing number of employees, their higher salaries and allowances and the higher cost of contingencies. Local Bodies and Panchayati Raj institutions are a State responsibility. Due discharge of this responsibility calls for growing financial support to these grassroot democratic institutions, but the paucity of resources prevents the States from extending support on the required scale. In spite of the increasing amounts being paid to them, their institutions are languashing over the greater part of the country for lack of adequate financial resources. If anything, very much more needs to be done by way of financial support to put life and vigour in these institutions. Public Works, mainly the maintenance of government bulidings, costs the State revenues a growing amount on account of the increasing area to be looked after and the higher unit cost of maintenance.

8.8 Apart from the debt repayments, a major item of States non-development capital outlay is the loans to Government servants for purchase of vehicles and other purposes. But this item shows only a modest rate of growth. There are also a few other items of non-development capital outlay which add up to a sizeable outgo.

(2) Factors for States' Inadequate Budgetary Receipts

8.9 States growing expenditure on revenue and capital account has not been matched by a commensurate expansion of their non-budgetary receipts, thus obliging them to increasingly look up to the Centre for financial support. States inadequate budgetary receipts may be attributed to : (i) a narrow tax base ; (ii) constraints on additional taxation, (iii) low returns on investment and enterprise ; and (iv) the Central Government's relentless drive for large capital receipts. An analysis of these casual factors has been attempted below.

(1) *A Narrow Tax Base*

8.10 The prevalent folklore on the subject of Centre-State financial relations attributes the States financial woes first and foremost to the alleged inelasticity, in a broad sense, of their own taxes. It is held that the taxes in the State List are inherently incapable of growing as fast as the principal taxes in the Union List. As a result, the States own tax revenues do not grow as fast as Centre's tax revenues and have to be supplemented by transfers from the Centre by way of share in Central taxes and grants.

8.11 It is indeed true that during the first fifteen years following the commencement of the Constitution, the revenue from States taxes was generally growing at a somewhat slower rate than the Centre's tax revenue (before States share of taxes) so that the latter's proportion in the total tax revenue was slowly improving. But since the mid-1960, the earlier trend has been reversed. By 1985-86 (B.E.), the Centre's percentage share had gradually declined to about the same level as observed in 1950-51. This is brought out in Table 8.3.

8.12 In Table 8.3, combined data for the States and the Union Territories has been given as separate figures for the States are not readily available. This, however, does not significantly alter the picture as the Union Territories with legislature account for only a tiny fraction of the total tax revenue. Table 8.3 shows that since the mid-1960s, in spite of the fact that the sales on sugar, textiles and tobacco formerly levied by the States has been substituted by Additional Duties of Excise levied by the Centre, the revenue from State taxes has generally tended to grow faster so that its contribution to total tax revenue has risen again to about the 1950-51 level.

8.13 At a particular rate of growth of the economy, the rate of growth of tax revenue depends upon, (i) the price and income elasticity of the taxes, that is, how responsive if the tax yield at unchanged tax rates etc. to the rise in the price level and the growth of national income (gross domestic product in real terms) ; (ii) the additional tax effort undertaken ; (iii) the improvement in tax enforcement ; and (iv) the tax structure, particularly the relative contribution of the more price and income-elastic taxes to total tax revenue. Towards securing large tax revenues, the Centre is *prima facie* at some inherent advantage compared to the States in all the above respects.

TABLE 8.3

Tax Revenue of the Centre, States and Union Territories

Period (Fiscal Years)	Rs. Crore			As per cent of total		
	Centre	States & Union Territories	Total	Centre	States & Union Territories	Total
1950	405	222	627	64.6	35.4	100.00
First Five Year Plan (1951—55)	2317	1260	3577	64.8	35.2	100.00
Second Five Year Plan (1956—60)	3652	1938	5590	65.3	34.7	100.00
Third Five Year Plan (1961—65)	7855	3399	11254	69.8	30.2	100.00
Annual Plans (1966—68)	7110	3306	10476	68.4	31.6	100.00
Fourth Five Year Plan (1969—73)	19476	8876	28352	68.7	31.3	100.00
Fifth Five Year Plan (1980—84)*	91145	47603	138748	65.7	34.3	100.00
1986 (B.E.)	25922	14249	40241	64.6	35.4	100.00

SOURCE : Compiled from Government of India, Ministry of Finance, *Indian Economic Statistics—Public Finance, Dec.* 1985, *Statement* 4.1., pp. 39—42.

*Including Revised Estimates for 1984-85.

8.14 The Union List has three principal taxes : the Income Tax on personal and corporated income, the Union Excise Duties and the Customs Duties. Between them they account for over 97% of the Centre's gross tax revenue. The Income Tax being related to money income is highly priced and income-elastic. Even with unchanged Income Tax, an increase in money incomes whether due to rise in prices or to real income growth ought to be reflected in larger tax revenue. Indeed, to the extent that the personal or corporate business incomes rise more than proportionately to the rise in prices because of lag in wages, or a rise in money incomes pushes the personal income tax payers into higher tax slabs, the revenue from income and corporate taxes should be rising more than proportionately to the rise in prices and real incomes. Union Excise Duties are related to the volume, value and structure of industrial output. Economic growth and industrial development inevitably widen the tax base for excise duties.

8.15 Since the early 1970s, customs duties have become a highly elastic source of revenue. All but a negligible fraction of the customs revenue is derived from import duties. As a result primarily of a liberalised import policy and the structural change in the composition of imports (particularly the substitution of industrial raw materials and products for cereals), the volume and value of imports has become highly income elastic. From 1975-76 to 1982-83 (the latest year for which the Quantum Index of Imports is yet available), against a rise of only 28% in G.D.P. in real terms, the quantum (as distinguished from value) of imports increased by 102%, that is 3.64 times the increase in G.D.P. During the same period, the Unit value Index of Import increased by 37%. These increases in the volume and unit value of imports raised the value of imports in 1982-83 to 2.1 (2.02×1.37) times the 1975-76 level. This was the principal factor which together with the structural change in imports and the substantial additional taxation with regard to import duties undertaken in 1981-82 and 1982-83 pushed up the customs revenue in 1982-83 (Rs. 5,119.40 crores) to 3.7 times the 1975-76 level (Rs. 1,419.4 crores). The high rate of growth of Customs revenue has been sustained ever since. The 1986-87, Budget Estimates have projected the customs revenue at Rs. 10,406.81 crores, that is over twice the 1982-83 level. Once again the principal factor for the increase in revenue seems to have been the high G.D.P. elasticity of imports, through increase in unit values (on account of, *inter-alia*, the depreciation in the external value of the rupee during this period) and the very substantial additional taxation undertaken every year have also made a considerable contribution to this increase. Since 1975-76, the Customs Duties have shown the highest rate of growth among the central taxes. This trend is likely to continue as long as the present highly import-intensive growth policy can be sustained.

8.16 The inherent price and income-elasticity of the principal Central taxes tends to endow the Central tax revenues with a high growth potential. On the other hand, the States tax revenues have a sizeable low-yielding and slow growing region, namely, the direct taxes in the State list. Land revenue, the principal direct tax in the State is a classical example of a price and income-inelastic tax. Agricultural income tax is levied by only 3 States (Assam, West Bengal and Karnataka) which have a sizeable area under plantations. It is extremely doubtful if the tax will yield much additional revenue if the other States, particularly those which have no large area under plantations, were to introduce it. Ten States (Andhra Pradesh, Harayana, Himachal Pradesh, J. & K., Kerala, Orissa, Punjab, Rajasthan, Sikkim and Tamil Nadu) do not levy the professions tax. The very populous States of U.P. and Bihar have levied this tax with effect from 1984-85, but they expect a revenue collection of not more than Rs. 5 lakhs and Rs. 25 lakhs, respectively. Furthermore Article 276(2) limits the total amount of tax payable in respect of any one person to the State or to any one local authority

in the State to Rs. 2.50 per annum. The Urban Immovable property tax yields meager and almost inelastic revenue Rs. 9 crores for all States in 1985-86 (B.E.). Twelve States (Bihar, Haryana, Himachal, Karnataka, Maharashatra, Manipur, Meghalaya, Nagaland, Orissa, Punjab, Sikkim and Tripura) do not levy this tax. The other ten States collect an insignificant amount each. U.P. collects a mere Rs. one lakh.

8.17 The States are also at a considerable disadvantage, compared to the Centre, with respect to other factors mentioned above which have a bearing on the growth of tax revenues. Firstly, it is much more difficult for the State Governments, than it is for the Centre, to undertake additional taxation. The State Governments and Legislatures are much closer to the people and are far more amenable to their pressure and resistance. They do not command powerful media like the Radio and Television which may put across their view point, whether valid or fallacious, day in or day out, or undertake a persistent build up of their image. Nor is the press, particularly the big national papers, so co-operative with them and so lavish with their understanding and support, as they generally are with the Central Government. It is only in some exceptional periods, when the Central Government by some very ill-advised policies and measures might have seriously offended the class which owns the press and finances the political parties, that the Centre has to face the sort of press and public criticism as is the daily lot of State Governments, not only of other parties but to an extent even of the ruling party at the Centre if these are headed by persons who are out of favour with the top leadership of that party. For the last 20 years or so, it has been a set policy of the top leadership of this party that no State leader of it is to be allowed to so grow in stature or become so free of snipping by his ministerial and party colleagues as to develop into a potential rival leadership pole. This has had a profound impact on the calibre, freedom of action and stability of the State Chief Ministers of that party. As for the State Governments of other parties, they generally function under an ever present threat of Centrally sponsored or approved propoganda compaigns, mass agitations and "liberation" struggles that are often climaxed by a bolt from the Raj Bhavan if they provide the State unit of the party an opportunity for hostile move by undertaking an unpopular measure like large additional taxation. The principal Central taxes are very high-yielding and directly affect only limited numbers so that the Government can raise even large additional tax revenues with a fairly manageable effort. On the contrary, the State taxes are generally low-yielding and directly affect large numbers. In order to raise even a modest additional amount, a State Government has to push up several taxes and to pinch a much larger proportion of the electorate. Finally, whereas the Union Excise Duties and Customs duties become an indistinguishable part of price, in the case of the States' principal indirect taxes—the sales tax, the taxes on vehicles, passengers and goods, the electricity duty and the stamps and registration fees—the amount of the tax is very much known to the consumers so that its burden is fully felt by them. For the above reason additional taxation is a far more hazardous exercise for the State Governments than it is for the Central Government.

8.18 Secondly, the scope for tax evasion seems to be somewhat larger with regard to State taxes. The Corporation tax covers a very manageable number of assessees but the Agricultural Income Tax will have to have a much larger number of assessees to yield revenue equivalent to or even a small fraction of the Corporation Tax collection. Moreover, the conceptual and statistical problems in computation of taxable income are more complicated in the later case. The Professions Tax is at least as difficult to administer as the Income tax particularly with regard to non-salaried employees. The Sales Tax assessees are far more in number and are more widely dispersed than are those covered by the Union Excise Duties. Besides, Sales tax provides a powerful incentive for collusion between the seller and the buyer for tax evasion. The yield from Stamps and Registration Fees, particularly with regard to transfer of real estate, is substantially reduced by collusion between the purchaser and the seller. The revenue from State Excise Duties is adversely affected in all States by considerable illicit distillation or other malpractices. There is a considerable evasion of tax on goods and passengers, particularly, by private operators. There is a considerable evasion taxes on vehicles by certain categories of private operators. There is, no doubt, also a considerable evasion of customs duties by smuggling, under invoicing, false description of the imported goods and the like. But a good deal of smuggling, for example that of gold, is aimed at jumping the import ban rather than evasion of import duty. Moreover, the scope for tax evasion through under invoicing etc., is fairly limited if the customs staff are vigilant and honest.

8.19 In spite of all the adverse factors that the State Governments have to contend with towards imposition and collection of taxes, the aggregate revenue from State taxes has shown, during the last ten years or so, a higher growth rate than that observed in the case of gross revenue from Central taxes. The only plausible explanation is that (i) contrary to popular belief, the State taxes, taken together, are quite comparable to Central taxes with respect to their price and income elasticity, and (ii) the States have not lagged behind the Centre, possibly have gone ahead of the latter, towards exploiting the revenue potential of their respective taxes.

8.20 The States' direct taxes are admittedly highly inelastic with respect to prices and incomes. Land Revenue, the principal direct tax, is altogether inelastic. The Professions Tax is nearly so. The Agricultural Income Tax should be more elastic but its other problems have deterred all but three States from imposing it. The States' indirect taxes are, however, very different in this respect. The Sales Tax, by far the most important indirect tax, being *ad valorem* benefits from larger sales turnover, whether it is due to larger volume of sales or to the higher prices of the goods sold. Larger money incomes definitely have a favourable impact on revenue from State excise on account of larger

sales of liquor. Stamps and Registration Fees are *ad valorem* taxes. Increase in capital values resulting from inflation and real growth enhance the revenue yield of this tax. The faster accretion to the number of vehicles and the larger traffic that go with growth of out put and incomes improve the revenue from vehicles taxes and the passengers and goods taxes. Revenue from the Electricity Duty benefits from higher electricity consumption which is usually associated with output and income growth.

8.21 That the States' indirect taxes are fairly elastic is borne out by the fact that, over the period 1975-76 to 1985-86, the improvement in the revenue from these taxes have been comparable, generally superior, to those from Central taxes. This is brought in Table 8.4.

8.22 Table 8.4 shows that, over the period 1975-76 to 1985-86, the State Excise and the Sales tax have registered substantially higher increase in revenue (377% and 319% respectively) than that shown by the Union Excise Duties (220%). Electricity duty has shown a higher increase in revenue (508%) than that observed in the case of any Central tax. Stamps and Registration, Taxes on Vehicles and Taxes on Passengers and Goods have shown a substantially higher revenue growth (265%, 320% and 239% respectively) than that yielded by the Union Excise Duties (220%). Since the

TABLE 8·4

Revenue from Central and States Taxes

	Revenue in Rs. Crores				Increase in 1985-86 over 1975-769
	1975-76	1980-81	1984-85*	1985-36(B.E.)	Per cent
A. State Taxes	3,549.2	6,616.2	12,239.1	14,405.2	306
1. Land Revenue	229.7	145.5	306.2	353.3	54
2. Sales Tax	1,943.7	3,887.6	7,064.6	8,142.4	319
3. State Excise	435.5	824.3	1,779.9	2,076.2	377
4. Stamps and Registration	216.9	425.1	692.2	792.6	265
5. Taxes on Vehicles	203.3	414.9	726.2	854.0	320
6. Taxes on Passengers and Goods	166.9	271.8	493.0	566.3	239
7. Electricity Duty	111.4	228.3	484.9	677.2	508
8. Other taxes and duties	238.8	418.7	692.1	943.2	295
B. Central Taxes (before States' share)	7,608.8	13,179.2	23,470.9	25,991.8	242
1. Income Tax	1,214.4	1,506.4	1,928.3	1,764.0	45
2. Corporation Tax	861.7	1,310.8	2,555·9	3,052.0	254
3. Union Excise Duties	3,844.8	6,500.0	11,150.8	12,307.4	220
4. Customs	1,419.4	3,409.3	7,040.5	8,166.0	475
5. Other Taxes	268.5	453.1	795.4	702.4	162

SOURCE : For the Sates "Finances of State Governments during 1985-86", op. cit., Statement 20, p. 822. For the Centre—Report on Currency and Finance 1984-85. Vol. II, Statement 81, 106.

*Accounts for the Centre and Revised Estimates for the States.

indirect taxes account for around 96% of the States' tax revenue, the inelasticity of States' direct taxes has only an insignificant impact on the growth of the States' aggregate tax revenue which, in the period under reference, showed a substantially higher increase (306%) than did the Centres' aggregate tax revenue (242%).

8.23 The increase in the States' tax revenue, as that in the Centre's tax revenue, is partly attributable to additional taxation undertaken during the period. The available data on additional taxation show that, had there been no rise in prices and incomes during this period, the States' aggregate tax revenue would have shown a far more modest improvement. This suggests that by far the largest contribution to growth of the States', as also the Centre's tax revenue has come from the impact of around 50% rise in national output and income (G.D.P.) and around 110% rise in the price level (as measured by the increase in the G.D.P. defaltor) observed during this period. This shows that the States' aggregate tax revenue is fairly elastic to prices and incomes. Any disadvantage that the States might have, relatively, to the Centre, in this respect seems to be of only minor and not crucial significance. The principal explanation for the States' financial dependence on the Centre must be sought in some other factor(s).

8.24 If the difference between the Centre and the States with respect to the price and income-elasticity of their respective aggregate tax revenue is of minor significance, more so if the Centre is

assumed to have a slight edge over the States in this respect, its slow growth of the Centre's tax revenue in recent years would suggest that it is shying away from the exploitation of the growth potential of the taxes. Indeed, there is now enough evidence that in recent years there has been an increasingly reorientation of Centre's fiscal policy in the direction of "Tax less, borrow more". The affluent classes which have been increasingly gaining in economic strength and political clout naturally prefer that the Government should borrow their surplus income, and that too at high rates of interest, instead of just taxing it away. The new policy orientation is the outcome of their increasingly effective pressure. The Central Government has visibly grown soft on taxation but it has been going in for borrowing, both within the country and outside, in a big way. In pursuance of this policy, the Central Government has persisted in a policy of very high interest rates even when the interest rates in the international capital market have shown a marked fall. The interest rates in India are now visibly out of line with the world marked rates. This is beginning to cause several distortions in the Indian economy. India is fast becoming the rentier's paradise. The number and well-being of those living principally on interest incomes is growing as never before. It appears that the Central Government will persist in the new policy orientation even though it has resulted in mounting deficits on revenue account and spiralling interest liabilities. As long as the Centre adheres to the new policy while the States remain unaffected by it, the latters own tax revenue is likely to continue growing at a higher rate than what the Centre's tax revenue might show.

8.25 There is a good probability that the States may follow suit. It makes much greater political and economic sense for a State Government, particularly if it happens to be the one which can always count on sympathy and support from the Centre, to go soft on taxation (that is do the minimum taxation that it can get away with *vis a vis* the Planning Commission) and go all out towards tapping the maximum of the flow of private saving in the country. This way it may achieve a high rate of growth of the State economy with minimum immediate burden of development on the people. This course of development might yield it rich political dividends. In any case, unlike the Central Government, it is not within the power of any State Government to make a significant impact on the rate of domestic saving even if it undertakes a Herculean taxation effort. Why then run a grave political risk by undertaking such an attempt ? If the States begin to argue this way, they may even outdo the Centre in going soft on taxation. As a result the growth of their tax revenue may also significantly slow down. Such a course will be disastrous for the country's economic future. A proper development perspective for the country calls for greater and not less tax effort by both the Centre and the States, as well as greater efficiency in public expenditure. The new fiscal policy orientation has already done a considerable damage to the economy. Rather than following suit, the States must press for reversal of this policy by the Centre.

8.26 The crucial factor for States' financial dependence on the Centre is their *very narrow tax base* in relation to their revenue expenditure as well as the Centre's tax base. These facts are brought out in Table 8·5.

8.27 In Table 8.5, 3(ii) shows that the revenue expenditure of the States (including the Union Territories with Legislature) has been considerably higher than the Centre's revenue expenditure (excluding grants to the States and U.Ts. for development and non-development purposes). It was 114·2%, 132·6%, 126·1%, 120·5% and 120·0% of the Centre's revenue expenditure in 1975-76, 1980-81, 1983-84, 1984-85(R.E.) and 1985-87(B.E.), respectively. On the other hand, the revenue receipts of the States (and the U.Ts.), excluding the States' share in Central taxes, were generally no more than around one-half of the Centre's tax revenue (before States' share of Central taxes) : 1985-76, 47·0%, 1980-81, 50·6%, 1983-84, 52·1%, 1984-85(R.E.), 51·9%, and 1985-86(B.E.), 54·8%. Clearly in spite of having to finince a considerably large revenue expenditure, the States (and the U.Ts.) have a much narrower tax base. The result has been that as shown in 3(iv) the Centre's tax revenue has invariably exceeded its revenue expenditure (excluding grants

TABLE 8·5

Relative Tax Base of the States@ and the Centre

	Unit	1975-76	1980-81	1983-84	1984-85 (R.E.)	1985-86 (B.E.)
1	2	3	4	5	6	7
1. Tax Revenue						
1. State Taxes	Rs. crores	3,572.94	6,664.17	10,803.42	12,292.90	14249.08
2. Central Taxes@@	"	7,608.89	13,179.18	20,722.03	23,701.59	25,991.75
2. Expenditure on Revenue Account						
1. States*	Rs. crores	6,354.86	13,864.34	22,335·50	26,622.31	29,839.22
2. Centre**	"	5,563.18	10,461.85	17,710.39	22,088.89	24,870.70

TABLE 8.5—*Contd.*

1	2	3	4	5	6	7
3. Ratios :						
(i) 1.1 to 1.2	%	47.0	50.6	52.1	51.9	54.8
(ii) 2.1 to 2.2	%	114.2	132.6	126.1	120.5	120.0
(iii) 1.1 to 2.1	%	56.2	48.1	48.4	46.2	47.7
(iv) 1.2 to 2.2	%	136.8	126.0	117.0	107.3	104.5

SOURCE : Indian Economic Statistics—Public Finance. op. cit., Statements 2.1, 2.2, 3.1., 3.2 and 8.8

@States include Union Territories with Legislature. Relevant data for States alone are not readily available.

@@Before States' share of Central taxes.

*Excludes : (i) Net transfers to funds ; (ii) Appropriation for reduction or avoidance of Debt ; and (iii) Working expenses and interest charges of public undertakings (which have been adjusted against receipts from these undertakings). Outlays (i) and (ii) are, in fact, States' saving and not expenditure.

**Excludes : (i) Grants to States and Union Territories for development and non-development purposes, and (ii) Self-balancing items.

to the States and U.Ts.). The excess in different years was : 1975-76, 36·8%, 1980-81, 26%, 1983-84, 17%, 1984-85(R.E.), 7·3% and 1985-86(B.E.), 5%. The excess shows a declining trend as the Centre's gross tax revenue has been growing slower than its revenue expenditure. In contrast, as shown by 3(iii), the revenue from the State (and U.T.) taxes has been generally less than one-half on their revenue expenditure. Moreover, this proportion has shown a declining trend : 1975-76, 56·2%, 1980-81, 48·1%, and 1983-84, 48·4%, 1984-85(R.E.), 46·2% and 1985-86(B.E.), 47·7%.

8.28 The basic conclusions that emerge are the following :

(i) The Centre's gross tax base is more than commensurate with its revenue expenditure (excluding grants to the States and U. Ts.). If the Centre did not have to share some of its taxes with the States or to provide grant assistance to the States and the U. Ts. with legislature, the Centre's tax revenue alone would yield it a revenue surplus, and its non-tax revenue would entirely add to that surplus ;

(ii) Centre is going soft on taxation and is not taking steps to ensure that its gross tax revenue grows at least *pari passu* with its revenue expenditure. As a result, the excess of the former over the latter is getting progressively eroded ; and

(iii) The States have too narrow a tax base compared to their revenue expenditure. The gap between the two cannot be filled by even the maximum effort at raising non-tax revenue or undertaking additional tax effort that may be politically and economically feasible. The States' dependence on the Centre for additional resources by way of share of taxes and grants is thus inherent and unavoidable under the existing provisions with regard to Centre-State financial relations.

8.29 The States' narrow tax base is attributable primarily to the Constitution itself and is not the result of fiscal developments during the last 35 years. As shown in Table 6·8, in 1950-51, the very first fiscal year after the commencement of the Constitution, the distribution of tax revenue between the States and the Centre, without taking into account the States' share in Central taxes, was in the ratio of 35·4 : 64·6. That position has been maintained, with very minor changes, ever since. In the meantime, the States, towards discharge of their constitutional responsibilities, have had to step up their revenue expenditure to the level where it exceeds the Centre's revenue expenditure, exclusive of grants to the States and U.Ts., by a considerable margin. The need for financial transfers from the Centre to the States is routed in these disproportionalities of the Centre-State financial relations. The crucial problem then is *the too narrow tax base of the* States and not, as is commonly postulated, the relative inelasticity of their aggregate tax revenue.

(2) *Low Returns on Investment and Enterprise :*

8.30 States' non-tax revenues (exclusive of grants from the Centre) have been financing in recent years only a small fraction, about one-fifth of the gap between States' revenue expenditure and their tax revenue. This is brought out in Table 8.6.

8.31 Table 8.6, item (3) shows that over the years the State's non-tax revenue has declined to a little over 10 per cent of their revenue expenditure. Its contribution to financing the gap between States' revenue expenditure and their own tax revenue has declined to below 20 per cent [Table 8·6, item (4)]. The balance gap has to be financed by grants from the Centre. The States, in order to reduce their financial dependence on the Centre, will need to secure larger non-tax revenues. While it may be possible to secure some improvement in the receipts from Services, the resource mobilisation effort needs to be directed principally to securing a more adequate return on State's investment and enterprise. This return is low at present mainly because

TABLE 8·6

Ratio of States' Own Non-Tax Revenue to the Excess of States' Revenue Expenditure over their own Tax Revenue

	Unit	1975-76	1980-81	1983-84	1984-85 (R.E.)	1975-76 (B.E.)
(1) Excess of States' Revenue Expenditure over their own tax revenue	Rs. Crores	2781.92	7200.17	11532.08	14329.41	15590.14
1. Revenue Expenditure	"	6354.86	13864.34	22335.50	26622.31	29839.22
2. Less : Own Tax Revenue	"	—3572.94	—664.17	—10803.42	—12292.90	—14249.08
(2) States own Non-Tax Revenue	"	966.25	1576.88	2422.07	2858.09	3094.90
1. Returns on investment and enterprise	"	363.89	662.35	865.46	1043.72	1164.52
(i) Net receipts* from Departmental commercial undertakings.	"	—30.07	—181.38	—331.70	—345.03	—324.51
(ii) Dividends and profits from non-departmental undertakings	"	16.21	18.43	25.10	38.22	37.49
(iii) Interest receipts	"	377.75	825.30	1172.06	1350.53	1451.54
2. Receipts from Services	"	602.36	914.53	1556.61	1814.37	1930.38
(i) General Services	"	165.29	258.99@	456.57	600.76	616.48
(ii) Social and Community Services	"	183.21	269.99	387.50	373.96	417.40
(iii) Economic Services	"	253.87	385.35	712.54	839.65	896.6
3. Ratio of (2) to (1.1)	%	15.2	11.4	10.8	10.7	10·4
4. Ratio of (2) to (1)	%	34.7	21.9	21.0	19.9	19.9

SOURCE : For (1) Table 8.5 above.
For (2) Indian Economic Statistics—Public Finance, December, 1985, op. cit., Statement 3.1
Note : States include Union Territories with Legislature.
*Net receipts Gross receipts less working expenses less interest charges.
@Exludes Rs. 580.22 crores on account of Central Loans Written off.

of the generally poor financial performance of the States' departmental and non-departmental undertakings.

(i) *Net Receipts from Departmental Commercial Undertakings :*

8.32 The States' net receipts from departmental commercial undertakings have deteriorated over the years to a large negative amount. The details are provided in Table 8.7.

8.33 Table 8.7 shows that over the 10 year period 1975-76 to 1985-86, the losses of loss-incurring enterprises have increased from Rs. 192·34 crores to Rs. 857·93 crores, that is 4.46 times. The States can ill-afford this large and growing leakage from

TABLE 8.7

States' Net Receipts from Departmental Commercial Undertakings*

(Rs. in Crores)

	1975-76	1980-81	1983-84	1984-85 (R.E.)	1985-86 (B. E.)
A. Profit-making Undertakings	162.27	330.49	490.39	491.00	533.42
1. Forests	155.08	312.04	467.12	455.35	494.32
2. Mines and Minerals	7.19	18.45	23.27	35.65	39.10
B. Loss-incurring undertakings	(—)192.34	(—)511.87	(—)822.09	(—)836.03	(—)857.93
1. Irrigation Projects. (Commercial)	—117.89	— 324.60	— 488.26	— 591.98	— 651.41
2. Multipurpose Projects	— 36.69	— 76·56	— 113.83	— 106.10	— 114.80
3. Power Projects	— 19.50	— 39.09	— 68.76	— 64.29	— 19.65
4. Road and Water Transport Services	—5.77	—19.95	—48.60	—54.48	—31.40
5. Dairy Development	—6.04	—37.53	—86.08	—2.68	—23.73
6. Industries	—6.45	—14.14	—16.56	—16.50	—16.94
C. Net Receipts (A+B)	—30.07	—181.38	—331.70	—345.03	—324.51

I:SOURCE Indian Economic Statistics-Public Finance, Dec., 1985, op. cit., Statement3.1.

State revenues. Commercial irrigation projects are by far the biggest loser. The second largest loser is the multipurpose river projects. The receipts generally do not cover even working expenses @. The successive Finance Commissions have been prodding the State Governments to improve the financial performance of these projects and fixing very modest norms for the same. But nothing has worked. If anything, the position has increasingly deteriorated over time. During the Seventh Five Year Plan period (1985---90), the receipts from commercial irrigation and multi-purpose projects, at 1984-85 rates, were estimated to fall short of even the working expenses by Rs. 966 corres*. Including interest charges, the losses on the same basis have been estimated at Rs. 5095 crores. Nothing was done in the 1985-86 budget towards improvement in this situation. The extimated losses for the year, Rs. 766·21 crores, are in line with the estimate of Rs. 5095 crores for the five-year period. These losses will be a heavy burden on State finances in all the States which have extensive public irrigation facilities. Departmental commercial undertakings in other activities are relatively much smaller losers, but their losses add upto a large figure.

8.34 The large positive net return from forests is at best a mixed blessing. In many states, the financial gain is offset by denudation of the forest cover which, for the country as a whole, is already very inadequate in relation to even the minimum ecological requirements. The country is already paying every year a heavy price for the inadequate forest cover in the form of damage done by otherwise avoidable droughts, floods, soil erosion and desertification. Long term national interest requires that exploitation of the country's forest wealth must be kept down to the level consistent with ecological considerations even if immediately this means lower annual net return to some States.

(ii) *Net Return from Investment in Non-Departmental Undertakings*

8.35 In the matter of financial performance, the States' Non-Departmental undertakings are no better than the Departmental undertakings.

8.36. In general, the S.E.Bs. financial performance remains far from satisfactory. At the 1984-85 rates of tariff, the commercial losses of S.E.Bs. over the Seventh Plan period (1985-90) were estimated at Rs. 1,17,57 crores£. The Seventh Plan has the S.E.Bs., the target of raising Rs. 7000 crores of *net*** additional revenue during this period. This is indeed a tall order, particularly because, the target is set in net terms. Even if this target is fulfilled, the S.E.Bs would still have incurred commercial losses of Rs. 4757 crores during the Seventh Plan period.

8.37. The poor financial performance of S.E.Bs. affects State finances in several ways. Firstly, the States' interest receipts are depressed. As on March 31, 1984, the State Government loans to S.E.Bs stood at Rs. 13639 crores&. A further substantial amount must have been added during 1984-85 as is normally being done every year. The total interest due from S.E.Bs to State Government during the Seventh Plan period has been estimated at Rs. 8555 crores. Projections for the Seventh Plan period showed that at 1984-85 tariff rates, 11 S.E.Bs (out of a total of 18) would have deficits after providing for depreciation and interest on borrowings from financial institutions and will be in no position to meet their interest obligations to their State Governments. The total default in their case has been estimated at Rs. 5588 crores. Another S.E.B. would be defaulting to the extent of Rs. 40 crores, raising the total to Rs. 5628 crores. Some other S.E.Bs/Power Corporation would also have a deficit or a very inadequate surplus. They could meet their interest obligations to the respective State Governments only by diversion of depreciation provisions or some other improper way. If they too choose the straight forward course of skipping the interest payment due to the State Government, the total default would add up to Rs. 6734 crores. This is equivalent to 8.5% of the estimated States total tax revenue during the Seventh Plan period at 1984-85 tax rates. The S.E.Bs. of only 3 States (Andhra Pradesh, Madhya Pradesh and Orissa) are anticipated to have a large enough surplus to meet in full their interest obligations to the State Government. To the extent that the Seventh Plan target of additional net revenue is realised, some other S.E.Bs. may also be able to pay at least a part of the interest due to their respective State Governments. Secondly, the capital account of the States is also put under extra strain. Expansion of S.E.B. activities, in several cases even the replacement and renewal of depreciated plant and equipment, has to be financed by fresh State loans. For instance, during the Seventh Plan period, at 1984-85 rates of tariff, the S.E.Bs' contribution to Plan resources (measured by their depreciation provision plus retained profit plus miscellaneous capital receipts less loan repayments to institutional creditors) has been estimated at Rs. (–) 1569 crores*. This means that the S.E.B's other extra-Budgetary resources, namely, their market borrowings and term loans from financial institutions will be substantially offset by the negative contribution to Plan resources. As a result, the projected large amount of gross capital formation by the S.E.Bs. during the Seventh Plan period will need to be financed by fresh State loans which will fetch the lenders neither due interest payment nor loans repayment.

8.38. The position with regard to State Road Transport Corporation/Undertakings is very similar. Their commercial losses for the Seventh Plan period, at 1984-85 rates, have been estimated at Rs. 1434 crores@. Their losses, after entirely

@Report of the Eighth Finance Commission 1984, Paragraph 3.18, pp. 13—15.

*Seventh Five Year Plan 1985—90, Oct., 1985, Vol. I, Paragraph 4.53, p. 56.

£Seventh Five Year Plan 1985—90, Vol. I, paragrahp 4.51. p. 56.

**That is net of any erosion of S.E.Bs' revenue resulting from cost excalation and other factors. & Report of the Eighth Finance Commission 1984, Annexure-III. 5, p. 181.

eating away the Corporation's depreciation provision, will leave substantial uncovered deficit. This deficit together with the loan repayments due to the institutional creditors, would result in the Road Corporations' own contribution to Plan resources becoming a large negative amount, namely, Rs. (–) 415 crores. This implies that there would have to be substantial fresh capital contribution from the State Budgets as also from other sources towards financing the fresh capital formation of State Road Transport Corporations.

8.39. There has been a big increase in recent years in States' share capital investment in Statutory Corporations and Government Companies other than S.E.Bs. and Road Transport Corporations. The Eighth Finance Commission estimated this investment at the end of 1983-84 at Rs. 1921.81 crores. The State investment in cooperative institutions at that time was estimated at Rs. 1721.42 crores. On this investment of Rs. 3643.23 crores, augmented by the additional investment undertaken during 1984-85, the States are expected to receive during 1985-86 a mere Rs. 37.43 crores as dividend (out of a total estimated receipt of Rs. 37.49 crores under this Head by the States and U.Ts.). This gives a return on investment of barely 1%. The contribution to Plan resources by this category of enterprises has been projected at a mere Rs. 15 crores for the 5-year period. Obviously fresh capital formation by these enterprises will also depend largely on Budgetary support by the States.

8.40. Policies and measures to improve the financial performance of States, departmental and non-departmental undertakings must be an important element of the required many sided effort towards establishing a more even financial balance between the Centre and the States. The resulting improvement in the return on investment and enterprise secured by the States would make a sizeable contribution to reducing the gap between their revenue expenditure and own tax and non-tax revenues.

(3) Centre's Drive for Capital Receipts :

8.41. The States' disadvantage relatively to the Centre is much more serious with regard to capital receipts than it is with regard to revenue receipts. The Centre has always had the lion's share in the public sector's capital receipts. In recent years, the reorientation of Centre's fiscal policy towards the "Tax less, borrow more" postulate has led it to further intensify its drive for mobilisation of capital receipts. The principal instruments employed by the Centre to secure for itself the bulk of the public sector's capital receipts are detailed below. A knowledge of these will help to work out measures towards enabling the States to secure a due share of these receipts.

(i) *External Assistance* :

8.42. The Centre is the sole recipient of external assistance to the public sector. External assistance for State projects has to be channelled through the Centre. External assistance, which was a mere trickle during the first Five Year Plan period, has since grown into a large flow. This is shown in Table 8.8.

8.43. During the 35-years period (fiscal years 1951 to 1985), the Centre has received a total of Rs. 27257 crores (at current prices) as Budgetary receipts corresponding to External Assistance. This amount is equivalent to two-thirds of the Centre's total net lending (lending less repayment/with off) to the States during this period. The country's self-reliance goal which had been defined as elimination of net external assistance from abroad, a definition which has not yet been formally repudiated or modified, obviously is being held in abeyance for the time being. As long as the present position lasts, the external assistance* will continue to make a substantial contribution to Centre's capital receipts. The 1986-87 Budget estimates have put this contribution at 15 per cent (Rs. 2950 crores out of a total of Rs. 19670 crores).

TABLE 8.8

Centre's Budgetary Receipts Corresponding to External Assistance.

(Rs. in crores)

Plan period	Fiscal Years	Plan period total	Annual Average
1. First Five Year Plan .	1951 to 1955	189	37.8
2. Second Five Year Plan	1956 to 1960	1049	208.8
3. Third Five Year Plan.	1961 to 1965	2423	484.6
4. Annual Plans . .	1966 to 1968	2410	803.3
5. Fourth Five-Year Plan	1969 to 1973	2087	417.4
6. Fifth Five-Year Plan	1974 to 1978	5209	1041.8
7. Annual Plan . .	1979	1086	1086.0
8. Sixth Five-Year Plan	1980 to 1984	8304	1660.8
9. Seventh Five-Year Plan	1985 to 1989	18000*	3600.0*
10. Annual Plan . .	1985(R.E.)	2500	2500.0
11. Annual Plan . .	1986(B.E.)	2950	2950.0

SOURCE : 1. Indian Economic Statistics-Public Finance, Dec. 1985, op. cit., Statements 7.9 to 7.21, pp. 69—82,

2. Central Budget Documents, 1986—87.

*Includes commercial borrowing/equity participation from abroad by public sector enterprises.

(ii) *Special Credits from Abroad* :

8.44. In addition to the external assistance the Central Government receives special credits from abroad for specific purposes. These credits are in the nature of commercial borrowing from abroad on Central Government account but possibly on easier terms. The counterpart of gross receipts is presumably credited to a special account maintained in the Central Government Public Account. The net accurals from this source add to the total net receipts in the Public Account. The data on annual receipts of special credits are not available but the size of annual repayments (for example, Rs. 90.88 crores in the 1986-87 Budget Estimates) suggests that the former are possibly a substantial amount.

*Including its grant portion.

(iii) Commercial Borrowing from Abroad by Central Government

8.45. In recent years, the Central Government has opened up a substantial additional source of funds for itself. This is commercial borrowing and equity participation from abroad, mainly the former, secured by Central autonomous undertakings. In the past, in line with the accepted selfreliance goal, the country fought shy of commercial borrowing and equity investment from abroad. The flow of funds in these forms remained a neligible trickle in most years. In some years there was even a net outgo of funds on this account. Efforts were made to meet the maximum of the country's requirements of external funds by securing concessional aid. As a result, while many Third World countries have now been caught in vicious debt trap, India has been able to avoid this trap and enjoys a high credit rating in the international capital markets. In recent years, there has been a noticeable departure from this policy. Several factors have contributed to this change. On account of policy reorientation in several directions, the country is having huge balance of payments deficits on current account. Even though the concessional external assistance is availed of in unprecedented amounts, it is necessary to supplement it with commercial borrowing ot finance the payments deficit. Otherwise the new policy orientation will not be sustainable Secondly, there has been in recent times a marked decline in interest rates in the international capital market. These rates, in fact, have fallen to substantially below the prevailing rates in India. An influential body of opinion would like India to avail of this opportunity. They believe that this would speed up the growth and modernisation of the Indian economy, thus creating conditions for a triumphant march into the 21st century. Thirdly, India's high credit rating in the international capital market facilitates borrowing at reasonable rates of interest which are comparable to those received by the most creditworthy borrowers from the developed countries. Fourthly, the western aid donors, particularly the U.S.A., have been putting strong pressure on India to graduate out of concessional aid into commercial borrowing in the international market and foreign equity investment in the Indian economy.

8.46. The data on acutal receipts from commercial borrowing abroad, including suppliers' credit, is not readily available to the public. Since all proposals for commercial borrowing abroad, including those from undertakings, require approval by the Government of India, the approvals may be taken as abroad, even if not a precise, indicator. The approvals aggregated to Rs. 1085 crores and Rs. 1906 crores in 1983-84 and 1984-85. These were anticipated at Rs. 1500 crores during 1985-86*. The commercial borrowings have been mainly in the form of syndicated commercial bank loans and suppliers' credit, but lately some amounts have also been raised by issue of bonds. The bulk of commercial borrowing has been raised by Central public sector undertakings. The 1985-86 plan anticipated that these undertakings will raise Rs. 865 crores from this source during the year. The balance amount has been raised by the private sector. It is doubtful if there has been any flow of funds to the State undertakings from this source. Commercial borrowing abroad by Central undertakings relieves to this extent the Central Government from the need to extend Budgetary support to these undertakings. If the Central Government is obliged to further liberalise its policy towards commercial borrowings, the latter may become an important source of funds for the Central undertakings.

(iv) *Deficit Financing*

8.47. Deficit financing, that is net borrowing from the Reserve Bank of India (RBI) has been another major source of funds for the Central Government. The latter can borrow from the RBI by issuing adhoc treasury bills (TBs.) without any constitutional limit. The Central Government may also borrow from the public, mostly the commercial and cooperative, banks, by issuing TBs. to them. Whenever the banks and other holders need cash, they rediscount (in effect, sell) the TBs. to the R. B. I. To this extent, too, the RBI is the eventual lender to the Central Government. There is no constitutional limit on the RBI with regard to rediscounting of TBs. Again, whenever the Central Government borrows from the Public (mainly the banks, the LIC and the non-Government Provident Funds) by issuing dated securities, the RBI may directly subscribe to these securities (to make the issue a success) or may acquire these securities through open market operations by purchasing these in the market at the going price. In either case, the R.B.I. lends to the Central Government against dated securities. Since the Central Government has the monopoly right to produce one-rupee notes and all coins, the R.B.I. acquires these by crediting the Cental Government account with the face value of the coins. In this case, the R.B.I. is in effect lending to the Central Government against these notes and coins whose intrinsic value is much less than their face value. Finally, when the Central Government builds up its deposit with the R.B.I., it is in fact lending to the latter. Conversely depletion of this deposit is in effect, Central Government borrowing from the R.B.I. The increase in R.B.I. hodlings of adhoc Treasury Bills, dated securities and one-rupee notes and coins together with the decrease in the Central Government deposit with the R.B.I. measures the total Central Government borrowing from the R. B. I. In other words, this amount measures the total deficit financing undertaken by the Central Government.

8.48. There is no constitutional limits on the Centre with respect to the amount of deficit financing that it might undertake. Any limit on it has to be only a self imposed limit namely, that imposed by Parliament by law under Article 292. But the Parliament is fully competent to raise or altogether abolish any such limit by law. No such limit is operative at present. The Central Government is restrained only by the economic limit to deficit financing as excessive indulgence in it may touch off unmanageable inflationary pressures. But in practice this limit is fairly flexible. A stable Central Government, the like of which India has had most of the time since Independence, may sometimes hazard a considerable

*Ministry of Finance, Economic Survey, 1985-86, Paragraph 8.60, p. 90.

degree of inflation without inviting unacceptable risks. This has, in fact, happened serveral times during the last 35 years.

The R.B.I. has indeed been a bountiful milch cow for the Central Government. Whereas, at the end of 1970-71, the Central Government's net borrowing from the R. B. I. has stood at Rs. 3569 crores, by the end of March 1986, this amount had increased to Rs. 38920 crores. In other words, over a period of 15 years, the Central Government had milked the R. B. I. to the extent of Rs. 35351 crores. This amount exceeds by Rs. 3728 crores the total amount of net lending (Rs. 31623 crores) to the States undertaken by the Centre during this period.

8.49. The States have no similar opportunity for augmenting their financial resources. The R.B.I. does not hold any State Government securities on its own account. The method of borrowing from the R.B.I. by issuing Treasury Bills and dated securities is not open to the State Governments. The States can borrow from the RBI only in two ways : (i) by means of loans and advances, and (ii) by drawing down their cash balance with the R. B. I. The States have been given authorised limits on ways and means advances from the R. B. I. In the past, when the States' pressing needs for cash could not be contained within the authorised limits, they continued to draw on the R. B. I. even beyond these limits. The only way for the Government of India and the R. B. I. to enforce the authorised limit was to refuse to honour the cheques issued by a State Government which has exceeded this limit. This would naturally do a great damage to the credit of the errant State Government and create a crisis situation. The Central Government hesitated to instruct the R. B.I. to take the crucial step of dishonouring the cheques. A major reason for this presumably was that in most cases the ruling party at the Centre was also in power in errant States. In course of time, this practice assumed intolerable proportions. Moreover, this practice was indulged in also by Governments of other parties who had come to power in some States.

Towards putting an end to this practice, the Central Government introduced the overdraft Regulation Scheme in 1972-73. It was modified in 1978. Nevertheless, this practice continued and was adopted by more States. On several occasions (1972-73, 1978-79, 1982-83 and 1983-84), the Central Government provided adhoc loan assistance to State Governments to clear their overdrafts with the R.B.I. But every time, almost immediately, the problem again surfaced. The Government doubled the authorised limits in 1982 but the practice of unauthorised overdrafts continued.

8.50. The Central Government finally overcame the problem in 1985-86. The Centre granted medium term loans to the States to an aggregate amount of Rs. 1628 crores (equivalent to 90%) of the overdraft level of Rs. 1809 crores reached on January 28, 1985 to clear their overdrafts with the R.B.I. They were required to clear the balance 10% themselves. The Centre also laid down that, with effect from October 1, 1985, the States shall not run overdrafts with R. B. I. for more than 7 continuous working days. This is being strictly enforced. No overdraft was outstanding against any State at the end of March, 1986.

8.51. The R.B.I.'s former responsibility to grant loans to State Governments to enable them to participate in the share capital of cooperative credit societies has passed to NABARD after the new bank started functioning in July, 1982.

8.52. As a result of the above developments, at the end of March, 1986 the State Government's net borrowing from the R. B. I. stood at Rs. (—) 19 crores as against Rs. 237 crores at the end of 1970-71. In other words, over the 15 years period (1971—86), the addition to State Governments' net borrowing, that is, their deficit financing, has been a negative amount to the extent of Rs. 256 (—19,237) crores. Reserve Bank is now more than ever before a truly high yielding milch cow of the Central Government.

(v) *Market Borrowing :*

8.53. Market borrowings, that is, borrowings by the Central and State Governments and their enterprises and local bodies (excluding financial institutions) from the capital market against negotiable dated securities is an important source of funds for financing the Central and State Plans. Over the successive Plan periods, this source of Plan finance has tended to gain in relative importance as shown in Table 8.9.

TABLE 8.9

Ratio of Market Borrowing to Public Sector Plan outlay in different Plan periods

Plan period	Public Sector Outlay (Rs. crores)	Market Borrowings (Rs. crores)	Col. 2 as %of Col. 1
0	1	2	3
First Five-Year Plan	1960	204	10.4
Second Five-Year Plan	4672	772*	16.5
Third-Five plan	8577	823	9.6
Annual Plans	6628	725	10.9
Fourth Five-Yar Plan	15779	2135	13.5
Fifth Five-Year Plan*.	40712	6388	15.7
Annual Plan 1979-80	12601	2371	18.8
Sixth Five-Year Plan**	110821	22120	20.0
Seventh Five-Year Plan (Original)	180000	30562	17.0
Annual Plan 1985-86 (Estimates)	32239	6700	20.8

SOURCE : Indian Economic Statistics—Public Finance, December 1985, op. cit., Statements 7.9 to 7.21.

*Includes investment by the S.B.I. out of PL 480 funds.

**Actuals for 1980-81 to 1983-84 and Budget Estimates for 1984-85:

8.54. While market borrowing has begun to finance in recent years around 20% of the over-all plan outlay, from the Fourth Five-Year Plan onwards, the States' share in total borrowing has been drastically reduced. This is brought out in Table 8.10.

8.55. In the Third Plan period, the States' share in market borrowing was 62.7 per cent. In the Annual plans, it came down to 46.2 per cent. From

the Fourth plan onwards, the States' share has been drastically reduced to less than a quarter. The Seventh Five-Year Plan set the States, share at 32.5 per cent but the Annual Plan for 1985-86, the first year of the Seventh Plan, set the States' share at only 23.9 per cent. This suggests that the actuals for the Seventh Five-Year Plan period are likely to show the the State's share in market borrowing as a much lower percentage than the original estimates.

8.56. Two factors have made it possible for the Centre to raise its share in total market borrowing to over three-fourth, in spite of vigorous and persistent protests by the States against this very uneven distribution. Firstly, Article 293(3) of the Constitution has made it obligatory for a State which has an outstanding loan or a part of a loan granted or guaranteed by the Government of India to secure the latter's consent to any borrowing within the territory of India upon the security of the Consolidated Fund of the State. Since all States have outstanding loans granted to them by the Centre, Article 293(3) effectively bars independent access to capital markets to all of them. They can borrow on the capital market only to the extent agreed to by the Centre. This Article indeed provides further evidence that the scheme of financial relations between the Centre and the States worked out by the Constitution makers was little informed by an even remotely realistic conjecture of the likely shape of Centre-State relations under the provisions of the Constitution relating to division of functions and revenues between the two levels of Government.

TABLE 8.10

State's Share in Total Market Borrowing (Actual)

Plan period	Total Market borrowing	State's Share in market borrowing	Col. 2 as % of Col. 1
0	1	2	3
First Five-Year Plan	204	155	76.0
Second Five-Year Plan	772*	356	46.1
Third Five-Year Plan	823	516	62.7
Annual Plans	725	335	46.2
Fourth Five-Year Plan	2,135	568	26.6
Fifth Five-Year Plan	6,388	2,529	39.6
Annual Plan 1979-80	2,371	521	22.0
Sixth Five Year Plan	22,120	4,719	21.3
Seventh Five-Year Plan (Original)	30,562	9,942	32.5
Annual Plan 1985-86 (B.E.)	6,700	1,600	23.9

SOURCE : (1) Indian Economic Statistics—Public Finance, December, 1985, op. cit., Statements 7.9 to 7.21.

(2) Fourth Five-Year Plan 1969—74, Chapter 4, Tables 1 & 2, pp. 73-74.

*Includes investment by the S.B.I. out of PL 480 funds.

Article 293(1) empowered the States to undertake borrowing within the territory of India, but clause (3) of this Article in effect changed the very character of this borrowing into that of allocation by the Central Government, thus making it a kin to Central Assistance for State Plans. Market borrowing has ceased to be an independent source of finance for the State Plans. The Centre has used the opportunity thus provided to allocate the lion's share of market borrowing to itself. Over the 35 years period FY 1951 to 1985 the Centre has raised a net amount (measured by the total market loans raised *less* the market loans repaid) of Rs. 34,050 crores as market loans.* In contrast, the State Governments have raised no more than around Rs. 5,800 crores.@ Even when allowance is made for the fact that a proportion of the market borrowing allocated to the States has been reallocated further to SEBs., SRTCs., Housing Boards, Municipal Corporation etc. the total amount of which is not readily known, there is little doubt that the Centre has been by far the bigger beneficiary from such borrowing.

8.57. Secondly, over the years, the Centre has extended its ownership or control over all the financial institutions which subscribe to all but a fraction of the total market borrowing by the Centre and the States. In the case of borrowing by the States, these institutions are the commercial and co-operative banks, the L.I.C., the General Insurance Companies and the non-Government Provident Funds. The State Governments have at best some influence over the State Co-operative Banks and the Provident Funds of Exempted Establishments. Even in their case, the Central Government (R.B.I.) wields considerable control and influence. All other institutions are fully under the control of the Central Government. In the event, even if under the Constitution no sanction of the Central Government were required for States' market borrowing, it is doubtful if many states could have raised adequate amounts this way without the approval and support of the Central Government/ R.B.I.

8.58. The Centre not only appropriates for its own use the bulk of the market borrowing, it also determines, through the Planning Commission, the *inter se* distribution among the States of the total amount allocated to them. The total amount allocated to the States is now divided into two parts, namely the normal and the special. In the financing scheme of the Seventh Plan, for instance, the relative share of the two parts has been set at around 70:30.† The division between the normal and the special is purely arbitrary. The Planning Commission might have as well set any other proportion between the two parts. The procedure for the distribution of the normal component for the past many years has been to allow a uniform increase over the previous year's figure. In the Seventh Five-Year Plan also this allocation has been affected "by allowing a uniform step up over the base year level"‡. This is just a mechanical projection in which irrationalities and anomalies in the base year allocation get magnified with evey passing year. This procedure provides no scope for taking into account the original inequities or a change in the

*Explanatory Memorandum to the Budget of the Central Government for 1986-87, Statement VI, p. 117.

@Report on Currency and Finance 1984-85, op. cit., Vol. II, Statement 92, p. 124.

†Seventh Five-Year Plan 1985—90, Vol. I, Paragraph 4.36, P. 1524.

‡Ibid.

relative circumstances of States. In the Seventh Plan, Punjab has been allocated out of the normal component the *smallest* amount (Rs. 196 crores) among all the non-special category States. Even Haryana which is considerably smaller State with a population only about three-fourth of that of Punjab, has been allocated a substantially larger amount (Rs. 229 crores) of market borrowing. No planning or any other principle seems to underlie the distribution of the normal market borrowing.

8.59. The special component of market borrowing is given only to the special category States and such other States as have a per capita State Domestic Product (SDP) lower than the National average. Actually, the concept used was "no higher than" the national average of per capita SDP. Otherwise Tamil Nadu which has per capita SDP equal to the national average would have been excluded. In the Seventh Plan this amount has been distributed among 16 States, namely, 8 special category States and 8 other States with a "not higher than the average" per capita SDP. Six States (Gujarat, Haryana, Karnataka, Maharashtra, Punjab and West Bengal) with a higher than average per capita SDP were altogether excluded. The arbitrariness of this distribition is fully brought out by the allocation to Tamil Nadu. This State had the same but not lower per capita SDP than the national average. It, was, therefore, considered just eligible to receive a share out of the special component. It is reported to have received an allocation of Rs. 225 crores from the special component, that is, an amount substantially larger than the total amount of market borrowing allocated to Punjab on all counts. If Tamil Nadu's per capita SDP had been higher by just one rupee, the State would have become ineligible for a share out of the special component and it would have been denied market borrowings of Rs. 225 crores. Could any allocation scheme for market borrowing be more arbitrary?

8.60. Since Punjab receives nothing out of the special component, its total allocation of market borrowing is the same as its normal allocation, namely Rs. 196 crores or 1.97 per cent of the total allocation of Rs. 9942 crores to the States in the Seventh Plan on both the counts. With regard to market borrowing, Punjab has been placed at the bottom among all the non-special category States, Why? The State is unable to discern, much less appreciate, the logic of this raw deal.

8.61. The market borrowings of States would be truly their own resources if these were secured on the basis of their credit-worthiness, or at least bore same relation to it. There is, in fact, no relationship whatsoever between the two. When the market borrowing of Rajasthan is set, as is reported to have been done in the Seventh Plan, at an amount approaching that of Maharashtra, or Gujarat's allocation of market borrowing is less than two-third of that of Madhya Pradesh, this item, both its aggregate amount and its *inter se* distribution among the States, is obviously as much a matter of allocation by the Central Government (Planning Commission) as the Central Assistance for State Plans. The market borrowing of States had indeed become a form of Central Assistance for State Plans instead of being a component of State's own resources.

(vi) *Bond Issues by Central Undertakings:*

8.62. Till very recently the Central and State autonomous undertakings refrained from tapping the domestic capital market by issue of bonds, secured against the fixed assets of the borrowing undertaking (but, unlike market borrowing, not carrying a Government guarantee) in the manner done by private companies. The Central public undertaking were provided with long-term finance largely by the Central Government in the form of loans and equity investment. The public undertakings of the State Governments did the same. It was, however, usual for the State Governments to reallocate a part of their allocation of market borrowing to the S.E. Bs., SRTCs., Housing Boards, Municipal Corporations etc. But no attempt was made to borrow from the capital market outside of this allocation. Recently selected Cantral undertakings have broken fresh ground in resource mobilisation. They have gone to the market with their bonds which are secured against their fixed assets and carry market rates of interest and the usual tax incentive but are not guaranteed by the Central Government. For instance, in 1985-86, the Indian Telephone Industries issued bonds for Rs. 100 crores. The success of this issue has encouraged the Central Government to set higher targets for such bond issues in 1986-87; National Thermal Power Corporation, Rs. 300 crores; National Hydro Electric Power Corporation, Rs. 150 crores; the Indian Telephone Industries and the Metropolitan Telephone Corporation (for Delhi and Bombay), Rs. 330 Crores; Coal undertakings, Rs. 50 crores; Chemical/Petrochemical undertakings, Rs. 50 crores; and Railways, Rs. 250 crores. This adds upto Rs. 1,130 crores in a single year. The Railways are not an autonomous but a departmental undertaking. The amount raised through Railway bonds will be credited to the Central Government Public Account and an equivalent additional amount of capital outlay will be made available to them

8.63. The State undertakings have not yet ventured, into this source of funds. In any case all bond issues, like the debenture issues by private companies, will require clearance of the Central Government's Controller of Capital issues. It is doubtful if the bond issues will even yield the State undertakings a significant amount of resources unless active steps are taken by the Central and the State Governments to encourage them to go in for bond issues.

(vii) *Special Deposit Schemes :*

8.64. Financial institutions such as the non-Goverment Provident Funds, the Life Insurance Corporation and the General Insurance Corporation and its subsidiaries are a rapidly growing source of development finance. Prior to July, 1975, these institutions invested a substantial proportion of their funds, under statutory obligations or otherwise, in such forms as market borrowing and the Small Savings schemes where the States shared the proceeds with the Centre. In July, 1985, the Centre initiated a scheme of special Deposits to divert solely to itself a sizeable proportion of the investible funds of the Employees' Provident Fund and other recognised non-Government Provident, superannuation and gratuity funds. These funds were allowed to invest 30 per cent of their net accretion

in a special deposit with the Government of India carrying a higher (10 per cent) rate of interest. Besides, the entire amount received on maturity of a special deposit could be invested in a fresh special deposit. The interest was raised to 11 per cent with effect from April, 1983. During the ten-year period ending 1984-85, the net accretion to special deposits was about Rs. 5,600 crores. Large net amounts are now flowing into these deposits annually. The flow in 1985-86 has been estimated at Rs. 1,450 crores. The anticipation for 1986-87 is Rs. 1,500 crores. The actual realisation in 1986-87 is, however, expected to be much larger because of two changes introduced with effect from this year. The rate of interest has been raised to 12 per cent and the funds have been permitted to invest 85 per cent (as against 30 per cent previously) of the net accretion in special deposits.

8.65. Under another Special Deposits scheme introduced from April, 1980, the L. I. C., the G. I. C. and its subsidiaries and the Unit Trust of India also invest their surplus funds with the Government of India in 10 Year deposits. Initially the rate of interest was 10 percent but with effect from April, 1983, it has been raised to 11 per cent. The net accretion to special deposits under this scheme has been estimated at Rs. 320 crores in 1985-86. The net receipts during 1986-87 have also been set at the same level.

8.66. The investment in special deposits by non-Government Provident Funds is almost entirely a diversion from Market Borrowings and Small Savings; the investment by insurance corporation is partially so. Since Market Borrowings and Small Savings are, while special deposits are not, shared by the Centre with the States, the special deposits shemes have been the Centre's device to reinforce its own Budgetary position at the expenses of the States.

(viii) *Public Provident Fund :*

8.67. At the Centre, the State Provident Funds are open to subscription only by the Central Government employees and the employees of quasi-Government institutions such as the Central Universities. Subscription to these Funds carries tax benefits. The net accretion to the Funds is a capital receipt of the Centre. The non-Government employees could subscribe to other statutory and recognised Provident Funds. But no provident fund facility carrying tax benefits was available to the self employed. In order to tap their savings, the Central Government instituted by an Act the Public Provident Fund Scheme in 1968 which is open to all. An individual who is also a member of a Hindu Undivided Family (HUF) can open another account on behalf of the HUF for purposes of subscription to the Fund. The outstanding balance with the Fund is exempt from Wealth Tax and the interest earned on it is exempt from Income Tax. Net accretion to the Fund both in 1985-86 (R.E.) and in 1986-87 (B.E.) has been estimated at Rs. 105 crores. In order to make the scheme attractive, the rate of interest on the Public Provident Fund has been raised with effect from 1986-87 from 10 per cent to 12 per cent.

(ix) *National Deposit Scheme :*

8.68. The Centre instituted the National Deposit Scheme in July, 1984. The deposits are for a period of 4 years and carry 10.5 per cent rate of interest. A major attraction of these deposits is the exclusive income and wealth tax benefits over and above those available on other approved saving. The annual net-receipts in 1985-86 (R.E.) and 1986-87 (B.E.) are put at Rs. 200 crores.

(x) *Deposits of the Surplus Funds of the Oil and other Public Sector Undertakings:*

8.69. For some years now, the Central Government has been requiring its oil and other public sector undertakings to deposit their surplus funds within the Public Account. The States would have no legitimate reason to take exception to this practice if it were limited to genuine surpluses of these undertakings. Many State Governments also now oblige their undertakings to deposit their surplus, or even not so surplus, funds with them. The Central Government however, has in recent years begun to make use of this practice to deny the States their due share of Union excise duties.

8.70. If the Central Government were to raise the prices of products of public sector undertakings with a view to securing a reasonable return on investment, the States could not object to this. But when, as has generally been the case in recent years with Centre's oil undertakings, the prices are raised to generate extra surpluses which are then deposited with the Government, the States have a legitimate grouse against this practice. If the concerned undertakings are already earning a high return on investment but an increase in the product price is considered necessary either to restrain domestic consumption or to raise more revenue, or to do both, the proper course would be to raise the excise duty. But in this case, the Centre would share the extra revenue with the States in accordance with the Finance Commission recommendations. To avoid having to do this, the Centre has instead been raising the prices of oil products. This has resulted in oil undertakings having large surplus funds with them which they have been depositing with the Central Government (Public Account). The Centre has been raising the prices of petroleum products even in the face of falling prices of crude and products in the world market, thus further adding to the surplus funds. While the amount of deposits annually received by the Central Government for this source cannot be ascertained from the Budget documents it is known to be a very substantial figure. Possibly in the same manner some other undertakings have also been enabled to generate surpluses for deposit with the Central Government. The States feel cheated of the additional revenue which would have flowed to them as share of Union Excise Duties if the rise in prices had instead been effected by raising the excise duty on these products.

(xi) *Small Savings :*

8.71. There has been a qualitative improvement in the net collections under small savings since 1981-82 when the VI and VII Issues of 6-Years National Savings Certificates, carrying 12% rate of interest and attractive tax incentives, were issued. Whereas the total amount outstanding under all Small Savings media at the end of 1975-76 was Rs. 4,237 crores, the net receipts in 1985-86 alone have been estimated at Rs. 4,209 crores.

8.72. The Small Savings media are a liability of the Central Government. The net collections accrue to the Centre in the first instance. Two-thirds of the net collections in each State are then passed on to the State Governments as long-term loans. The balance one-third of the net collections is retained by the Central Government.

8.73. Withdrawals from Small Savings are the first charge on the gross collections. Only the balance after the withdrawals have been met, that is, the net collections are shareable with the States. Since withdrawals have already been met from gross collections, the repayments of Small Savings loans by the States to the Centre are fully available to the latter for financing its capital outlays. The States retain their share of the net collections from Small Savings only for a while. With the repayment of Small Savings loans to the Centre, the States' share also eventually, becomes available to the Centre. The States benefit from Small Savings only during the maturity period of the loans from the Centre.

8.74. The Centre has sought to draw directly to itself some of the funds previously going into Small Savings so that, to this extent, the States are denied even the temporary use of the two-thirds of these funds. The Small Savings collections are made from two categories of subscribers; the households and the non-Government Provident Funds. As recently as 1982-83 their relative contribution was 70 : 30. Since the larger subscription by households has been mainly responsible, for the rapid increase in net collections observed since 1982-83, there has been a relative decline in the contribution of Provident Funds to Small Savings. Now that, with effect from 1986-87, the non-Government Provident Funds have been allowed to invest up to 85% of their net accretions in Special Deposits with Government as against the previous ceiling of 30% and the rate of interest on the Special Deposit has been raised from 11 to 12%, a further sharp decline in the Provident Funds' relative contribution is likely. The increase with effect from 1986-87 in the rate of interest allowed on the State Provident Fund and the Public Provident Fund to 12% as well as the liberalisation of withdrawal terms with respect to the latter Fund will enhance the relative attraction of these Funds and might thus also have an adverse impact on the flow of funds into Small Savings. The fact that the 1986-87 Budget Estimates have projected only 10.4% step up in net collections from Small Savings (from Rs. 4,800 crores in 1985-86 to Rs. 5,300 crores in 1986-87) as against the rise of over 32% in 1985-86 (from Rs. 3,633 crores in 1984-85 to Rs. 4,800 crores in 1985-86) is probably explained by the anticipated adverse impact of the above factors.

8.75. It may be in order to repeat here that the net collections from Small Savings are entirely a capital receipt of the Centre. Two-thirds of the net collections in a State are given by the Centre to that State as long term loans not under any Constitutional obligation but as Centre's own decision. The Constitution will not stand in the way of the centre if it chooses to reduce this proportion or to altogether abolish it. The present position means no more than that a proportion of the Central loans to the States is linked to their Small Savings collections just as another proportion of these is linked to the Central Assistance for State Plans. The States receive both categories of loans not as matter of any constitutional right but as very much of a discretionary resource transfer to the States. The entire amount of net collections is thus very much the Centre's net capital receipt and is treated as such in this document. The Central Capital receipts are given in Table 8.11.

8.76. The Capital Receipts of the Centre and the States in recent years are compared in Table 8.12.

8.77. The States' capital receipts are meagre in relation to their very large and growing requirements of capital funds to finance investment in areas of development that are, under the Constitution, within their jurisdiction. This makes them depend heavily on loans from the Centre. Indeed, the States' dependence on the Centre for capital funds is much severer than for revenue transfers. While the Constitution has provided for Devolution of revenues from the Centre to the States on the basis of the recommendations of the Finance Commission to be appointed every five years (or even earlier), it has made no provision for comparable institutional arrangements to examine and finance their requirements of capital funds. Again, while the Constitution assigned certain taxes to the States, it did not earmark any capital receipts for them. The Constitution in fact just did not take into account the States' requirements of capital funds. No wonder then that the first five Finance Commissions were asked to examine only the various aspects of the States' gap on revenue account. The reference of even the very limited question of the States' resources gap on non-plan capital account to the Sixth Finance Commission had to overcome stiff resistance put up by the Finance Ministry. The financing of the States' resource gap in relation to their Plan expenditure on Capital Account still remains very much a matter for the Centre's discretion, notwithstanding the eyewash of the Planning Commission formula (misnamed NDC formula) covering a part of the Central Assistance for State Plans. This is having serious impact on the Centre-State relations as well as the efficiency of resource use.

8.78. The problem of States' requirements of capital funds has not received due attention to-date, surprisingly not even from the States. A satisfactory and lasting solution to this problem would require that the States must be ensured, *as a matter of right*, access to capital funds commensurate with their reasonable investment requirements. The discretionary loan assistance from the Centre must be reduced to the minimum. Only a solution along these lines could create favourable conditions for cooperative Centre-State relations and greater efficiency of resource use.

TABLE 8.11

Capital Receipts of the Centre

(Rs. in Cores)

	1984-85 (Accts.)	1985-86 (B.E.)	1985-86 (R.E.)	1986-87 (B.E.)
A. Budgetary Receipts	20,912.38	23,612.72	28,784.02	27,925.17
1. Consolidated Fund, net	8,770.06	11,029.86	10,897.07	12,450.30
1. Gross receipts	(9,877.18)	(12,409.68)	(12,223.39)	(14,680.42)
(i) Market Loans	4,583.70	5,754.00	5,763.00	6,350.00
(ii) Other items	637.18	1,002.10	1,155.16	1,226.47
(iii) Recovery of loans and advances	2,653.33	2,977.77	2,981.67	3,726.05
(iv) External loan assistance	2,002.77	2,675.77	2,323.56	3,377.90
2. Repayments	(1,108.12)	(1,379.78)	(1,326.32)	(2,228.12)
(1) Market Loans	488.16	654.10	663.03	1,050.47
(2) Other items	132.44	194.08	45.47	406.89
2. Public Accounts	7,922.51	8,807.73	11,263.31	11,391.39
(1) Small Savings, net	3,650.33	3,900.00	4,800.00	5,300.00
(2) Provident Funds	(429.30)	(370.05)	(416.15)	(430.77)
(i) State Provident Funds	364.23	265.05	311.15	325.77
(ii) Public Provident Fund	65.07	105.00	105.00	105.00
3. Other Accounts				
(i) Postal Insurance and Life Annuity Account	39.47	22.86	16.86	19.07
(ii) Other Accounts	1,728.67	2,110.24	2,406.27	2,375.57
4. Deposits	(2,395.88)	(2,163.84)	(3,547.53)	(3,435.29)
(i) Special Deposits of non-Government Provident Funds		135.00	1,450.00	1,500.00
(ii) Special Deposits of LIC/GIC		320.00	320.00	320.00
(iii) National Deposit Scheme		300.00	200.00	200.00
(iv) Deposit of Proceeds of Railways bonds		..	..	250.00
(v) Family Pension-*cum*-Life Assurance Fund etc.		364.97	422.73	480.69
(vi) Other Deposits		—170.63	1,154.80	686.58
5. Reserve Funds, net		142.84	56.12	98.84
6. Advances		—42.15	—63.54	—62.05
7. Suspense, Miscellaneous and Remittances		140.08	83.92	—208.10
3. Deficit financed by	3,745.15	3,316.10	6,118.34	3,649.74
1. Net issue of Treasury Bills	3,695.84	33,15.22	5,681.00	3,649.60
2. Depletion of cash balances	49.31	0.88	437.34	0.14
4. Total Capital Receipts	20,437.72	23,153.69	28,278.72	27,491.43
5. External Grant Assistance	474.66	459.03	505.30	433.74
B. Borrowing by Central undertakings in the Capital Market	..	..	100.00	880.00
1. Market borrowing	..	..	..	..
2. Bond Issues	..	..	100.00	880.00
C. Total Capital Receipts*	20,912.38	23,612.72	28,884.02	28,805.17

*The Explantory Memorandum of the Budget of the Central Government for 1986-87 shows (P.29) the Central Governments Capital receipts at Rs. 17,421.62 crores, Rs. 18,845.64 crores and Rs. 19,669.89 crores for 1985-86 (B.E.), 1985-86 (R.E.) and 1986-87 (B.E.) respectively. These estimates are derived by excluding certain capital receipts as shown below :

(Rs. in crores)

	1985-86 (B.E.);	1985-86 (R.E.)	1986-87 (B.E.)
1. Total Capital Receipts as shown in Table 8.11	23,612.72	28,884.02	28,805.17
2. Less	—6,191.10	—10,038.38	—9,135.28
(i) Securities issued in favour of IMF under its Maintenance of value provisions	—500.00	—520.00	—755.54
(ii) Deposits of Nationalised banks with Central Government against the latter's additional equity investment in the banks	..	—400.00	—400.00
(iii) States' share of Small Savings	—2,375.00	—2,900.00	—3,200.00
(iv) Deficit financing	—3,316.10	—6,118.34	—3,649.74
(v) Bond issues by Railways	..	..	—250.00
(vi) Bond issues by Central Government autonomous undertakings	..	—100.00	—880.00
3. Capital Receipts as shown in the Explanatory Memorandum	7,421.62	18,845.64	19,669.89

TABLE 8.12

Capital Receipts of the Centre and States

(Rupees crores)

	1984-85		1985-86		
	States*; (R.E.)	Centre (Accts.)	States* (B.E.)	Centre	
				(B.E.)	(R.E.)
1. Budgetery Receipts net	2,600.57	20,912.38	2,457.09	23,612.72	28,984.02
(1) Excluding deficit financing	1,552.29	19,167.23	1,782.83	20,296.62	22,665.68
(2) Deficit financing	1,048.28	3,745.15	674.26	3,316.10	6,118.34
2. Borrowing in the Capital market by autonomous non-financial undertakings.	257.60	..	619.50	..	100.00
(1) Market borrowing net	557.60	..	619.50		..
(2) Bond issues	..	..	..	..	100.00
(3) Commercial borrowing a broad	..	N.A.	..	N.A.	..
3. Total Capital Receipts, net	3,158.17 (1.0)	20,912.38 (6.6)	3,076.79 (1.0)	23,612.72 (7.7)	28,884.02 (9.4)

*States' own capital receipts, that is, excluding all new loans from the Centre.

Sources : For States : Table 7.5
For Centre : Table 8.11

Impact of states Financial dependence on centre-state relations

9.1 States' financial dependence on the Centre is having a pronounced impact on Centre-State Relations. There is a progressive erosion of the jurisdiction, authority and initiative of the States which is undermining their role in the State structure. The shifting internal balance in the State structure shows itself in the following trends :—

(1) Diminishing share of the States in the total Plan Outlay;

(2) Growing Central Outlay on State subjects;

(3) Proliferation of Central and Centrally-Sponsored Plan Schemes;

(4) Centres' tight control over the planning process in the States:

(5) Imposition of an irrational structure and ill-conceived criteria of Centre-State resources transfer; and

(6) Growing political subordination of the States to the Centre.

9.2 The above trends in Centre-State relations have been discussed below.

(1) Diminishing Share of States in Total Plan Outlay.

9.3 The division of subjects between the Centre and the States as originally laid down by the Constitution was such as to require that the States must

be allocated about 50% of the total Plan outlay if there was to be proper development of the sectors within their jurisdiction. This has not been the case in practice as shown in Table 9.1 which gives the projected and actual outlay under different Plans.

9.4 Table 9.1 shows that in the First Plan, the States' share in total Plan outlay had been projected at 61.5%. Since the shortfall in the implementation of this Plan was mainly in the Central Sector, the States, share in actual Plan outlay was as high as72.8%. In the Second Plan the States' share in total Plan outlay was depressed to 46.4%. Actual Plan outlay showed a still lower States' share (43.1%). This was mainly on account of the fact that in the Second Plan the simultaneous construction of three integrated steel plants in the Central sector increased Plan outlay in this sector to Rs. 2619 crores as against only Rs. 533 crores in the First Plan, *i. e.* almost 5 times. Accordingly the State sector had to be limited to much smaller share in total outlay. The Third Plan restored a more normal division of the plan outlay between the Centre and the States. The States' share in total plan outlay was set at 51.2 per cent and the actual outlay showed the States' share as 48.6 per cent. During the three years of the Annual Plans, the States' share in actual plan outlay was again depressed to 45.6 per cent. There was an improvement in this share to 47.6 per cent under the Fifth Plan as finalised in 1976. The actuals for the Fifth Plan period showed a further increase in the States, share to 49.2 per cent. The Annual Plan 1979-80, as implemented brought down the States, share to 47.3 per cent.

TABLE 9.1

States' Share in Total Plan Outlay

	Total Plan Outlay	States' Share		Actual		
		Rs. crore	Per cent	Total Plan Outlay	States' Share Rs. crore	States' Share Per Cent
First Five-Year Plan	2,356	1,450	61.5	1,960	1,427	72.8
Second Five-Year Plan	4,800	2,228	46.4	4,600	1,981	43.1
Third Five-Year Plan	7,500	3,837	51.2	8,577	4,165	48.6
Annual Plans	6,665	2,894	43.4	6,756	3,052	45.2
Fourth Five-Year Plan	15,902	6,606	41.5	16,160	7,364	45.6
Fifth Five-Year Plan	39,303	18,717	47.6	40,712	20,019	49.2
Annual Plan 1979-80	..	..	..	12,601	5,962	47.3
Sixth Five-Year Plan	97,500	48,600	49.8	1,09,645	48,957	44.7
1980-81	15,109	7,414	49.1	14,832	7,527	50.7
1981-82	17,418	8,471	48.6	18,210	8,666	47.6
1982-83	20,933	9,540	45.6	21,283	9,588	45.1
1983-84	25,481	11,130	43.7	25,088	10,995	43.8
1984-85 (R.E.)	40,170	12,261	40.6	30,232	12,181	40.3
Seventh Five Year Plan	1,80,000	80,698	44.8	..	..	..
1985-86	32,239	13,097	40.6	..	..	..
1986-87	39,052	15,880	40.7	..	..	..

SOURCES : (1) Five Year Plan Documents. (2) Annual Plan, 1985-86.
(3) 1986-87 Central Budget Documents.

..Indicates not available.

9.5 The sixth Plan projected the States' Plan outlay at 49.8 per cent of the total Plan outlay. The actual State Plan's outlay during 1980-81, the first year of the Sixth Plan, was 50.1 per cent. There after the States' share in Plan outlay was brought down year after year till in 1984-85 it fell to almost 40 per cent. The actual State Plan outlay during the Sixth Plan period turned out to be 44.6 per cent of the total Plan outlay as against the originally projected 49.8 per cent. The Seventh Plan has continued this policy. While the plan itself set the States' share in total Plan outlay at 44.8 per cent, the State Plans, outlay projected by the Annual Plans 1985-86 and 1986-87 has been only 40.6 per cent and 40.7 per cent of the total outlay, respectively. The actual State Plans outlay in these years might well show a still lower percentage. Going by the present trends, the State Plans outlay during the Seventh Plan period might turn out to be no more than 40 per cent of the total plan outlay. It looks that the States' share in total plan outlay has been effectivelly brought down to around 40 per cent.

9.6 This has two very undesirable consequences. Firstly, the States are unable to ensure an adequate development of the sectors within their jurisdiction. The worst sufferers have been the social services, particularly in the rural areas where, for instance, medical and health care facilities remain extremely inadequate and of very poor standard. Secondly since the States' Plan outlay cannot accommodate all that needs to be done within the Plan period, the Centre has been able to make heavy inroads into the States' jurisdiction. All this happened because, taking advantage of States' very inadequate own resources for financing the Plan, the Centre has greatly reduced their share in the total Plan outlay.

(2) Growing Central Outlay on State Subjects

9.7 The Centre, on account of its much larger Plan and non-Plan resources, is now able to spend large amounts on subjects that were originally envisaged to be wholly or very largely State subjects. Examples are given in Table 9.2.

TABLE 9.2

Budgetary Expenditure of the Centre on Selected Subjects.

(Rs. crores)

	1974-75			1985-86 (B.E.)			Total Expenditure 1985-86 over 1974-75
	Revenue Account	Capital Account	Total	Revenue Account	Capital Account	Total	
1. Police	169.24	..	169.24	653.87	...	653.87	3.9
2. Agriculture & Allied Services*	128.52	366.24	494.76	829.01	658.77	1,487.78	5.4
3. Power	3.21	97.78	100.99	45.70	1,643.18	1,688.88	16.7
4. Education, Art & Culture	158.24	1.42	159.66	737.27	26.60	763.87	4.8
5. Medical, Public Health, Sanitation and Water Supply	68.77	1.34	70.11	353.43	22.42	375.85	6.3
6. Family Welfare	58.59	0.19	58.78	494.94	4.74	499.68	8.5

SOURCE :— Indian Economic Statistics Public Finance, December, 1985. op. cit. statements 2.2 and 2.3 pp 22-28.

*Includes subsidy on indigenous and imported fertilizers but excludes food subsidy, working expenses of Delhi Milk Scheme and Forests.

Police .

9.8 Public order and Police are State subjects (Entries 1 and 2 of List II) whereas Defence of India and Armed Forces are Union subjects (Entries 1 and 2 of List I). In this division of responsibility between the Centre and the States, maintenance of police forces in the Union Territories without Legislature, or of genuine para-military forces and defence intelligence establishments to aid the armed forces in the defence of the country against actual or potential external aggression, would have been the only legitimate activities for the Centre. But it went much beyond its legitimate role. It maintained greatly expanded and even newly created police outfits primarily for internal political espionage rather than for defence intelligence. It created a number of forces like the Central Reserve Police Force, the Border Security Force, the Central Industrial Security Force and the National Security Guard which were used wholly or largly in a police rather than a para-military role. The Constitution (Entry 2 of List I) made no mention of any forces of the Union other than the armed forces. This did not deter the Centre from setting up other forces, mainly of the nature of police forces, under its control. It was as late as 1976 that the Forty-Second Amendment inserted the new Entry 2-A in List I which for the first time made a mention of "any other force subject to the control of the Union". At the same time Entry 2 of the State relating to Police was amended to make it "subject to the provisions of Entry 2-A of List I". The Centre's encroachment on a major responsibility originally conferred on the States by the Constitution was thus sought to be legitimised. At the same time the States were not permitted to modernise and upgrade their police forces with regard to their equipment and weapons to enhance their capability for meeting new challenges. This obliged them to frequently requisition the Central police forces to aid civil power. By thus creating the demand for Central forces their creation, maintenance and expansion were sought to be justified.

9.9 The Centre's expanding encroachment on States' responsibility with regard to public order and police is reflected in a rapid increase in its police expenditure. It has increased from Rs. 169.24 crores in 1974-75 to Rs. 733.55 crores in 1985-86 (B. E.) that is 3.9 times.

Agriculture and Rural Development :

9.10 Agriculture and allied services and rural development are unquestionably State subjects. They are altogether excluded from List I and III. The Centre was concerned with agriculture and allied services only in respect of UTs without Legislature. Nevertheless, Centre's combined revenue and capital expenditure on agriculture and allied services (inclusive of the subsidy on indigenous and imported fertilizers but excluding the food subsidy, working expenses of Delhi Milk Scheme and Forests) has been rising rapidly and consistently. It rose from Rs. 494.76 crores in 1974-75 to Rs. 2687.78 crores in 1985-86 (B. E.), that is, 5.4 times in just 11 years.

9.11 A reflection of the Centre's growing encroachment on States' jurisdiction with regard to agriculture and rural development is that its Annual Plan outlay on these subjects now exceeds the States' outlay on these. This is shown in Table 9.3.

9.12 Table 9.3 shows that out of the total provision for Agriculture and Rural Development in the Annual Plan 1985-86, 50.2% has been allocated to Centre and 48.4% to States. Taking Union Territories without Legislature with the Centre and the UTs with Legislature with the States, the relative allocation between the Centre and the States works out to 50.6% and 49.4%. As far as development planning goes, agriculture and rural development is increasingly becoming *de facto* Central subject even though the Constitutional position remains unchanged except that the Forty-second Amendment (1976) has made forests a Concurrent instead of a State subject.

TABLE 9.3

Outlay on Agriculture and Rural Development under the Annual Plan, 1985-86.

(Rs. crores)

	Agri-culture	Rural Develop-ment	Total
1. Centre . . .	917.93	917.75	1,835.68 (50.2%)
2. States . . .	1,034.59	733.23	1,768.48 (48.4%)
3. Union Territories .	45.01	5.57	50.58 (1.4%)
1. With Legislature	31.50	3.67	35.17 (1.0%)
2. Without Legislature	13.51	1.90	15.41 (0.4%)
Total . .	1,997.53	1,656.55	3,654.08

SOURCE :—Annual Plan, 1985-86, Table 2.1 and 3.2 pp. 13—15 and 22—23.

Power :

9.13 Electricity is a Concurrent subject. But til! mid-1970s, the responsibility for power development had been left very largely to the States who set up State Electricity Boards (SEBs) for the purpose. This position has been changing rapidly in recent years. The Centre, because of its superior command of resources, has entered the field of power generation in a big way. The new policy was ushered in by the setting up of two new Central enterprises in 1975 in the power sector, namely, the National Hydro Electric Corporation (NHPC) and the National Thermal Power Corporation (NTPC). The NHPC has not yet overcome its teething troubles but the NTPC is forging ahead. From 1980-81 onwards the first thermal power station (600 MW) put up by the Neyveli Lignite Corporation also began to show very good capacity utilisation. The Corporation was then asked to put up a second 630 MW station and a second lignite mine to feed it. Nuclear power stations have been all along in the Central sector. The growing share of the Central sector in the installed generating capacity is shown in Table 9.4.

TABLE 9.4

Share of the Central Sector in the Installed Generation Capacity (Utilities).

(MW)

Installed capacity	At the end of 1979-80	At the end of 1984-85	At the end of 1989-90	Increase 1979-80 over 1984-85
1	2	3	4	5
1. Total . .	**28,448**	**42,440**	**64,736**	**22,296**
1. Hydro . .	11,384	14,465	19,835	5,390
2. Thermal .	16,424	28,880	43,081	14,201
3. Nuclear .	640	1,095	1,800	705
2. Central Sector .	**3,400**	**6,758**	**16,078**	**9,320**
1. Hydro . .	2,760	439	1,104	665
2. Thermal .		5,224	13,174	7,950
3. Nuclear .	640	1,095	1,800	705
3. (2) as % of (1) .	**12.0**	**15.9**	**24.8**	**41.8**
1. Hydro . .	9.9	3.0	5.6	12.3
2. Thermal .		18.1	30.6	56.0
3. Nuclear .	100.00	100.0	100.0	100.0

SOURCE :—(1) For total installed capacity : Economic Survey 1985-86, op. cit. Table 1.18, p. 125.
(2) For Central Sector capacity : Seventh Five Year Plan, 1985-90, Vol. II, Annexure 6.4, P. 125.

9.14 Table 9.4 shows that in 1979-80, the Central Sector accounted for only 12.0% of the installed generating capacity. Its share is projected to rise to 24.8% that is, more than double the 1979-80 level, by 1989-90. Of the total projected increase of 22296 MW during the Seventh Plan period. the Central Sector is anticipated to account for 41.8%. It seems almost certain that during the Eighth Plan period, the Central Sector will account for the greater part of the total addition to installed capacity. It looks that electricity generation is well on the way to becoming largely a Central subject.

9.15 One consequence of the above development has been that inadequate attention is being paid to the exploitation of the country's very large as yet untapped hydro potential. The Centre is concentrating on thermal capacity which is easier to develop and more remunerative on the business criteria. At the end of the Sixth Plan, the Central Sector's share in installed capacity was 18.1% in the case of thermal capacity and only 3.0%, with respect to hydro capacity. During the Seventh Plan period, the Central Sector will contribute 56% of the total addition to thermal capacity but only 12.3% of the addition to hydro Capacity. Even if the Centre wants to play a more significant part in hydro power development, the NHPC is in no position to undertake this task. The States have no resources for the purpose even if some of them might have the organisation and the expertise for it. This situation is having serious consequences in several regions. For instance, failure to develop Himachal's large hydro-power potential is a major constraint on the economic development of the States of Punjab, Haryana and Himachal.

9.16 Power being on the concurrent List, it is in this area that there is another issue pertaining to the role of the Union vis-a-vis the States, besides what has been stated in paragraph 6.59. There has been a tremendous expansion in the role of the Union in the generation and distribution of power in the country in the recent past, Backed by the vast financial resources, the Union has set up the National Thermal Power Corporation and the National Hydro-Electric Power Corporation, the plan programmes of which are larger than those of any State Government.

Apart from gradually overshadowing the States in an area which was earlier largely within the sphere of activities of the States, this also increases the Union's claim on scarce resources such as coal, foreign exchange and generation and transmission

equipment, which may effect the pace of activities of the States in the sector. Some mechanism needs to be set up to ensure that the expansion of the Union's activity in this field is based purely on techno-economic considerations and is not a result simply of the vast resources at the disposal of the Union. Further, Central generation is essentially meant for the States, and in practice States of the region are allocated power from Central Projects. Since the final users of the product are the States, they certainly need to have a say in the planning, execution and management of the Union's Projects and activities in this sector. At present, however the Union's control is absolutely unfettered and States have virtually no say in the matter. It is proposed that States should be given representation on the Board of Directors of the Central Corporations concerned with generation and distribution/transmission of power to ensure that benefits accrue to the States fairly and promptly.

Industry :

9.17 The Constitution made industries a State subject except for industries falling within the purview of Entries 7 and 52 of List I. In practice the exceptions have become the rule, and the rule is now the exception. The Industries have virtually become a Union subject. The Industries Development and Regulation Act passed with reference to Entry 52 enabled the Centre to bring practically all large and medium industries within its purview. The much large resources at the disposal of the Centre and the tight control exercised by it over the preparation of States Plans have together made it possible for the Centre to exploit the opportunity provided by the above Act to institute virtually a monopoly control over development of large and medium industries in the public sector. This is borne out by the distribution of Plan allocation for industries between the Centre and the States given in Table 9.5.

TABLE 9.5

Distribution of Plan Allocation for Industries and Minerals

Industries/Sector	Village and Small Industry				Large and Medium Industry			
	Seventh Five Year Plan		Annual Plan 1985-86		Seventh Five Year Plan		Annual Plan 1985-86	
	Rs. crore	%	Rs. crore	%	Rs. crore	%	Rs. crore	%
1. Industries excluding petroleum and coal	**2752.74**	**100.0**	**549.94**	100.0	**19,708.09**	**100.0**	**4,063.76**	**100.0**
1. Centre	1,284.84	46.7	313.00	56.9	17,268.13	87.6	3,670.04	90.3
2. States	378.52	50.1	222.87	40.5	2,407.36	12.2	388.27	9.6
3. Union Territories	89.38	3.2	14.07	2.6	33.60	0.2	5.45	0.1
2. Petroleum and Coal	..	..	..	..	20,028.25	100.0	4,082.00	100.0
1. Centre	..	..	..	..	20,028.25	100.0	4,082.00	100.0
2. States	..	..	..	..	..	..	..	..
3. Union Territories	..	..	..	..	..	..	..	..
3. Total	**2,752.74**	**100.0**	**549.94**	100.0	**39,736.34**	100.0	**8,145.76**	**100.0**
1. Centre	284.84	46.7	313.00	56.9	37,296.38	93.9	7,752.04	95.1
2. States	1,378.52	50.1	222.87	40.5	2,407.36	6.0	388.27	4.8
3. Union Territories	89.38	3.2	14.07	2.6	32.60	0.1	5.45	0.1

SOURCE :— (1) Seventh Five Plan 1985-90, Vol. 1, Table 3.4(b), pp. 27—29.
(2) Annual Plan 1985-86, Annexure 2.1, pp. 13—15.

9.18 Table 9.5 shows that the Seventh Plan for village and small industry has been distributed as follows : Centre, 46.7%; States, 50.1%; and Union Territories 3.2%. The corresponding allocation for large and medium industry (including petroleum and coal industries) is : Centre, 93.9%; States, 6%; and UTs., 0.1%. Taking the two segments of industry together the allocation works out to : Centre, 90.8%; States, 8.9%; and UTs., 0.3%. In the Annual Plan 1985-86, the corresponding allocation for industry and minerals is : Centre, 92.8%; States, 7.0%; and UTs., 0.2%. This suggests that, on present trends, the actuals for the Seventh Plan are likely to show the Centre's share even higher, and correspondingly the States' share even lower, than in the original Plan. Clearly, industries have virtually become a Central subject and the exceptions to Entry 24 of List II have become the rule, reducing the rule to an insignificant exception. All this has happened without a Constitutional amendment apart from the Seventh Amendment 1956 which made the defence industries an exclusive Central subject. In bringing about this, the Centre's financial resources have been a crucial factor.

Education :

9.19 Education was originally a State subject (Entry 11 of List II) except for a limited number of institutions within the purview of Entries 63 to 66 of List I. The Centre, however, exploited its superior financial resources and political hegemony to encroach on this part of States' sphere of responsibility. It did not spare even the area of school education. This expanding encroachment was legitimised in 1976 when the Forty-second Amendment transferred

Education from List II (Entry 11) to List III (Entry 25). Centre's revenue and capital expenditure on Education (including art and culture) has increased from Rs. 158.24 crores in 1974-75 to Rs. 763.87 crores in 1985-86 (B.E.), that is, 4.8 times. The shifting of Education from List II to List III has opened the way for rapid expansion of Central activity in this area. The new education perspective is reflected in the New Education Policy (1986) adopted by the Centre. In the Annual Plan 1985-86, the Centre (including UTs., without Legislature) already accounts for over one-third of the total plan outlay on Education (including art and culture, and youth affairs and sports).

Medical, Public Health, Sanitation and Water Supply :

9.20 Medical, Public Health and Sanitation are State subjects in terms of Entry 6 of List II. Water supply is an allied function. But the Centre did not hesitate to intrude into this area of State responsibility. From 1974-75 to 1985-86 (B.E.), Centre's expenditure on these subjects increased 5.4 times. In the Annual Plan 1985-86, the Centre (including Union Territories without Legislature) already accounts for one-third of total Plan outlay on these subjects.

Family Planning :

9.21 Originally the subject of family planning did not figure in any of the three Lists. The Honourable Member of the Constituent Assembly had either not yet heard of this activity, or thought it too un-Gandhian or too irrelevant to this country. Since the family planning facilities and services are akin to those of medical and public health, and since the motivational aspect of family planning may be considered an element of mass education, and since both the latter subjects were State matters, the States were the proper agency to be assigned this responsibility. But the Centre thought otherwise. Presumably it felt that it alone had the resources to bear the cost of the programme. The Centre took on itself the responsibility for planning, steering and financing the family planning programme. When this subject caught the fancy of Mr. Sanjay Gandhi, particularly when the Emergency placed *de facto* unbridled power in his hands, he made it virtually the nation's top most priority. Centre's expenditure on family planning shot up more than two-fold in a single year (1975-76). It was in this context that the Emergency regime chose to confer recognition on this subject and to bring it within the purview of the Centre. The Forty-second amendment (1976) made "Population Control and Family Planning" a Concurrent subject as Entry 20-A of List III. Though it still remains a Concurrent subject, the Centre has borne the exclusive responsibility for financing the Plan outlay on family planning.

9.22 The above are the major thrust areas for Centre's encroachment on States' Constitutional jurisdiction. This surely does not exhaust the list of Centre's intrusions. Indeed, the Centre, taking advantage of its greater access to financial resources, has been nibbling at States' jurisdiction and authority at very many points. The above instances, however, should be indicative enough of how serious and persistent have been the Centre's inroads into the original scheme of State responsibility under the Constitution.

(3) Proliferation of Central and Centrally Sponsored Plan Schemes :

9.23 An effective device employed by the Centre to impose its own development priorities and preferences also on the States' sphere of responsibility as well as to further reinforce its influence and control over the States is the Central and Centrally Sponsored (the C and CS for short) Plan Schemes. These schemes mostly pertain to States' sphere of responsibility as originally marked out in the Constitution and are in fact implemented by the States. These Schemes are mooted and drawn up by the Central Ministries without any genuine consultation with the States. The Planning Commission too has little say in the matter or even advance information. In a few cases the Schemes are financed wholly by the Centre, but generally the Centre finances only a part of the cost on the basis of a matching contribution (50 per cent in most cases) by the States. In other words, in all cases the Centre's contribution is in the nature of earmarked Central Assistance. This contribution forms part of the Central Sector Plan while the matching contribution by the States is provided out of the State Plan.

9.24 The States are generally critical of the C and CS Plan Schemes on several grounds. *Firstly* with regard to the subjects covered by these Schemes, the States are denied the initiative and opportunity to engineer development in accordance with their own ideas and preferences even in the States' sphere of responsibility. The States' role is thus reduced to implementing the Centre's ideas and preferences. *Secondly*, these Schemes result in misdirection of resources. The temptation of matching Central Assistance induces the States to take up these Schemes to the neglect or even abandonment of their own schemes even if they rate the former as of lower utility and priority and ill-conceived with regard to their specific circumstances. Most States make no secret of the fact that they have a different order of priorities and if the amount now available to them as matching Central Assistance for C and CS Schemes were instead available to as untied assistance for State Plan Schemes. a substantially different structure of development outlays will emerge. *Thirdly*, the Central Assistance made available for these Schemes cuts into the amount available to the Centre for transfer as Central Assistance for State Plans. In other words a flow of funds rated by the States as of lower utility for them is substituted for one considered by them as of greater utility. *Finally*, the States resent their having to be supplicants at the door of the Central Ministries and the opportunity that this provides to the latter to take superior *airs-vis-a-vis* the State Governments and their officials.

9.25 The States have been persistently and insistently making a number of demands with respect to the C and CS Plan Schemes. *Firstly*, these Schemes must be cut down to the minimum and must be limited to only such areas of State responsibility as are related to attainment of crucial national objectives and as such funds released as above may be

made available to the States as larger Central Assistance for State Plans. *Thirdly*, the few C and CS Schemes that are retained may be financed cent per cent by the Central Government so that no diversion of State funds to these Schemes is necessary. *Fourthly*, new Schemes may be introduced only at the beginning of a new Five-Year Plan or at the latest at the beginning of a new Annual Plan and not during the course of the Plan. *Finally*, the States may be given due freedom to adjust these schemes in the light of their specific local circumstances so that these better subserve local needs.

9.26 The above demands of the States are very reasonable, but these have met with little response from an expansionist Centre. The proliferation of C and CS Plan Schemes continues unabated and their number now literally runs into hundreds. For some reason, neither the Five-Year Plan nor the Annual Plan Documents have given even an exhaustive list of these Schemes, much less any indication as to the provision of each such Scheme. The Explanatory Memorandum on the Central Budget for 1985-86 indicated only the broad areas covered by these Schemes and the allocation for each such area. But even this information has been omitted in the Explanatory Memorandum on the Central Budget for 1986-87. In the event a list of the Schemes for which provisions had been made in the Punjab Budget for 1986-87 was compiled. These Schemes were indeed very large in number. The Budgetary Provision for the Schemes summarised by Heads/Sub-Heads of Development is given in Table 9.6.

TABLE 9.6

Provision in the Punjab Budget for Central and Centrally Sponsored Plan Schemes by Heads/Sub-Heads of Development

(Rs. in lakhs)

Heads/Sub-Heads	1985-86 (R.E.)			1986-87 (B.E.)		
	Grants	Loans	Total	Grants	Loans	Total
I. Social and Community Services	3,017.73	100.00	3,117.73	4,078.91	..	4,078.91
1. Education	182.82	..	182.82	205.78	..	205.78
2. Medical	58.15	..	58.15	132.85	..	132.85
3. Family Welfare	1,815.64	..	1,815.64	2,775.76	..	2,675.76
4. Public Health, Sanitation and Water Supply	419.50	..	419.50	457.20	..	457.20
5. Urban Development	31.00	100.00	131.00	..	..	..
6. Social Security and Welfare	515.22	..	515.22	607.32	..	607.32
II. Economic Services	3,519.28	593.51	4,112.79	4,048.84	395.07	4,443.91
1. Co-operation	681.07	457.51	1,138.58	688.99	266.07	955.06
2. Agriculture	575.29	..	575.29	1,024.71	..	1,024.71
3. Minor Irrigation	140.25	..	140.25	175.84	..	175.84
4. Soil and Water Conservation	11.21	..	11.21	20.50	..	20.50
5. Animal Husbandry	165.00	..	165.00	164.07	..	164.00
6. Fisheries	34.00	31.00	65.00	46.00	19.00	65.00
7. Forests	236.40		236.40	429.00	..	429.00
8. Community Development Programme	1,432.16	..	1,432.16	1,190.50	..	1,190.50
9. Village and Small Industries	199.30	35.00	234.30	269.23	50.00	319.23
10. Roads	40.00	70.00	110.00	40.00	60.00	100.00
III. Total Provision	6,537.01	693.51	7,230.52	8,127.75	395.07	8,522.82

9.27 There might be some, possibly many, other Schemes which have not yet been availed off by Punjab or are not relevant to the States' development requirements. Even as it is the Punjab list confirms that these Schemes run into hundreds and more are being added. A perusal of the list indicates that few of these schemes are such as may be considered beyond the competence of the States to moot and plan, taking into account the specific local condition and requirements. There is no valid reason why these Schemes may not be altogether transferred to the States Plan. The Central Ministries may limit themselves to providing any inter-State co-ordination that some of these Schemes might require. The bait of earmarked Central Assistance for these schemes need not be indispensable for eliciting due co-operation from the States. If co-ordination by Central Ministries is well conceived and is persuasively put across, it is bond to receive a positive response from the States.

9.28 The Centre, however, does not seem to be inclined this way. The C and CS Plan Schemes continue to grow in number and to claim a rising proportion of the total grant assistance to States. The data for the first two years of the Seventh Plan are presented in Table 9.7.

TABLE 9.7

Central Grant Assistance to States for Plan Schemes

Plan Schemes	1985-86 (P.E.)		1986-87 (B.E.)	
	Rs. crore	Per cent	Rs. crore	Per cent
1. Central and Centrally Sponsored Plan Schemes . .	2,645.51	50.8	2,997.44	53.6
2. State Plan Schemes*	2,558.71	49.2	591.42	46.4
Total . .	5,204.22	100.0	5,588.86	100.0

SOURCE :—Explanatory Memorandum on the budget of the Central Government for 1986-87, P. 59.

*Includes North-East Council Schemes.

9.29 Table 9.7 shows that during 1985-86 (R.E.) and 1986-87 (B.E.), 50.8 per cent and 53.6 per cent of the total Central grant assistance to States for Plan purpose is for C and CS Plan Schemes. If this trend continues, the actual Central grant assistance for these Schemes over the Seventh Plan period will exceed that for State Plans by a wide margin. This is a complete violation of the NDC directive that the expenditure on C and CS Plan Schemes must not exceed one-sixth of the assistance for Plan purposes. *Secondly,* the Centre has not accepted full responsibility for financing C and CS Plan Schemes. Generally the Centre finances these schemes only partially, mostly on 50:50 basis. The State Plan resources therefore, continue to be diverted to providing the matching funds for these schemes, reducing the amount available for States' own schemes. *Thirdly,* new C and CS Plan Schemes continue to be added throughout the year and all through the Five-Year Plan period. The need to divert State plan resources for providing matching contribution for financing these schemes interferes with the implementation of States' own Plan Schemes. *Finally,* the Schemes are seldom flexible enough to allow the States to effect adjustments to local conditions and requirements. A schematic pattern of a C and CS Plan Scheme covering this vast country makes no allowance for the inevitable diversity of circumstances and preferences encountered in different States. The utility and effectiveness of many of these Schemes continues to be adversely affected on this account.

9.30 The C and CS Plan Schemes are incompatible with an efficient and co-operative federalism. With the possible exception of a few such Schemes which are related to crucial national objectives, the rest of these Schemes must be wound up or transferred to State Plans. Correspondingly the Central Assistance now being given for these Schemes must instead be made available to the States either as their own resources or as Central Assistance for State Plans.

(4) Centre's Tight Control over the Planning Process in the States :

9.31 The States do not have adequate resources to implement the State Plans even though these now account for only about 40% of the total outlay under the national Plan. In fact, some States do not have any resources whatsoever for the State Plan. In the event, the States have become crucially dependent on Central Assistance to put through even the reduced level of State plan outlays. This provides the Centre with a powerful leverage to control the planning process in the States.

9.32 The Preparation of a State Plan, whether a Five-Year Plan or an Annual Plan, usually begins only after the detailed Guidelines on the subject have been received from the Centre (Planning Commission). The Guidelines are prepared by the Centre in the light of its own priorities and assessment of the State of the economy. There is virtually no consultation with the States in drawing up the Guidelines. The Guidelines are thus truly an imposition on the States and are not the outcome of an agreed assessment arrived at after due consultation between the Centre and the States.

9.33 At about the same time, the Centre forwards to the States detailed proformae which cover every item of interest to the former. The States are required to provide on these proformae full financial and non-financial information concerning the State Plan and the State economy. This information puts the Centre fully in a position to cross-examine and pressurise the State officials during the Centre-State discussions that follow.

9.34 On receipt of detailed information with regard to financial resources for the State Plan, the Centre (the Planning Commission) sets up a Resources Working Group to undertake detailed examination of the States' estimates of their own financial resources for their respective State Plans. The Union Finance Ministry and the R.B.I. are represented in the working group. The Group discusses separately with the officials of each State, the States' estimates of its own resource for the State Plan. To the agreed estimate of a States' own resources (including the market borrowing allocated to the State by the Planning Commission and the target of additional resource mobilisation by the State insisted upon by the Planning Commission) is added the Planning Commission's allocation of Central Assistance for the State Plan to arrive at the feasible total size of the State Plan. This exercise is gone through with every State.

9.35 When the non-official information on the prescribed proformae and the States' Plan proposals have been received, the Planning Commission sets up Working Groups/Sub-Groups, comprising Central officials, on different subjects to examine *each and every* scheme proposed by the State for inclusion in the State Plan. They suggest changes (both ways) in the proposed outlay on different schemes. They even suggest deletion of some new schemes and inclusion of others. The discussions are also sometimes used by the State officials to enhance the allocation for schemes in their respective Departments. They thus try to modify the State Government's priorities to the advantage of their own Departments or pet schemes with the help of the Central officials. This gives the latter a further chance to impose Centre's priorities on the State Plan.

9.36 Usually the outlays recommended by the Working Groups far exceed the State Plan size as arrived at by the Resources Working Group. The concerned Adviser in the Planning Commission matches the two by cutting down the outlays recommended

by the Working Groups for different Heads/Sub-Heads. In applying these cuts, the Adviser is naturally guided by the Planning Commission's intersectoral priorities. He announces the new allocations at the so called "wrap-up" meeting with the top State officials. This meeting provides a semblance of consultation with the State.

9.37 The State Plan size is finalised at the meeting between the Deputy Chairman of the Planning Commission and the State Chief Minister. The estimate of Central Assistance available for the State Plan originally indicated by the Planning Commission Officials and adopted by the Resources Working Group usually holds back a small proportion of the Central Assistance which is anticipated to be available. This amount is offered by the Deputy Chairman at the above meeting as an expression of the Centre's generosity and its consuming concern for an adequate State Plan, but usually on condition that the Chief Minister agrees that the State would go in for a higher amount of additional resource mobilisation than it had agreed to undertake at the officials level discussions. The Planning Commission Adviser, usually in consultation with top State officials, once again re-adjusts the sectroral allocation to the somewhat higher Plan size agreed to at the above meeting. The State Plan as thus finalised is then formally approved by the Planning Commission.

9.38 The release of Central Assistance to a State is subject to approval by the Planning Commission of the *entire* State Plan even if this Assistance finances only a small fraction of the total Plan. Furthermore, in order to make sure that among the approved Plan schemes the State will pay particular attention to the implementation of schemes to which the Centre attaches high priority, the Planning Commission earmarks the approved outlay on these schemes. This means that any shortfall in approved outlay on these schemes will be penalised by a corresponding proportionate reduction in Central Assistance for the State Plan. The Centre, indeed, exercises a tight control even over the 40% Plan outlay that still remains within the purview of the States. Any State priorities that do not accord with the Centre's priorities can be incorporated into the State Plan only by stealth, taking advantage of the ignorance of the Planning Commission officials about the true facts of the State economy and not openly.

(5) Irrational Structure and Criteria of Centre-State Resources Transfer :

9.39 The Constitution shows a serious internal imbalance in that the division of financial resources between the Centre and the States mismatches the allocation of responsibilities between them. This imbalance shows up as a large and growing gap between the States' total expenditure and their own receipts on revenue and capital account. Since the States' borrowing from outside the country is ruled out by Article 293(1), the only way to fill this gap is resources transfer from the Centre to the States. Since the gap has now grown to huge dimensions, the resources transfer has to be correspond-dimensions, the resources transfer has to be correspondingly large.

9.40 The Constitution pays scant attention to the modalities and criteria of the required resources transfer. There are only few provisions relating to this subject. These are mentioned below.

9.41 Article 270 provides that the taxes on income other than agricultural income shall be levied and collected by the Centre but the net proceeds from these, after certain prescribed deductions, shall be shared with the States. However, no minimum percentage is prescribed as the States' share. Even a token share should meet the Constitutional requirement. Moreover, Article 271 provides a loophole to the centre by excluding from the divisible pool and surcharge on income tax for purposes of the Union. For many years, the Centre made use of this loophole to deny the States their due. The surcharge on income-tax has been abolished only with effect from the assessment year 1986-87. A further big loophole was provided by the fact that under clause(4)(A) of Article 270 a corporation tax was excluded from the income tax and thus made non-shareable with the States. The Centre made use of this loophole by an amendment of the Income Tax Act in 1959 which treated the Income Tax on companies as Corporation Tax and hence non-shareable with the States.

9.42 The Constitution has made Customs Duties, a high yielding tax, altogether nons hareable with the States. In the case of Union Excise Duties, a high yielding tax with the highest growth potential, the Constitution only permitted under Article 272 sharing of the net proceed of the Duties with the States if the Parliament by law so provided, but it did not make this mandatory.

9.43 The Constitution has said just nothing on the principles and criteria for distribution of the States' share of Income Tax and the Union Excise Duties among the States *inter-se*. It left the distribution to be determined by Parliament by law on the recommendations of the Finance Commission to be appointed under Article 280.

9.44 Article 268 lists two minor taxes which shall be levied only by the Union but which shall be collected and appropriated by the States where leviable. Article 269 provides that certain duties and taxes listed under that Article shall be levied and collected by the Centre but shall be assigned to the States. The net proceeds from any such duty or tax, except the amount attributable to the Union Territories, shall be distributed among the States where it is levied in accordance with the principles of distribution laid down by Parliament by law.

9.45 Under Article 275(1) such sums as Parliament may be by law provide shall be paid out of the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States. Under the first Proviso to Article 275(1), grants-in-aid of revenue shall be made to a State as may be necessary to enable that State to meet the cost of approved schemes of development for promoting the welfare of the Scheduled Tribes or raising the level of administration of the Scheduled Areas. The second Proviso to Article 275(1) provides for specified grants-in-aid of revenues of the State of Assam.

9.46 Article 280 provides that the President shall, within two years from the commencement of the Constitution and thereafter every five years or earlier, constitute a Finance Commission consisting of a Chairman and four other Members to be appointed by the President. It shall be the duty of the Finance Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes, which are to be, or may be, divided between them under Chapter I of Part XII of the Constitution and the allocation between the States of the respective share of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(c) Any other matter referred to the Commission by the President in the interests of sound finance.

9.47 Under Article 282 the Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

9.48 Article 293 (2) enables the Government of India, subject to any condition laid down by Parliament, to make loans to any State or give guarantees in respect of loans raised by any State.

9.49 Under the above provisions five channels for Centre-States resources transfer have developed : (i) Devolution of resources on the recommendations of the Finance Commission with reference to Articles 269, 270, 271, 272, 275(1) and 280; (ii) central Assistance for State Plan Schemes with reference to Articles 282 and 293(2); (iii) Central Assistance for Central and Centrally Sponsored Plan Schemes with reference to Articles 282 and 293(2); (iv) Debt relief on the recommendations of the Finance Commission with reference to Article 282 and 233(2); and (v) other non-plan grants and loans with reference to Articles 282 and 293(2). The Structure of resources transfer in recent years is brought out in Table 9.8.

TABLE 9.8

Resources Transfer from the Centre to the State

	1985-86 (R.E.)		1986-87 (B.E.)	
	Rs. crores	Per cent	Rs. crores	Per cent
1	2	3	4	5
1. Devolution of Resources	8,569.13	39.1	9,432.83	41.8
1. Share of taxes	7,498.26	34.2	8,260.70	36.6
2. Grants	1,078.87	4.9	1,172.13	5.2
2. Central Assistance for State Plan Schemes	6,385.43	29.2	6,320.45	28.0
1. Grants	2,558.71	11.7	2,631.42	11.7
2. Loans	3,826.72	17.5	3,689.03	16.3
3. Assitance for Central and Centrally Sponsored Plan Schemes	2,818.62	12.9	3,167.12	14.0
1. Grants	2,645.51	12.1	2,997.44	13.3
2. Loans	173.11	0.8	160.68	0.7
4. Non-Plan Transfers	3,997.70	18.3	3,625.24	16.1
1. Grants	580.30	2.7	376.31	1.7
2. Loans	3,417.40	15.6	3,248.93	14.4
(i) Small Savings Loans	2,900.00	13.2	3,200.00	14.2
(ii) Others*	517.40	2.4	43.93	0.2
5. Debt relief (Grants for repayment of Central Loans)	110.00	0.5	30.00	0.1

SOURCE :—Central Government Budget Documents for 1986-87.

*Excludes the following loans from the Centre:—

	1985-86 (R.E.)	1986-87 (B.E.)
1. Ways and means advances	1,200.00	800.00
2. Short-term loans for fertiliserx and other agricultural inputs	250.00	255.00
3. Loans to clear over- drafts from the R.B.I.	1,628.00	..
	3,078.00	1,055.00

9.50 Devolution on the basis of Finance Commission's recommendations is the most important channel for resources transfer. It accounted for 39·1% and 41·8% of the total transfer in 1985–86 (R.E.) and 1986–87 (B.E.), respectively. The respective contribution of the States' share in Central taxes and the Central grants to this flow was 34·2% and 4·9% of the total resources transfer in 1985-86 (R.E.) and is estimated at 36·2% and 5·2% in 1986-87 (B.E.).

9.51 The second most important channel of resources transfer is Central Assistance for State Plans on the recommendations of the Planning Commission. It accounted for 29·2% and 28·0% of the total resources transfer in 1985-86 (R.E.) and 1986-87 (B.E.), respectively. In this category, the grants constitute 11·7% of the total resources flow in each of the two years and the loans were 17·5% and 16·3% respectively.

9.52 The Central Assistance for Central and Centrally Sponsored Plan Schemes is a relatively growing flow. It formed 12·93% and 14·0% of the total resources flow in 1985-86 (R.E.) and 1986-87 (B.E.) respectively. The bulk of the assistance is made available as grants and only a very small proportion as loans. This flow has been discussed above.

9.53 The Non-Plan transfers formed 18·3% and 16·1% of the total resources flow in 1985-86 (R.E.) and 1986-87 (B.E.). This data excludes ways and means advances and short-term loans for fertilizers and other agricultural inputs as these are expected to be re-paid during the same year. The loans granted to State to clear the over-drafts from the R.B.I. have also been excluded as if the present scheme to avoid over-drafts continues to be effective, there will be no more loans of this sort.

9.54 Among the non-plan loans, the Small Savings loans equivalent two-thirds of the net collection of Small Savings in the States are by far the most important item accounting for 13·2% and 14·2% of the total resources transfer during 1985-86 (R.E.) and 1986-87 (B.E.) respectively.

9.55 The Eighth Finance Commission, whose recommendations cover the five-year period 1984-85 to 1988-89, granted debt relief to States on Central Loans in two forms : (i) write off of repayment of loans and (ii) rescheduling of loans. The relief in the two forms over the five-year period is estimated at Rs. 405·20 crores and Rs. 1880·19 crores, respectively, making a total of Rs. 2285·39 crores (excluding relief of Rs. 117·08 crores for the re-payment of Small Savings loans in 1985-86)*. The mode of write off of repayment is that the Centre gives Non-Plan grants to States which are utilised by them to make the repayment which is to be written off. Such grants formed 0·5% and 0·1% of the total resources flow during 1985-86 (R.E.) and 1986-87 (B.E.). The annual estimates of the amount of debt relief on account of rescheduling of Central loans are not available.

9.56 The first two channels of resources flow from the Centre to the States are the most important and account for around 70% of their total flow. They have their respective negative features which need to be rectified. These features are discussed below:

(i) *Devolution of Resources*

9.57 Devolution of resources to the States is on the basis of the recommendations of the Finance Commission. So far the Finance Commission has been constituted eight times. The recommendations of the Eighth Finance Commission cover the period 1984-85 to 1988-89. Each Finance Commission is an *ad-hoc* body. It goes out of existence after submitting its report. The Chairman and the four members are all appointed by the President (the Union Executive) without any consultation whatsoever with the States. Members might render part-time or full-time service to the Commission. Since the Sixth Finance Commission, a Member of the Planning Commission who is concerned with the Financial Resources Division of that body is appointed concurrently also a member of the Finance Commission to provide a link between the two Commissions. Generally at least one member of the Finance Commission is a former or even, for a while, a serving official of the Union Finance Ministry. The crucial post of the Secretary of the Finance Commission is usually held by a senior official of the Finance Ministry. Sometimes he is appointed a Member-Secretary of the Commission to give him a still higher status. The research staff of the Commission is mostly taken on deputation from among the staff of the union Ministries, particularly the Ministry of Finance and the Planning Commission. Clearly such a Commission just cannot remain uninfluenced by the thinking of the Union Government (particularly, the the Ministry of Finance) on the subjects referred to it. In any case, the Commission's freedom of approach is severely constrained by the very detailed terms of reference laid down by the Union Government which virtually prescribes the approach to be followed.

9.58 The Finance Commission is required by its terms of reference to have regard to, among other considerations, "the existing practice in regard to determination and distribution of Central Assistance for financing State Plans". The existing practice is that the determination of the total Central Assistance for State Plans and the share of each State in it is the responsibility of the Planning Commission. The Central Assistance for the Central and the Centrally Sponsored Plan Schemes is, by its very nature, the privilege of the concerned Union Ministers. Thus, in practice, the main concern of the Finance Commission is the States' Non-Plan gap on revenue account.

9.59 By the time the terms of reference of the Sixth Finance Commission came to be determined, it had become quite clear to the Planning Commission that the non-plan capital gap had also become an important problem for many States. They took up the matter with the Finance Ministry and at their insistence the States' non-plan capital gap was included in the terms of reference. This practice has continued ever since. Nevertheless, the non-plan revenue gap remains by far the most important concern of the Finance Commission.

9.60 In working out their recommendations for devolution of resources with respect to the Non-plan revenue gap, the successive Finance Commissions have adopted the gap-filling approach. This implies that the total amount of devolution and its distribution among the States must be so determined as not to leave an unfilled non-plan revenue gap in the case of any State, even if in the process some States might acquire substantial surpluses on non-plan revenue account.

9.61 The first step in the implementation of this approach is to work out the non-plan revenue gap. For this purpose, firstly, the revenue resources of the States are projected for the reference period on the basis of levels of taxation likely to be reached at the end of the base year, that is, the year immediately preceding the reference period for the Finance Commission recommendations. The revenue from additional taxation that might be undertaken by the States during the reference period is considered a resource for financing the State Plan. In working out the revenue projections, the Commission is required to take into account the scope for better fiscal management and to take credit for reasonable returns on States' investments in irrigation and power projects, transport undertakings, industrial and commercial enterprises and the like. This exercise is done on the basis of only State taxes, that is, without taking into account any Devolution from the Centre. Secondly,

*Report of the Eighth Finance Commission 1984, Annexure XIV-6, p. 68.

the non-plan revenue expenditure of States is projected for the reference period taking into account, *inter alia* :

(i) the provision for emoluments and terminal benefits of Government employees, teachers and employees of local bodies as obtaining on a date specified by the Commission, but with reference to objective criteria rather than actual increases that might have been given effect to;

(ii) commitments with regard to transfer of funds to local bodies and aided institutions;

(iii) adequate maintenance and upkeep of capital and assets and maintenance of Plan Schemes completed by the end of the base year; and

(iv) the scope for economy in expenditure.

In practice the projections of revenue and non-plan revenue expenditure are worked out by a reassessment of States' forecasts of these by following a combination of a positive and a normative approach. The excess of the projected non-plan revenue expenditure over the projected revenue gives the estimated non-plan revenue gap of States. The Eighth Finance Commission exercise showed that 6 States were in surplus even at this stage, that is, had a negative non-plan revenue gap. The other 16 States showed a deficit.

9.62 The second step is to determine the States' total share in Central taxes and the share of each state in the total divisible pool of taxes. The States generally prefer devolution of taxes rather than grants-in-aid under Article 275*. This is because "whereas taxes are buoyant, grants-in-aid are fixed sums, whose value is eroded, in real terms over the years.'** The States which have a pre-Devolution surplus or a very small deficit have an added reason for this preference. They will receive no or very little revenue gap grants, whereas they can hope to have a share in the divisible pool of taxes. On the other hand, the cost of Devolution to the Centre will be the minimum if almost the entire amount is transferred to the States as 275(1) grants with the States receiving only a token share in income to meet the requirements of Article 270. Then the total Devolution would need to be no more than the aggregate non-Plan revenue gap of deficit States plus the amount of income tax that might have gone to surplus States as their share in the divisible tax pool and wasted from the stand-point of filling up the revenue gap of deficit States.

9.63 It follows that a very important implication of the gap-filling approach is that the Devolution is minimized to the extent it goes to fill the non-plan revenue gap of the deficit States *instead of* merely adding to the non-plan revenue surplus of the surplus States. There are thus two ways to minimize the Devolution amount :

(i) by maximizing its component of revenue gap grants and

(ii) by so designing the formula for distribution of the States share of Central taxes as to ensure that the maximum proportion of the divisible pool of Central taxes goes to the deficit States and is utilised to fill the non-plan revenue gap.

The States preference for share of Central taxes as against revenue-gap grants on the ground of the former being buoyant can be overcome, at least in the case of the deficit States, by introducing an element of escalation in the recommended grants. This, indeed, has been done by the Eighth Finance Commission. The grants estimated to be necessary in different years to fill the remaining gap, after share of taxes has been taken into account, are recommended to be escalated by 5%, 10%, 15%, 20% and 25% in the successive five years of the reference period of the Commission. Clearly, if necessary, even higher rates of escalation could be recommended, say, 10%, 20%, 30%, 40% and 50%, respectively. Nevertheless the successive Finance Commissions have mainly resorted to the second device. The formulae for distribution of States' share of Central taxes have been made more and more "progressive", that is, such criteria of *inter se* distribution have been devised as ensure that the maximum of the divisible pool of taxes goes to the deficit, generally the relatively lower income, States while the minimum of its goes to the surplus, generally the relatively higher income States. The low income States believe that the higher income States have been squeezed, as befits this socialist Republic, for their sake. Many millions of others in the country, including those who ought to know better, also believe the same. The reality is, however, very different. Such of the deficit States as, in spite of being allowed a very generous share of the divisible pool of taxes, continue to show a deficit although a reduced one, do not benefit even by a single paisa from the Finance Commission's highly "progressive" stance. The deficit States who, as a result of a liberal share in the divisible amount of Central taxes, acquire a revenue surplus benefit only to the extent this surplus exceeds the one which would have accrued to them as a result of a more even distribution of the share of taxes among all the States. The beneficiary of the extremely "progressive" posture of the Finance Commission is not the above categories of States but very largely the Centre, which appoints the Finance Commission. It is not for the sake of the deficit States but for the benefit of the Centre that the Finance Commission does the superficially very progressive mask and penalises the surplus States for the relatively higher *per capita* SDP of their people. The validity of the above conclusion is demonstrated by Table 9.9 on the basis of the data thrown up by the Eighth Finance Commission.

9.64 Table 9.9 shows that, under the gap-filling approach, the required Devolution would be Rs. 18,484.83 crores under Assumption I and Rs. 37,195·70 crores under both Assumptions II and III. The required Devolution is the minimum under Assumption I. Being entirely in the form of revenue gap grants, no part of it is wasted from the point of view of filling the pre-devolution non-plan revenue gap as none of it goes to the States that had a non-plan revenue surplus even prior to Devolution.

9.65 Under Assumption II the required Devolution of Rs. 37,195·70 crores exceeds the required Devolution of Rs. 18,484·83 crores under Assumption I by Rs. 18,710·87 crores. This is because, firstly, the entire amount of category A States' share of Central taxes, that is, Rs. 9,229·64 crores merely added to the pre-devolution non-plan revenue surplus of these States. It was complete 'waste' from the stand point of gap-filling. Secondly, of the Rs. 18,253·89 crores

*Report of the Eighth Finance Commission 1984, Paragraph 2.7, p. 6.

TABLE 9.9

Estimates of Devolution on different assumptions relating to States' share of Central Taxes by applying the gap Filling approcch to the Eighth Finance Commission Data for the period 1984-85 to 1988-89.

(Rs. in crore)

	Category A States	Category B States	Category C States	Total
1. States' revenue position before Devolution	8,063.94	(—)8,789.90	(—)9,694.93	(—)18,484.83
				(—)8,063.94
2. Devolution under Assumption I	..	8,789.90	9,694.93	18,484.83
1. States' share of Central taxes	..	..	..	..
2. Revenue gap grants	..	8,789.90	9,694.93	18,484.83
3. States' share of Central taxes other than 5% of Union Excise Duties	9,229.64	18,253.89	5,684.05	33,167.58
4. States' revenue position under Assumption II	17,293.58	9,481.23	(—)4,010.88	26,774.81
		(—)17.24		(—)4,028.12
5. Devolution under Assumption II	9,229.64	18,271.13	9,694.93	37,195.70
1. States' share of Central taxes	9,229.64	18,253.89	56,884.05	33,167.58
2. Revenue gap grants	..	17.24	4,010.88	4,028.12
6. States' share of 5% Union Excise Duties	..	7.54	2,507.46	2,515.00
7. States' revenue position under Assumption III	17,293.58	9,481.82	(—)1,503.42	26,774.81
		(—)9.70		(—)1,513.12
8. Devolution under Assumption III	9,229.64	18,271.13	9,694.93	37,195.70
1. States' share of Central taxes	9,229.64	18,261.43	8,191.51	35,682.58
2. Revenue gap grants	..	9.70	1,503.42	1,513.12
9. Increase in Devolution—				
1. Assumption II over Assumption I	9,229.64	9,481.23	..	18,710.87
(i) States' share of Central taxes	9,229.64	18,253.89	5,684.05	33,167.58
(ii) Revenue gap grants	..	(—)8,772.66	(—)5,684.05	(—)14,456.71
2. Assumption III over Assumption II	..	..	..	..
(i) States' share of Central taxes	..	7.54	2,507.46	2,515.00
(ii) Revenue gap grants	..	(—)7.54	(—)2,507.46	(—)2,515.00

NOTES :

Categories of States :

A. States which had a non-plan revenue surplus even before Devolution, namely, Gujarat, Haryana, Karnataka, Maharashtra, Punjab & Tamil Nadu.

B. States which had non-plan revenue deficits before Devolution but acquired a revenue surplus after share of Central taxes, namely, Andhra Pradesh, Bihar, Kerala, Madhya Pradesh, Rajasthan and Uttar Pradesh. Rajasthan would have a small deficit during 1984-85 and a surplus during 1985-89.

C. States which had non-Plan revenue deficit even after share of Central taxes, namely, Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Nagaland, Orissa, Sikkim, Tripura and West Bengal.

Assumptions :

I. No States' share of Central taxes.

II. Including States' share of Central taxes other than 5% of Union Excise Duties.

III. Including also States' share of 5% of Union Excise Duties.

of category B States' share of Central taxes, only Rs. 8,772·66 crores were utilised in reducing the pre-devolution non-Plan revenue gap of these States from Rs. 8,789·90 crores to Rs. 17.24 crores. The balance Rs. 9,481.23 crores of their share of Central taxes was "wasted" in providing these States with a non-plan revenue surplus. The total "wastage" of Rs. 18,710·87 crores of States' share of taxes (Rs.9,229·64 crores in the case of category A States and Rs. 9,481·23 crores with respect to category B States) from the stand point of gap filling was responsible for the equivalent increase in the required Devolution under Assumption II. *Clearly that part of States' share of Central taxes which merely goes to augment the non-plan revenue surplus of some States adds to the Centre's burden or required total Devolution by and equivalent amount.*

9.66 It may also be noted that under Assumption II, the Rs. 5,684·05 crores which went to the revenue deficit category C States as their share of central taxes did not add a single paisa to the total Devolution entitlement of these States. Their Devolution entitlement remained completely unchanged as the entitlement to revenue gap grants was reduced precisely by the amount of their share of Central taxes. The second important conclusion that follows is that *The States' share of Central taxes which only reduces the non-plan revenue gap of deficit States makes no addition whatsoever to the Centre's total burden of required Devolution. Nor does it make any addition to the deficit States, total entitlement to Devolution.* Only the composition of that Devolution changes. There is an increase in the component of share of taxes but at the same time an equivalent decrease in the component of revenue gap grant.

9.67 It is obvious that under the gap filling approach, a highly "progressive" formula for distribution of States' share of Central taxes among the States *entirely* benefits the Centre by minimising its total burden of Devolution at the cost of the revenue surplus States and that it does not at all benefit the revenue deficit States who nevertheless might be bamboozled into believing that the revenue surplus States' tail has been twisted solely for their sake. This is brought out even more vividly by the fact that under Assumption III the total Devolution (including both States' share of Central taxes and revenue gap grants) remained precisely the same amount as under Assumption II, namely, Rs. 37,195·70 crores even though in this case the States received a higher share of Union Excise Duties, that is, 45% instead of 40%, where did the extra share of taxes go? The extra 5% of Union Excise Duties was distributed among the States who continued to have a non-plan revenue deficit even after their share of other taxes, including 40% of Union excise duties had been taken into account (as under Assumption II). Since no part of the extra 5% of Union Excise Duties went to the States who already had non-plan revenue surplus at this stage, none of it was wasted from the standpoint of gap filling. The entire amount went into reducing the revenue gap of States and hence their entitlement to revenue gap grants. The extra amount that the Centre had to pay as 5% additional share of Union Excise Duties was fully compensated for by the lower amount of the required revenue gap grants. There was just *no* additional net burden on the Centre of the extra share of Union Excise Duties. Nor did the deficit (category C) States who received a share in the extra 5% of Union Excise Duties thereby get a paisa more of total Devolution as this extra amount was fully neutralised by the reduced entitlement to revenue-gap grants. Clearly, the extra 5% share of Union Excise Duties which the Eighth Finance Commission granted to the States was a cent per cent public relations exercise at absolutely no extra cost to the Centre. It was made out that the Centre had been asked to forego another 5% of Union Excise Duties for the sake of the deficit State. And yet the Centre did not have to part with a single paisa more than what it would have in any case to shell out under the gap filling approach, nor were the deficit States this way given a paisa more than what they would have in any case been entitled to receive. Indeed, this recommendation of the Eighth Finance Commission was a magic show at its professional best !

9.68 The "very progressive" criteria adopted by the Eighth Finance Commission for *inter-se* distribution of States share of Central taxes implied in the context of the gap-filling approach that, of the estimated Rs. 35,682·58 crores of States share of Central taxes recommended by the Commission, as much as Rs. 16,971·71 crores (*i.e.* 47.5% of the total) benefited the Centre by reducing its liability for revenue gap grants from the original Rs. 1,848·43 crores to the final Rs. 1,513·12 crores. Thus the Centre was by far the biggest beneficiary of the tax sharing formula. The second largest beneficiary was the category B States. They benefited on a net basis to the extent of revenue surplus of Rs. 9,481·23 crores which resulted from their share of the Central taxes. This was 26·6% of the total amount of the divisible pool of Central taxes. The six States in category B included the four Hindi-speaking States of U.P., Bihar, Madhya Pradesh and Rajasthan, the low-income heartland of India which is increasingly the main power base of the ruling party at the Centre and, in consequence, has a tremendous political clout with the Central government. The four States share of Central taxes transformed their large pre-devolution non-plan deficit of Rs. 7,308·49 crores into an equally large revenue surplus of Rs. 6,948·92 crores. The balance Rs. 9,229·64 crores that is 25·9% of the total divisible pool of Central taxes, accrued to category A states whose non-plan revenue surplus increased from the pre-devolution level of Rs. 8,063·94 crores to Rs. 17,298·58 crores. *The ten States of Category C were the only group which received no net benefit from their share of Central taxes as their entitlement to revenue gap grants was as a result reduced exactly by the same amount.*

9.69 The gap-filling approach and the "progressive" tax distribution formula adopted in conjunction with it have other important fiscal implications. Firstly, the Category C States have no incentive to undertake tax and non-tax measures for additional revenue. Whatever is their pre-devolution non-plan revenue deficit, it will be taken care of by the Finance Commission, partly by their share of Central taxes and the balance by revenue gap grants. A better outcome, namely, a post-devolution non-plan revenue surplus is generally not within their reach no matter how "progressive" might be the tax sharing formula that the Finance Commission might recommend. All that they can hope for as a result of vigorous tax and non-tax measures for additional revenue is a reduced pre-devolution non-plan revenue deficit. But this has no logic for them. The only result of this will be a corresponding reduction in their entitlement to devolution, leaving them in the same no deficit but also no surplus post-devolution position which is in any case ensured to them under the gap-filling approach. There is then no sense in incurring the odium of unpopular revenue raising measures. On the other hand, if lavish expenditure results in their pre-devolution non-plan revenue gap going up, it is not their headache but that of the Finance Commission and the Centre. For these advantages, Category C is very welcome status for many States. Otherwise, it will be difficult to explain why States like West Bengal, Himachal Pradesh and J & K who occupy the 5th, the 6th and the 11th position from the top with respect to per capita SDP figure among Category C States. Others may well be preparing to join their

ranks in the reference period of the Ninth Finance Commission which is expected to be constituted in mid-1987.

9.70 The incentive to Category B States to mobilise revenues and to economise on non-plan expenditure is also very weak. On account of the political clout of the heartland States, who form two-thirds of this category, they can count that if, as a result of lax fiscal discipline, they land themselves in bigger pre-devolution non-plan revenue deficits, the next Finance Commission will make the tax sharing formula even more "Progressive" to ensure that they nevertheless end up with substantial post-devolution non-plan revenue surpluses. Besides their political clout, these States know that in this matter their and the Centre's interests converge. A "More progressive" tax sharing formula will enable the Centre to reduce its additional Devolution liability on account of enlarged pre-devolution non-plan revenue deficits of Categories B and C States, at the expense of the surplus (Category A) States. The worst that can happen to a Category B States as a result of financial indiscipline is that it may slip into Category C, which means that its post-devolution non-plan revenue surplus may be reduced to zero. This is by no means a frightful prospect for the four heartland States of this category. They can be reasonably sure that, in the event, on account of their powerful influence at the Centre, the Planning Commission "formulae" for distribution of market borrowings and the Central Assistance will be made still more "progressive" to give them a larger share of these at the expense of the surplus States, so as to ensure that the former have adequate State Plan size.

9.71 Category A States are the only ones who definitely stand to lose by financial indiscipline. This will, by lowering their post-Devolution non-plan revenue surplus, almost certainly adversely effect their State Plan size. The result has been that the present system of Devolution of resources shows a strong negative correlation between the States' estimated revenue at existing rates from own tax and non-tax resources over the reference period and their respective devolution entitlement per Rs. 100 of own revenues over the same period. This is shown in Table 9.10.

9.72 Table 9.10 shows that for every Rs. 100 of revenue expected to be raised from State taxes over the period 1984-89, Haryana and Punjab would receive Rs. 15·6 and Rs. 16·3 as their share of Central taxes, respectively, whereas U.P. and Bihar would receive Rs. 84·2 and Rs. 142·3 and the neighbouring State of Himachal Pradesh, as much as Rs. 159·5 that is, about 10 times as much as Haryana and Punjab receive. The system of Devolution as evolved in India effectively divorces total financial resources available to different States from the revenue raised by them from their own tax and non-tax resources. Such a system might not have been so disastrous for financial discipline if it had been concerned with transfer of a few hundred crores. But as seen in Table 9.9, Devolution recommended by the Eighth Finance Commission formed as much as 39·3% of the State's total estimated own tax and non-tax revenues during 1984-89. A highly discriminating system of Devolution covering such huge transfers to the States could not but be ruinous from the standpoint of building up a healthy fiscal system. It has given immense opportunities to the Centre to play off, through the Finance Commission, one group of States against the other and effectively undermine their autonomy. Such a brazenly discriminatory system can never be the basis of stable regime of cooperative Central-State relations geared to vigorous national development.

TABLE 9.10

Ratio of Estimated Devolution Entitlement of States to their Estimated Revenue at Existing Rates from their Own Tax and Non-Tax Resources during 1984—89.

State	Estimated Revenue (Rs. Crore)			Estimated Devolution Entitlement (Rs. Crore)			Devolution Ratios	
	Tax	Non-tax	Total	Share of taxes	Grants	Total	Col. 4 as of Col. 1	Col. 6 as of Col. 3
0	1	2	3	4	5	6	7	8
1. Haryana	2,743.74	884.72	3,628.46	427.97	..	427.97	15.6%	11.8
2. Punjab	3,743.23	1,039.09	4,782.32	611.15	..	611.15	16.3	12.8
3. Maharashtra	12,342.19	3,135.91	15,476.10	2,617.30	..	2,617.30	21.2	16·9
4. Gujarat	5,915.88	899.88	6,815.76	1,417.18	..	1,417.18	24.0	20.8
5. Tamil Nadu	7,750.46	1,249.85	9,000.31	2,443.07	..	2,443.07	31.5	27.1
6. Karnataka	4,961.65	1,414.29	6,375.94	1,712.97	..	1,712.97	34.5	26.9
7. Kerala	3,402.57	869.52	4,272.09	1,258.94	..	1,258.94	37.0	29.5
8. Andhra Pradesh	6,554.41	1,374.19	7,928.60	2,754.78	..	2,754.78	42.0	34.7
9. Rajasthan	2,811.93	907.25	3,719.18	1,538.18	9.70	1,547.88	54.7	41.6
10. West Bengal	4,860.41	1,383.90	6,444.31	2,820.62	213.71	3,034.33	58.0	47.1
11. Madhya Pradesh	3,980.35	2,661.58	6,641.93	2,788.11	..	2,788.11	70.0	42.0

TABLE 9.10—contd.

0	1	2	3	4	5	6	7	8
12. Uttar Pradesh	7,029.06	2,554.58	9,383.64	5,915.60	..	5,915.60	84.2	63.0
13. Orissa	1,381.52	750.54	2,132.16	1,561.60	102.20	1,663.80	113.0	78.0
14. Bihar	2,814.47	1,627.49	4,441.96	4,005.82	..	4,005.82	142.3	90.2
15. Jammu & Kashmir	505.69	697.65	1,203.34	738.21	257.18	995.39	146.0	82.7
16. Himachal Pradesh	332.63	266.33	598.96	530.69	183.08	713.77	159.5	119.2
17. Assam	779.67	604.09	1,383.76	1,251.67	192.79	1,444.46	160.5	104.4
18. Sikkim	27.76	43.75	71.51	63.52	29.13	92.65	228.8	129.6
19. Meghalaya	53.76	48.14	101.90	242.88	98.42	341.30	415.8	334.9
20. Nagaland	44.79	95.00	139.79	325.47	158.57	484.04	726.7	346.3
21. Manipur	32.19	76.11	108.30	299.18	123.55	422.73	929.4	390.3
22. Tripura	41.39	60.67	102.06	357.67	144.79	502.46	864.1	492.3
Total	72,109.75	22,642.63	94,752.38	35,682.58	1,513.12	37,195.70	49.5	30.3

SOURCE :—Report of the Eighth Finance Commission 1984 :
(i) For columns 1-3, Annexure III-27(i) to 27 (xxii).
(ii) For columns 4 and 5 Chapter (xiii) tables 1 and 2.

9.73 The Finance Commission's completely one-sided approach of severely penalising growth performance and financial discipline and handsomely rewarding economic inefficiency and financial laxity has predictably led to a continued increase in States dependence on Devolution from the Centre. The Devolution has increased from a mere Rs. 447 crores in the First Five Year Plan period to Rs. 39452 crores for 1984-89, the five year period covered by the Eighth Finance Commission that is, 88 times. The Eighth Finance Commission had estimated the Centre's non-plan revenue surplus for the period 1984-89 at Rs. 39123 crores*. In other words, the Commission had to denude the Centre of its entire estimated non-plan revenue surplus and a sizeable sum in addition to provide for the required Devolution. This amount of Devolution has indeed been an important factor, through by no means the only one, for the severed deterioration in the revenue position of the Centre in recent years. The Centre is now incurring large and growing deficits on revenue account, in spite of the fact that provides for too large items of expenditure which are unmistakably of the nature of revenue expenditure, on the capital account. These are (i) Defence capital outlay (Rs. 1098 crores in the 1986-87 Budget) and (ii) the subsidy on imported fertilizers (Rs. 250 crores in the 1986-87 Budget). The revenue deficit implies that the Centre is financing also a part of its revenue expenditure by borrowing. In consequence, its liability is shooting up. Beyond doubt, interest will be the largest item of revenue expenditure in the 1987-88 Budget, exceeding even the Defence expenditure. Contrary to the general impression prevailing among the States, the Centre's financial power is based not on its superior revenue position but on its grab of the bulk of the public sector capital receipts.

9.74 In recent years the net saving (that is, the true revenue surplus) by the Central Government (including retained profits of Departmental commercial undertaking) has been negative and shows a progressive deterioration : 1983-84, Rs. (—) 674·2 crores; 1984-85 (R.E.), Rs. (—) 1702·9 crores; and 1985-86 (B.E.), Rs. (—) 3404·2 crores@. This has been an important factor in the steady deterioration in the country's rate of net saving in recent years from 20·0% in 1978-79 to 16·1% in 1984-85@@.

(ii) *Central Assistance for State Plans*

9.75 Central Assistance for State Plans involves two basic issues : (i) its total amount and (ii) its distribution among the States. The financial dependence of the States and their conflicting interests in this matter have inhibited the States from firmly demanding that a rational approach must be evolved to both these issues.

Total Amount of Central Assistance

9.76 Ideally, the total amount of Central Assistance ought to be the excess of the rationally determined total outlay under the State Plans and the State's own resources for these Plans. There are at present several difficulties in adopting this approach. The rational procedure to estimate the reasonable total outlay under the State Plans would be to first distribute the envisaged total outlay on the Public Sector Plan among the various Heads and Sub-Heads of Development. The outlay allocated to each Head/Sub-Head could then be divided between the Centre and the States in accordance with their respective Constitutional responsibility for different matters, with due regard to the relative suitability of the two levels of government for handling the different projects and programmes of development. There are, however, major difficulties in applying the above approach. Firstly, the existence of the Concurrent List blurs the division of responsibility between the

* Report of the Eighth Finance Commission 1984, Annexure IV-1, PP 231-232.

@ Government of India, Ministry of Finance, An Economic and Functional classification of the Central Government Budget 1985-86, Annexure 3 (item 5.1 plus 5.2) P 8.

@@ CSO, National Accounts Statistics 1970-71 to 1983-84 January, 1986, Appendix A-1, pp. 156-157.

Centre and the States. The Forty-second Amendment (1976) has made further important additions to this list. Secondly, the Centre's superior command of resources enables it to pull to itself even programmes which have to be implemented through the agency of the States. The Centre gives grants and loans to the States for implementing these so called Central and Centrally Sponosred Plan Schemes. The Central outlay on these schemes forms a sizeable proportion of the Budgetary outlay ion the Central Sector Plan. This is shown in Table 9.11.

TABLE 9.11

Centre's Budgetary Outlay on Central and Centrally Sponsored Schemes as a Percentage of its Total Budgetary Outlay on the Central Plan

	Unit	1985-86 (R.E.)	1986-87 (B.E.)
1. Centre's Budgetary Outlay on Central and Centrally Sponsored Schemes . . .	Rs. crore	2,818.62	3,167.12
1. Grams . . .	,,	2,645.51	2,997.44
2. Loans . . .	,,	173.11	169.68
2. Centre's Budgetary Outlay on the Central Plan	,,	13,231.38	13,617.33
1. Central Sector Plan	Rs. crore	20,093.97	22,300.00
2. Less : Amount Financed by the Extra-Budgetary Resources of the Central Enterprises	,,	(—)6,862.59	(—)8,682.67
3. (1) as a Ratio of (2)	%	21.3	23.3

9.77 Table 9.11 shows that the Central Budgetary outlays on Central and Centrally Sponsored Plan Schemes as a ratio of the total Budgetary Outlay on the Centtral Plan was; 1985-86 (R.E.), 21·3%; and 1986-87, 23·3%. This order of outlay by the Centre on schemes; implemented by the States confuses the line of demarcation between their respective spheres of development responsibility. Thirdly, the Centre has abused its large financial resources to brazenly encroach even on areas of development such as agriculture which under the Constitution, unquestionably fall within the State's sphere of responsibility. Fourthly, the Constitution authorised the Centre in certain cases to unilaterally add to its development responsibility at the expense of the States by making the prescribed declaration by or under a law enacted by Parliament. It can do this, for instance, by declaring (i) a road as a national highway, (ii) an inland waterway as a national waterway, (iii) a port as a major port, (iv) an industry as one the control of which is expedient in the public interest, (v) an inter-State river and river valley as one the regulation and development of which is expedient in the public interest, and (vi) an institution as one of national importance. The residuary subjects, that is, those not included in the State or the Concurrent Lists are the responsibility of the Centre. As a result the line of demarcation of responsibility between the Centre and the States is further undermined.

9.78 There are also difficulties in defining unambiguously the concept of State's own resources for the Plan. For example, the State's market borrowings are counted as their own resource but, as mentioned above, the State's share in the total market borrowings and its *inter-se* distribution among the States is very much a matter of arbitrary allocation by the Centre. Similarly the State's share in net collections from Small Savings is determined by the Centre. The State Electricity Board's borrowings from the Rural Electrification Corporation (R.E.C.), financed very substantially by investments of the Centre in this Corporation, are counted as the S.E.B.'s contribution and hence are a component of the State's own resources. Discretionary non-plan grants from the Centre go to reduce the State's non-plan expenditure that has to be met from their own resources. They thus add to the amount available to the States for financing their Plans. The Additional Resources Mobilisation (A.R.M.) by the States and their enterprises, to the extent of the net revenue accrual from it, adds to the State's own resources for the Plan. No rational approach has yet been evolved towards determining the A.R.M. target for a State. In practice, the projected A.R.M. is usually more the result of a battle of wits and nerves between the Planning Commission and the individual State than of any objective criteria on the subjects.

Distribution of Central Assistance among the States

9.79 The above difficulties have made any exercise aimed at deriving the quantum of the required Central Assistance as the excess of the rationally determined State Plan outlays over the State's own resources a rather arbitrary affair. Upto the Third Plan, the Central Assistance of all States was in fact determined by the above procedure. But on account of the several arbitrary aspects of this procedure, there was increasing dissatisfaction among the States against it. This led to the adoption of the Gadgil Formula in September, 1968. This formula did not go into the question of how to determine the total quantum of Central Assistance. It assumed that the total quantum had somehow been determined and limited itself to laying down objective criteria for the distribution of the total amount of Central Assistance among the States *inter-se*. The following objective criteria were adopted. A lump-sum amount was to be set apart for special category states (which then included Assam, J & K and Nagaland). The balance was to be distributed among the remaining States (i) 60% on the basis of population, (ii) 10% on the basis of the per capita income (State Demestic Product) among the States having per capita income below the national level, (iii) 10% on the basis of tax effort, (iv) 10% for continuing irrigation and power projects, and (v) 10% for special problems of States.

9.80 The Fourth Five-Year Plan (1969-74) allocated the Central Assistance entirely on the basis of the Gadgil Formula. In the Fifth Plan (1974-79) as finalised in 1976, 90·8% of the total Central Assistance was allocated under the Gadgil Formula, the balance 9·2% was to be distributed under two additional criteria, namely, (i) assistance for externally aided projects (1·7%), and (ii) special assistance for area programmes (7·2%). The stillborn Draft Sixth Plan (1978-83) of the Janata Government introduced another additional criterion, namely, the Income

Adjusted Total Population (IATP). A State's IATP was measured by the State's population weighted by the inverse of a 3-year average of the per capita State Domestic Product (SDP). The share of a State in the portion of Central Assistance distributable in accordance with this criterion was to be determined by its IATP as a percentage of the aggregate of all State's IATP.

9.81 In August, 1980 the National Development Council modified the original Gadgil formula to the extent of abolishing the 10% of the total Central Assistance allocable on the basis of continuing irrigation and power projects and instead raised the percentage allocable to States having per capita SDP below the national level from 10 to 20. The Seventh Plan has given up IATP as an allocation criterion. Other criteria remain unchanged. The criteria for distribution of Central Assistance among the States adopted under different Five-Year Plan together with the relative weight given to them has been summarized in Table 9.12.

TABLE 9.12

Criteria for Distributions of Central Assistance among the States

	Fourth Plan		Fifth Plan		Sixth Plan 1980-85		Seventh Plan	
	Rs. crore	%	Rs. Crore	%	Rs. Crore	%	Rs. Crore	%
1. Gadgil/Modified Gadgil Formula	3,500.00	100.0	5,450.0	90.8	10,945.00	71.3	23,627.00	79.6
1. Lumpsum provision for Special Category Sttes	525.00	15.0	..	..	3,245.00	21.1	7,102.00	23.9
2. Objective criteria	2,975.00 (100%)	85.0	..	..	7,700.00 (100%)	50.2	16,525.00 (100%)	55.7
(i) Population	1,785.00 (60%)	51.0	..	..	4,620.00 (60%)	30.2	9,915.00 (60%)	33.4
(ii) Per Capita SDP	297.50 (10%)	8.5	..	..	1540.00 (20%)	10.0	3,305.00 (20%)	11.1
(iii) Tax effort	297.50 (10%)	8.5	..	..	770.00 (10%)	5.0	1,652.50 (10%)	5.6
(iv) Continuing Irrigation and Power Projects	297.50 (10%)	8.5	..	..	..	..	..	..
(v) Special problems	297.50 (10%)	8.5	..	..	770.00 (10%)	5.0	1,652.5 (10%)	5.0
2. Other Criteria	..	..	550.00	9.2	4,405.00	28.7	6,259.00	20.4
1. Externally Aided Projects	..	..	100.00	1.7	1,450.00	9.5	3,800.00	12.8
2. Selected Area Programmes.	..	..	450.00	7.5	1,355.00	8.8	2,459.00	7.6
3. Income Adjusted Total Population (IATP)	..	..	..	..	1,600.00	10.4	..	..
3. Total Central Assistance.	3,500.00	100.00	6,000.00	100.00	15,350.00	100.00	29,886.00*	100.00

NOTE :—Figures in parenthesis give the relative weightage to different objective criteria in the Formula.

* After adjustment of Rs. 149 crores of advance Plan Assistance given for relief works, the net Central Assistance has been determined as Rs. 29,737 crores.

Evaluation of the Seventh Plan Criteria for Distribution of Central Assistance :

9.82 An evaluation of the criteria for distribution of Central Assistance among the States is greatly handicapped by the fact that the Five-Year and Annual Plan documents have stopped giving the Statewise allocation of Central Assistance resulting from the application of these criteria. This is not just an inadvertent omission. It is a deliberate attempt to withhold vital information lest public knowledge of inequitous distribution of Central Assistance might provoke widespread criticism and protests. Some of the related facts that have been made public to suggest that several of the criteria are fairly ill-conceived and unreasonable in several respects. The shortcomings of the various criteria are brought out below.

Special Category Status:

9.83 Under the Gadgil Formula characterisation as a Special Category State is very rewarding indeed. Out of the total Central Assistance of Rs. 23,627 crores distributed in the Seventh Plan under the Gadgil Formula, Rs. 7,102 crores, i.e. 30%, have been allocated to the Special Categories States (Assam, H.P., J. & K. Manipur, Meghalaya, Nagaland, Sikkim and Tripura). This works out to 23.9% of the total Central Assistance allocated under the Gadgil Formula and other criteria. It may be mentioned that the 8 States accounted for a mere 5% of the total 1970 population of all the 22 States. Except or the tiny Sikkim, they are not very poor States either. In 1979-80 the last year of which the estimates of net State Domestic Product are available for all the States, the 8 States accounted for 4.8% of the total net State Domestic

Product of all the States. Thus, as a group, their per capita net SDP closely approached the average for all the States. The Total Plan outlay of the Special Category States has been set at Rs. 6,490 crores, i.e. less than their total Central Assistance by Rs. 612 crores. Since H.P. usually has substantial own resources for the State Plan and Assam and Meghalaya are also likely to make some positive contribution, even if small, to financing their Plans the excess of Central Assistance over the State Plan outlays is very probably accounted for by the other five States. In other words, Central Assistance to these five States would finance not only their entire State Plan outlay of Rs. 2,900 crores but also around Rs. 600 crores of gap in Non-Plan resources. In the case of other 3 States also the bulk and in some cases possibly almost the entire State Plan, would be financed by Central Assistance. To be classified as a Special Category State is indeed a very profitable proposition.

9.84 It would be logical to expect that such a financially rewarding status would be conferred on the basis of well defined stringent criteria. But no such criteria have been laid in the Plan Document. Nor can these be inferred from the actual classification of States as Special Category States. Location on active or a potentially active border does not seem to be the criterion. If this were so, this category should have also included Gujarat, Punjab and Rajasthan. Low per capita income is obviously not the criterion for several States in this category have higher per capita. SDP Plan than several other States which have been excluded. The Planning Commission presumably took the 3-year (1976-79) average per capita net State Domestic Product at current Prices of different States as worked out by the Finance Commission* as the basis of its exercises for the distribution of Central Assistance for State Plans. These estimates show that H.P. has a higher per capita SDP (Rs. 1,230) than the all-States' average (Rs. 1,139) and that J. &K. (Rs. 1,100) quite approaches the all-States' average. Both the States have been included in the Special Category while Bihar (Rs. 755), U.P.(Rs. 870), Madhya Pradesh (Rs. 895), Orissa (Rs. 918), Andhra Pradesh (Rs. 1,006) and Rajasthan (Rs. 1,127) whose per capita SDP is well below the all-States' average have been excluded. If the criterion is hilly terrain the States now classified as Special Category States could instead have been allowed due extra Central Assistance under the Hill Areas Programme (which is included under the Special Areas Programmes) and, to the extent necessary, a much larger than the present amount could have been earmarked for this purpose outside the Gadgil Formula. This would have obviated the need to set some States having hill areas apart from the rest of such States. If actual or threatened political trouble is the criterion, how is H.P. included while Punjab is excluded ? Moreover, it will be short-sighted and inexpedient or even immoral to submit to unjustified political pressure and is likely to encourage similar developments elsewhere.

9.85 The liberal treatment meted out to Special Category States sharpens, instead of satisfying, their appetite for Central Assistance. As a result of the total Central Assistance for State Plans allocated under all criteria, the share of Special Category States works out as follows : the Fourth Plan, 15.0% the Sixth Plan, 21.1% and the Seventh Plan, 23.9%. In the Seventh Plan of J. & K., with a population only one-eleventh of the combined population of Karnataka, Punjab and Haryana (1981 census) is reported to have been allocated over 20% larger Central Assistance than the latter 3 States taken together. Again, Himachal Pradesh, with a population only about one-seventh of the combined population of Punjab and Haryana is reported to have secured over 10% more Central Assistance than the latter two States taken together. In view of these and other such facts irrationality of the existing criteria should be obvious. There is clearly a need for a different approach to ensuring a preferential treatment in the matter of distribution of Central Assistance for particularly deserving States.

Per Capita SDP Criterion :

9.86 The per capita SDP (State Domestic Product) criterion as implemented at present is quite arbitrary. Under this criterion 20% of the Gadgil Formula Central Assistance is allocated to States which have per Capita SDP below the national average. The allocation among the State is made on the basis of population weighted by the deviation of the average per capita SDP of the particular State from twice the average per capita SDP of all the eligible States.

9.87 A major objection to the criterion as now applied is that the deviation is measured, not from the national or the all-States' average per capita SDP, but from a very arbitrary amount, namely, twice the eligible States' average. Why not measure it from 3 times, or 4 times the eligible States' average ? There is no rational way to decide why one and not the other multiple might be adopted ? Each multiple will give a different allocation. If instead of 2 times the eligible States' average, the deviation is measured from 3 times this average, the *inter-se* allocation will be different as shown in Table 9.13.

9.88 A comparison of Variant A and Variant B of Table 9.13 shows that when the deviation is measured from 3 times the eligible States' average per capita SDP instead of twice this average. Andhra Pradesh, Kerala and Rajasthan will get much more, while Bihar and U.P. will secure much less, Central Assistance under the per capita SDP criterion. There will be a marginal decline in the case of Madhya Pradesh and practically no change in the case of Orissa. Indeed any multiple from 1.3 upwards can be chosen for measuring the deviation, as it will give a positive deviation for all the States. The nearer is the chosen multiple to 1.3, the larger will be the share of the relatively lower income States. Thus under the present computation procedure, the *inter-se*-distribution of Central Assistance under the per capita SDP criterion is largely a matter of arbitrary choice of the multiple for measuring the deviation from the all eligible States' average.

9.89 The choice of the eligible States' average per capita SDP as the reference point for measuring the deviation indeed gives absurd results. Tamil Nadu is reported to have claimed that, on the basis of CSO's figures adopted by the Finance and the Planning Commissions, its average per capita SDP for the

*Report of the Eighth Finance Commission 1984, App. VI, Page, 158.

3-year period 1976-77 to 1978-79 works out to Rs. 1,164.67 which is below the national average of Rs. 1,165. Clearly, the State asserts, Tamil Nadu is eligible for a share in Central Assistance under the per capita SDP criterion but it has been deprived of this share by rounding of its per capita SDP to Rs. 1,165. If Tamil Nadu's *prima facie* reasonable plea had been accepted and unrounded figures of individual State's per capita SDP for 1976-79 has been used, as shown in Table 9.14 its share under the per capita SDP criterion would have been Rs. 315.82 crores, that is, 92.3% larger than Kerala's share which has lose lower per capita SDP by Rs. 3 only.

9.90 The rounding up of Tamil Nadu's per capita SDP by a mere one-third of a rupee had deprived the State of Rs. 315.82 crores of Central Assistance. What could be more arbitrary and absurd ?

9.91 Another facet of the extreme arbitrariness of the present interpretation of the per capita SDP criterion is that if, instead of taking the 3-year average for 1976-77 to 1978-79,. the average for the period 1978-79 to 1980-81 had been taken (as the State's per capita SDP data for 1979-80 and 1980-81 had become available before the Seventh Plan had been finalised). Kerala would have been excluded from the category of eligible States while Tamil Nadu would have figured in it. Thus a mere change of the reference period would have made a difference of a few hundred crores of rupees to both these States' entitlement to Central Assistance.

TABLE 9.13

Computation of Central Assistance for State Plans under the Per Capita SDP Criterion for the Seventh Plan Period

Eligible State	Population 1971 (million)	Per Capita SDP (1976—79 AV. Rs.)	Deviation (Rs.)	Col. 1 x Col. 3 (million)	Per Cent	Central Assistance (Rs. Crore)
0	1	2	3	4	5	6
Variant A						
1. Andhra Pradesh	43.503	1,006	9,88	39,935.75	13.282	438.97
2. Bihar	56.353	755	1,169	65,876.66	21.910	724.13
3. Kerala	21.347	1,162	762	76,266.41	5.410	178.10
4. Madhya Pradesh	41.654	895	1,029	42,861.97	14.256	471.16
5. Orissa	21.945	918	1,006	22,076.67	7,343	242.69
6. Rajasthan	25.766	1,127	797	20,535.50	6,830	225.73
7. Uttar Pradesh	88.341	870	1,054	93,111.41	30.969	1,023.52
Total				3,00,664.37	1,00,000	3,305.00
Variant B						
1. Andhra Pradesh	43.503	1,006	1,880	81,785.64	13.904	459.53
2. Bihar	56.353	755	2,131	1,20,088.24	20.416	674.75
3. Kerala	21.347	1,162	1,724	36,802.23	6,257	206.79
4. Madhya Pradesh	41.654	895	1,991	82,933.11	14.099	465.97
5. Orissa	21.945	918	1,968	43,187.76	7.342	242.65
6. Rajasthan	25.776	1,127	1,759	45,322.39	7.705	254.65
7. Uttar Pradesh	88.341	870	2,016	1,78,095.46	30.277	1,000.66
Total				5,88,214.83	1,100.000	3,305.00

Variant A : Deviation of per capita SDP is measured from 2 times the eligible States' average per capita SDP.

Variant B : Deviation of per capita SDP is measured from 3 times the eligilbe States' average per capita SDP.

TABLE 9.14

Computation of Central Assistance for State Plans under the per Capita SDP Criterion for the Seventh Plan Period Using Unrounded Figures of per Capita SDP

(Variant A)

Eligible State	Population 1971 (million)	Per Capita SDP (1976-79 AV. Rs.)	Deviation (Rs.)	Col. 1 x Col. 3 (million)	Per Cent	Central Assistance (Rs. crore)
0	1	2	3	4	5	6
1. Andhra Pradesh	43.503	1,005.67	968.75	42,143.53	12.072	398.98
2. Bihar	56.353	755.33	1,219.09	68,699.38	19.678	650.36
3. Kerala	21.347	1,161.67	812.75	17,349.77	4.970	164.26
4. Madhya Pradesh	41.654	896.00	1,079.42	44,692.16	12.879	425.65
5. Orissa	21.945	918.33	1,056.09	23,175.90	6.638	219.39
6. Rajasthan	25.766	1,127.33	847.09	21,826.12	6.252	206.63
7. Uttar Pradesh	88.341	869.66	104.76	97,595.60	27.955	923.91
8. Tamil Nadu	41.199	1,164.67	809.75	33,360.89	9.556	315.82
Total				3,49,113.35	1,100.000	3,305.00

9.92 It was probably decided to measure the deviation of individual States' per capita SDP, not from the eligible States' average per capita SDP, but from twice the latter amount because the adoption of the former amount as the reference point for measuring deviation would have resulted in some States showing a negative deviation. This would imply that such States would have a negative allocation, that is, would have to contribute to the amount divisible under this criterion rather that receiving a share from it. Clearly, on the basis of all eligible States' average per capita SDP as the reference point for measuring deviation, the computation procedure would have given absurd results. It looks that in order to secure a positive deviation for all the states, it was decided to use twice the eligible state's average per capita SDP as the reference point.

9.93 The most rational course would be to adopt all States' average per capita SDP as the reference point for determining the eligibility of States for a share in Central Assistance under this criterion as well as for measuring the deviation. The Union Territories have nothing to do with Central Assistance for State Plans. The relevant reference point for exercises in connection with Central Assistance is the per capita SDP of all States, and not of the entire country. If such a reference point is adopted, all eligible States, by definition, will show a positive deviation and the computation of their respective shares will present no difficulties. This is shown in Table 9.15.

TABLE 9.15

Computation of Central Assistance for State Plans under the Per Capita SDP Criterion for the Seventh Plan Period

Eligible State	Population 1971 (million)	Per Capita SDP (1976—79 Rs.)	Deviation (Rs.)	Col. 1 × Col. 3 (million)	Per Cent	Central Assistance (Rs. crore)
0	1	2	3	4	5	6
		Variant C1				
1. Andhra Pradesh	43.503	1,006	133	5,785.90	8,699	287.50
2. Bihar	56.353	755	384	21,639.55	32.535	1,075.28
3. Madhya Pradesh	41.654	895	244	10,163.58	15.281	505.04
4. Orissa	21.945	918	221	4,849.84	7.292	241.00
5. Rajasthan	25.766	1,127	12	309.19	0.465	15.37
6. Uttar Pradesh	88.341	870	269	23,763.73	35.728	1,180.81
Total				66,511.79	11,00.000	3,305.00
		Varient C2				
1. Andhra Pradesh	43.503	1,005.67	133.33	5,800.25	8.718	288.13
2. Bihar	56.353	755.33	383.67	21,620.96	32.496	1,073.99
3. Madhya Pradesh	41.654	895.00	244.00	10,163.58	15.276	504.87
4. Orissa	21.945	918.33	220.67	4,842.60	7.278	240.54
5. Rajasthan	25.766	1,127.33	11.67	300.69	0.452	14.94
6. Uttar Pradesh	88.341	869.67	269.33	23,792.88	35.760	1,181.87
7. Tamil Nadu;	41.199	1,138.67*	0.33	13.60	0.020	0.66
Total				66,534.56	1,100.000	3,305.00

*Assumed for the purpose of this variant so as to make Tamil Nadu eligible for a share under this criteria.

9.94 It may be seen from Table 9.15 by comparing variant C1 with the variant C2 that when deviation is measured from the all State's average per capita SDP, the use of unrounded data instead of rounded data makes a very marginal difference to inter-State distribution of Central Assistance. The irrationality in the presently used reference point is thus removed. Further more, the absurdities of the sort noticed above in the case of Tamil Nadu will not arise.

9.95 Table 9.15 also shows that under a rational version of the per capita SDP criterion like the one adopted in that Table, only 6 non-special category States will share the Central Assistance allocable under this criterion. Of this as much as 83.5% will go to the heart-land States of U.P., Bihar and Madhya Pradesh. This criterion thus primarily serves the interest of these States. Under this criterion alone the three States receive 16.7 (20×835)% of the total Central Assistance allocated under the Gadgil Formula criteria. These three States are also the highest beneficiary under the population criteria as they account for 36.3% of the total population of the non-special Category States. Under the population criteria the three States receive another 21.7 (60×·362)% of the Central Assistance distributed under the Gadgil formula. Thus under these two criteria alone the share of the three States adds up to 38.4% of the Gadgil Formula total.

Tax Effort Criterion

9.96 Of the Central Assistance allocated under the modified Gadgil Formula, 10% is distributed on the basis of the tax effort of the States. The tax effort of the State is measured by the ratio of its Per capita tax receipts to its per capita SDP, expressed as a percentage. The tax effort percentages of different States are then added up. The share of a state in the allocable amount is the ratio of its tax effort percentage to the total of tax effort percentages of all States.

9.97 There is a persistent demand on the part of the States with a low level of tax effort, who correspondingly get a relatively smaller share of the amount allocable under this criterion that this criterion be altogether abolished and the amount now allocated under this criterion should also be added to that allocated under the Per Capita SDP criterion. The tax effort criterion is the only one in the modified Gadgil Formula that rewards the States for their effort at resource mobilisation. The amount allocated under this criterion is not more than 10% of the total distributed under this Formula. The interests of relatively lower income States have been safeguarded, not only by other criteria, but even under this criterion by measuring the tax effort of a State, not by the absolute amount of its per capita tax revenue, but by the ratio of its per capita tax revenue to its per capita SDP. The lower is the per capita SDP of a State, the correspondingly lower is the absolute amount of per capita tax revenue which gives it the same tax ratio that a relatively higher income State can secure only with a correspondingly higher per capita tax revenue.

9.98 It is sometimes said that is much easier for a relatively higher income State to achieve a given tax ratio than it is for a relatively lower income that State to do this. The same postulate was at one time put forth with respect to the rate of saving of countries. But this postulate has been conclusively invalidated by the experience of the group of Asian countries classified by the World Bank as "low income Asia." Since 1980, the low income Asia has been showing a *higher* rate of saving than that observed in the *case* of "industrial market economics" which are the most developed and the highest income group in the world. The rate of saving of the two groups of countries, as percent of GDP, has been as follows : 1981, 23.7% as against 21.6%; 1982, 22.1% as against 19.9%; 1983 (estimated), 24.0% as against 20%. *The Indian experience shows that the direct relationship between the tax ratio and the per capita SDP is very weak. The latest available data are presented in Table 9.16.

9.99 Table 9.16 shows that in 1983-84 among the the non-special category States, the first three positions in terms of tax ratio were occupied by States who held the 9th, the 6th and the 10th position in terms of per capita SDP, respectively. Among the special category State Himachal Pradesh which ranks number 1 in terms of per capita SDP, is only number 3 with regard to the tax ratio. If all States are taken together Himachal Pradesh will be number 6 from the top in terms of per capita SDP but only number 15 in the tax ratio ranking. West Bengal which is number 5 in per capita SDP is only number 12 in tax ratio ranking. If all States were taken together, West Bengal will still rank number 5 in per capita SDP but will be as low as number 14 with regard to tax ratio. Haryana and Punjab which occupy the first two positions with respect to per capita SDP rank only number 7 and 8, respectively, in terms of tax ratio. Sikkim which has the highest tax ratio among the special category States has the lowest per capita SDP. The correlation coefficient between the per capita SDP of States and their tax ratio is no doubt positive, but it is very week, a mere 296. It is not significant even at 20% level.

*World Bank, World Development Report 1985, Table A-7, P. 1951.

This shows that relatively low per capita SDP is no insuperable barrier to a State achieving a fairly high tax ratio. As shown in Table 9.14, several States with a fairly modest per capita SDP do rank among those with the highest tax ratio.

TABLE 9.16

Tax Ratio of States, 1983-84

State	Population@ (million)	Per capita revenue from State taxes (Rs.)	Per Capita SDP (Rs.)	Tax ratio Rank	Tax ratio (%)
1	2	3	4	5	6
Non-Special Category States					
1. Tamil Nadu .	50.09	229	1,827	9	12.5
2. Karnataka .	39.58	225	1,957	6	11.5
3. Kerala .	26.57	183	1,761	10	10·4
4. Maharashtra	65.88	277	3,032	3	9.1
5. Gujarat .	36.20	252	2,795	4	9.0
6. Andhra Pradesh	56.58	171	1,955	7	8.7
7. Haryana .	13.73	266	3,147	2	8.5
8. Punjab . .	17.74	307	3,691	1	8.3
9. Madhya Pradesh	54.77	117	1,636	11	7.2
10. Rajasthan .	36.78	120	1,881	8	6.4
11. U.P. . .	118.91	101	1,567	12	6.4
12. West Bengal	57.50	134	2,231	5	6.0
13. Bihar . .	75.17	59	1,174	13	5.0
Special Category States					
1. Sikkim .	0.34	111	1,300	6	8.5
2. J. & K. .	6.36	112	1,820	2	6.2
3. Himachal Pradesh . .	4.51	120	2,230	1	5.4
4. Meghalaya .	1.43	66	1,483	5	4.5
5. Assam .	21.64	63	1,762	3	3.6
6. Manipur .	1.53	32	1,673	4	1.9

SOURCE :—1. For per capita SDP—Govt. of India, Ministry of Finance. Indian Economic Statistics-Public Finance Dec., 1985, Table 11.3, P. 102.

2. For revenue from State-taxes RBI, Bulletin Nov. 1985, P-P. 835-836 @ Implied in CSO's estimates of per capita SDP for that year.

9.100 It looks that the availability of soft options for financing public expenditure is the most important factor, though by no means the only one, determining the State's propensity to impose and collect taxes. The heartland States and the special category States, who because of their political clout or the special status have plenty of soft options in this matter, generally tend to have low tax ratios, while the Southern States who enjoy no comparable advantages have to have high tax ratios. It looks that no alibi of low tax ratio States, such as relatively low per capita SDP in the case of some of these States, is valid enough to justify abandonment of this criterion.

Special Problems Criterion

9.101 The 10% of Central Assistance allocable under the Gadgil formula on the basis of special problems is, in fact, at the discretion of the Planning

Commission. This is too big an amount to be placed at the unfettered discretion of the Planning Commission. This is not even in the interest of the Commission. No matter how judiciously the Planning Commission exercise their discretion, it will always expose them to the charge of discrimination on political or other grounds. For instance, it will be hard to convince Punjab and Haryana of the rationale of inter-State distribution of Central Assistance under this criterion when they reportedly do not get a paisa under it while some other States have been reportedly allocated huge amounts. Do not these two States have no special problems ? Punjab is, in fact, beset with enormous financial problems. The present financial situation may well continue over the greater part of the Eighth Plan period. And yet it gets nothing under this criterion in the Seventh Plan period. It is very necessary that the special problems must be identified and their respective allocation determined in the Plan document itself. The Plan must also lay down the criteria for the inter-State distribution of the amount allocated to each special problem. Preferably, if time permits, the Plan should even determine the actual amount allocated to each State for each special problem. A reasonable proportion, say 10% of the amount allocated to special problems may, however, be left to be distributed among the sepcial problems and the States by the national planning organisation, at its discretion, over the period of the Plan in the light of the emerging situation in various States.

Central Assistance outside the Gadgil Formula

9.102 Central Assistance is made available, outside the Gadgil formula, for (i) externally aided projects and (ii) the special area programme. Under item (i) the States receive extra Central Assistance equivalent to 70% of the aid disbursements. The balance 30% of the aid amount is retained by the Centre. There need be no change in the percentage of aid made available to the States as extra Central Assistance. The percentage is already high enough. Nor is there any justification for making available this part of the Central Assistance to States at the concessional rates at which it might have been secured by the Central Government. This would introduce an invidious distinction between aid amounts made available under different criteria. The fact that the States get a substantial amount of extra Central Assistance on this account for securing and expeditiously implementing the externally-aided project should be an adequate incentive for them.

9.103 The amount available for special area programmes is largely for four programmes, namely, the North East Council Schemes, the Hill Areas Programmes, the Tribal Areas Programmes and the Border Areas Development Programmes. These programmes are in fact very much of the nature of Centrally Sponsored Schemes and should be treated as such. The Central Assistance for these programmes really does not form part of the Central Assistance for State Plans. The Annual Plan 1985-86 document in fact correctly shows Central Assistance for Area Programmes separately from and outside of the "Total Central Assistance for State Plans".

9.104 The above discussion shows that the Central Assistance for State Plans is at present subject to serious irrationalities with respect to its concepts and criteria. It is very necessary to rationalise this form of Centre-State resources transfer.

(6) Growing Political Subordination of the States to the Centre.

9.105 In a genuine federal state structure, the constituent units are autonomous within their constitutional jurisdiction. This is, however, not true of the Indian States. Their heavy financial dependence on the Centre, together with the serious constitutional limitations on their legislative and executive authority, even with regard to matters which are within their jurisdiction under the Constitution, has subordinated them to the Centre to a degree which is obviously inconsistent with the federal concept. This subordination is getting worse day by day. A good proportion of the time of the State Chief Ministers and other important Ministers, as well as of key State officials, is spent on making trips to Delhi at heavy cost to the State exchequer. A further substantial proportion of their time and attention is taken up attending to the visiting Union Ministers and officials, answering their queries, or offering explanations to the Centre on one matter or the other. All this stands in the way of their giving due attention to State Affairs and the State Government work suffers.

9.106 The havoc that political subordination of the States to the Centre has played with the autonomy, prestige and self-respect of State Governments is brought out by a recent very painful but highly instructive episode. A major State in its replies to the Sarkaria Commission is reported to have vehemently objected to Article 249 of the Constitution and demanded that it be omitted. Even before the Sarkaria Commission had given its reaction to this demand, the State staged a volte-face on this matter. During the 1986 monsoon session of Parliament when the ruling party at the Centre moved a resolution in the Council of States to authorise the Parliament, with reference to Article 249, to enact legislation on, *inter-alia*, two major subjects in the State List, namely, Public Order and Police, the M.Ps. belonging to the ruling party in the State not only did not protest against the resolution but actually supported it. The fault for this volte-face lies not so much with the ruling party in that State as with the present state of Centre-State relations. State's financial dependence on the Centre is a major factor for this degree of their subordination to the latter.

Towards balanced Centre-State Financial relations*

10.1 Cooperative federalism and a congenial environment for efficient resource use require an even financial balance between the Centre and the States. Such a balance may be said to exist when the following conditions are met :

(1) The distribution of financial resources between the Centre and the States may broadly correspond to the expenditure implications of the division of responsibility between them under the Constitution.

(2) The need for purely discretionary resource transfers from the Centre to the States may be reduced to the Minimum so that the Central ministries may have few opportunities to

influence States development policies and programmes in the latters sphere of Constitutional responsibility by exerting financial pressure.

(3) The scale and terms of Centre-State resources transfer, whether discretionary or non-discretionary, may be such as do not inevitably push the States into a debt-trap.

(4) The Centre and the States may have adequate incentives for mobilisation of resources in their respective spheres and using them efficiently.

(5) Reasonable opportunities may be available to the relatively lower income States and regions to financially reinforce their own resources and efforts towards overcoming their backwardness.

(6) States afflicted by natural calamities or burdened by exceptional impediments to development may receive such extra financial support as is necessary for making their own remedial efforts effective enough.

10.2 The measures suggested below are aimed at creating a system of Centre-State financial relations which does reasonably come up to the notion of a balanced system put forth above.

(1) Widening the States' Tax Base

10.3 It has been shown in Chapter 8 that the fact that at present the tax revenue from State taxes is only 35.4% of total tax revenue of the Centre and the States is attributable to the States' narrow tax base and not so much to the alleged relative inelasticity of taxes in their jurisdiction. Since the Constitutional responsibilities of the States require them to incur expenditure comparable to that implicit in the Centres' responsibilities, their much smaller tax revenue creates a serious financial imbalance between the Centre and the States. This imbalance must be tackled to the extent possible at its roots, that is, by widening the States' tax base by transferring some taxes from the Centre to the States.

Additional Sales Tax in lieu of Union Excise Duties on selected Products :

10.4 Among the taxes which the Centre is empowered to levy and collect, the most important are : The Customs Duties, the Income Tax (on personal incomes), the Corporation Tax (that is, the income tax on corporate incomes) and the Union Excise Duties. Accordingly to the Central Budget Estimates for 1986-87, the four taxes between them will yield 97·8% of the estimated gross tax revenue of the Centre. By the very nature of the Custom Duties, the Income Tax and the Corporation Tax, these must continue to be levied and collected by the Centre. The only tax which it may be feasible to transfer to the States wholly or partially is the Union Excise Duties. But it will be extremely unjust and ill-advised to transfer the power to levy this tax is as such to the States. The Union Excise Duties are levied, as a rule, on industrial products. In their case, the demand is generally less elastic than supply, particularly in the long run. The burden of Union Excise Duties therefore falls wholly or largely on the final consumer by way of higher prices payable for the taxed commodities, and not on the producer. If a State were to levy this tax, it will be taxing its own people only to the extent of their share in the total consumption. To the extent that the people of other States are the Consumer, this state will be taxing the population of other States. It is manifestly unjust to empower a State to tax, for the most part, the people of other States. Furthermore, since industrial development has been very uneven among the different States, the transfer of Union Excise Duties as such would imply that the industrially advanced States, which generally also have a higher per capita S. D. P., will be taxing the people of other States for the benefit of their own people. This is doubly unjust as it will further accentuate inter-State inequalities.

10.5 What can be done, and ought to be done, is that the income to be derived from Union Excise Duties on selected products may be transferred to the States in such a way as to make it possible for them to tax, in each case, their own people. This can be done if the Centre abolishes the excise duty on these products so that the States may levy an equivalent additional sales tax on these (in lieu of the excise duty). In this case there ought to be no increase in price. Each State will then be taking its own consuming population and there will be no additional burden even on them as the additional tax will be in lieu of the withdrawn Union Excise Duties. In order to ward off any pressure on the individual States to reduce the basic additional sales tax in lieu of Excise Duties, all States may agree that they will follow a common all-India policy in the matter under the aegis of the Inter-State Council or the National Development Council.

10.6 This arrangement may preferably cover such industrial products the sales tax on which cannot be easily evaded. The cost suitable from this point of view are the products the retail sales of which are easy to control and record so that it should be possible to collect the additional sales tax efficiently without much risk of evasion. This condition is largely met in the case of the following products : petroleum products (Tariff items no. 6 to 11AA), tyres (T. item 16), processed vegetable oils (included in T. item 12), vanspati (item 13), cement (item 23), iron and steel and products thereof (item 26A), sheet glass (part of item 23A), TV sets (item 23A), and motor vehicles and tractors (item 34). According to the Revised Estimates for 1985-86, the expected revenue yield from Basic and Special Excise Duties on these items was Rs. 4387.56 crores. The Budget Estimates for 1986-87, put the corresponding yield as Rs. 4,890.24 crores. Details are given in table 10.1

TABLE 10.1

Estimated Revenue Yield from Basic and Special Excise Duties on Selected Products

(Rs. crores)

	1985-86 (R.E.)	@ 1986-87 (B.E.)
1	2	3
1. Petroleum Products	1,894.84	2,044.47
2. Processed vegetable oils	5.00	85.00
3. Vanaspati	134.00	93.00
4. Tyres	480.00	525.00
5. Cement	745.90	820.00
6. Glass and glasswares*	107.40	123.70
7. Iron and steel and Products thereof	480.60	512.56
8. TV sets	100.00**	168.00**
9. Motor Vehicles and tractors	439.62	518.51
I. Total revenue from selected items	4,387.56	4,890.24
II. Total revenue from all excisable items (gross of refunds and drawbacks)	10,761.69	11,868.52
III. (I) as % of (II)	40.8	41.2

* Glassware is not considered a suitable item to be covered under this arrangement.

With regard to glass the arrangement may cover only sheet glass.

@ Includes the estimated revenue from additional tax proposals in the Budget.

** Estimated.

10.7 The above 9 items (even when allowance is made for the fact that glassware is to be excluded from the proposed arrangement) account for over 40% of the total revenue yield from Basic and Special Excise Duties. Substitution on additional Sales tax for the existing basic excise duties would mean a very substantial widening of the State's tax bases. The revenue from State taxes in 1985-86 (B.E.) was estimated at Rs. 14,405 crores. An arrangement which in that year would have substituted over Rs. 4,300 crores of Union revenue from Excise Duties by an equivalent amount of State's revenue from the additional sales tax levied in lieu of the excise duties on selected items would have widened the State's tax base by abount one-third. This arrangement will be a major step towards balanced Centre-State Financial relations. And it is workable arrangement. In the case of all the selected item it should be possible to have a limited number of retail outlets licenced and controlled by the respective State Governments. Even today the number of retail points in their case is generally fairly limited. Administration of the additional sales tax in lieu of the excise duties should not therefore pose tricky problems.

Reimposition of Sales Tax on Sugar, Textiles and Tobacco :

10.8 If it is considered necessary to introduce an additional sales tax in lieu of Union excise duties on selected items, there will be little justification for retaining the additional duties of excise in lieu of the sales tax on sugar, textiles and tobacco imposed with effect from 1957-58. These Duties have been estimated to yield Rs. 1,047·36 crores in 1986-87 (including additional taxation proposed in the Budget). The old arrangement may be restored. Many States claim that under the existing arrangement they have received much less revenue than what they would have got if the old arrangement had been continued. For instance, the Punjab Department of Finance has calculated that if the additional duties of excise in lieu of Sales tax had not been introduced, on the very plausible assumption that the rate of growth of revenue from sales tax on sugar, textiles and tobacco would have been at least not lower than that actually shown by the total sales tax on other items, over the period 1957-58 to 1983-84, the State would have got more than double the amount that it actually got as its share in the revenue from the additional duties of excise, that is, Rs. 320 crores as against the actual receipts of Rs. 157 crores. The abolition of this arrangement and reimposition of sales tax on sugar, textiles and to bacco will remove any felt grievance with regard to the operation of the existing arrangement.

Fuller Exploitation of the Revenue Potential of the Taxes Listed under Article 269 *:*

10.9 There should be a fuller exploitation of the revenue potential of taxes listed under Article 269. Specific suggestions in this respect are given below.

10.10 Tax on railway fares should be reimposed, initially at the rate of 15%. This tax rate will still be much lower than the prevalent tax rates on bus fares. Moreover, the tax on bus fares is on top of other heavy taxes on road transport which include the excise duty and sales tax on diesel, vehicles, tyres and spare parts, and the tax burden under Motor Vehicles Taxes. There are no comparable tax burdens on railway transport.

10.11 Pending the reimposition of a tax on railway fares, the Grant to States in lieu of tax on railway passenger fares may be maintained at 10·7% of the non-suburban passenger earnings. But the amount of the Grant may be determined each year on the basis of these earnings in that year and not fixed for a 5 year period as done by the Eighth Finance Commission. The amount of grant may be determined initially on the basis of the projection of non-suburban passenger earnings as adopted in the Railway Budget estimates for the year. Necessary adjustments in the grant amount may be made subsequently when the data on actual earnings during that year are available.

10.12 An adequate terminal tax on passenger arrivals by air may be imposed.

10.13 A tax on advertisements should be imposed and the scope of Article 269(1)(f) may be widened to include, besides newspaper advertisements, advertisements broadcast by radio or telecast by television.

10.14 Article 276(2) may be amended to raise the ceiling on tax on professions, trades, callings and employments to Rs. 1,000 per annum from the present level of Rs. 250. Several States may be included to brave the odium of imposing this tax if it could

yield a substantial amount. The general price level has risen several times since this ceiling was fixed. Raising the ceiling to Rs. 1,000 will mean only its partial adjustment to prevent general price level.

10.15 The power of Parliament by law to impose restrictions under Article 286(3) on taxes on sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce of or delivery of goods on hire purchase or any other system of payment by instalments or the transfer of the right to use any goods for any purpose and for any period for a valuable consideration must be used sparingly and judiciously. The State which export a large proportion of their output to other States must not be penalised for this by an indiscriminate use of power to impose restrictions on sales tax levied by exporting States. The burden of such restrictions will be particularly heavy on small States which necessarily have to export a large part of their output to other States just as the small countries have to do this in international trade. Again, now that leasing, particularly of machinery and sale on instalment credit, particularly in the case of consumer durables, is rapidly growing, restriction on sales tax under Article 286(3) must not be allowed to develop into a means of large scale avoidance of sales tax.

(2) Enlarging the State's Share in Central Taxes.

10.16 There must be no indiscriminate enlargement of the Divisible Pool of Central taxes. It is as necessary for the Centre to have adequate tax resources for proper discharge of its Constitutional responsibilities as it is for the States to have access to financial resources commensurate with their constitutional responsibilities. It would therefore be inadvisable to support the extreme ideas sometimes put forth for enlargement of the State's share in Central taxes. In this section an attempt has been made to outline a responsible approach to this subject which keeps in view the overall national interest.

10.17 Customs Duties may remain outside the Divisible Pool. These alone should provide the Centre with substantially larger revenue than the amount normally needed to finance a reasonable level of Defence expenditure. The Central Budget for 1986-87 has estimated the net customs revenue at Rs. 10,407 crores (including additional tax measures proposed in the Budget) whereas Defence expenditure (including defence capital outlay) has been budgeted at Rs. 8,728 crores. This leaves a margin of Rs. 1,679 crores for financing the Centre's non-defence requirements.

10.18 Having taken care of the Centre's foremost Constitutional responsibility, it should be in order to suggest that 50% of the revenue from Centre's principal taxes, namely, the Income Tax, the Corporation Tax and the Union Excise Duties may go to the State's as their share in Central Taxes. The Corporation Tax being but a tax on corporate incomes it is conceptually very much a part of the income tax. It should be once again treated as one, if need be, a Constitutional amendment and included in the Divisible Pool of Central taxes. At present, the State's share in Income Tax has been set at 85%. A 50% share in the combined Income and Corporation Tax should not be too onerous on the Centre. The Union Excise Duties are already divisible. The increase in the State's share from 45% under the Eighth Finance Commission recommendations to the proposed 50% is but a rather small adjustment. No tax which is essentially of the nature of an excise duty may be kept out of the Divisible Pool merely by classifying it as an earmarked cess. The present cesses on indigenously produced crude oil, sugar, coal and coke and TV sets, which are expected to yield in 1986-87 Rs. 910·80 crores, Rs. 95·20 crores, Rs. 67·30 crores and Rs. 280.00 crores are clearly excise duties the revenue yield of which ought to form a part of the Divisible Pool. To prevent misuse of the earmarked cesses on commodities to the detriment of the States, it may be provided that the yield of a cess in excess of Rs. 10 crores shall be included in the Divisible Pool.

10.19 On the above basis, the Divisible Pool in 1986-87 may be estimated at Rs. 13,832 crores comprising : Income Tax, Rs. 2,588 crores; Corporation Tax, Rs. 3,133 crores and Divisible Union Excise Duties, Rs. 8,111 crores.* At 50% the State's share in Divisible Pool will work out to Rs. 6,916 crores.

* The Estimate of Divisible Excise Duties had been worked out as under :—

	(Rs. crore)
1. Total estimated Union Excise Duties	14,142
2. *Less* :	
(i) Union Excise Duties proposed to be transferred to State as additional sales tax in lieu of Union Excise Duty .	(—)4,890
(ii) Effect of reimposition of sales tax in place of the Additional Duties of Exise	(—)1,047
(iii) Earmarked cesses outside the Divisible Pool	(—)94
3. Contribution to Divisible Pool . .	8,111

(3) Net effect of proposal in Sections (1) and (2)

10.20 The various proposals made in Sections (1) and (2) above for transfer of tax revenues from the Centre to the State will add upto a total transfer in 1986-87 of Rs. 12,853 crores made up of the following :

	(Rs. crores
1. Effect of imposition of additional sales tax in lieu of Union Excise duties . .	4,890
2. Effect of reimposition of sales tax and abolition of the Additional Excise Duties .	1,047
3. State's share in Central Taxes . .	6,916
Total estimated transfer . . .	12,853

10.21 Under the existing arrangement, the State's share in Central Taxes in 1986-87 has been estimated at Rs. 8,260 crores.** The net effect of the proposals made in Sections (1) and (2) above would be an additional tax revenue transfer of Rs. 4,593 crores to the States. The Centre would then be left with a total tax revenue of Rs. 18,103 crores as against Rs. 22,696 under the recommendations of the Eighth Finance Commission.

**Central Budget Documents 1986-87.

(4) Inter-State Distribution of the Divisible Pool

10.22 Various criteria for distribution of the constituent units' share in federal tax revenues among these units are, in the final analysis, variants of two basic criteria, namely, the criterion of compensation and the criterion of redistribution. Under the criterion of compensation, each constituent unit receives a share in proportion to the contribution of its population to the gross federal tax revenue from divisible taxes. Under the criteria of redistribution, the units with lower per capita SDP than the national average receive more than proportionately and the units with higher per capita SDP than the national average receive less than proportionately to the contribution of their respective population to the gross federal revenue from divisible taxes so that there is in the process a net resources transfer from the higher income units to the lower income units of the Federation.

10.23 The extra tax revenue accruing to the States from the proposed imposition of additional sales tax in lieu of the Union Excise Duty, and the reimposition of sales tax on sugar, textiles and tobacco together with abolition of the Additional Duties of Excise on these items will obviously get distributed among the States on the compensation criterion. In fact, each State will be realising additional revenue from sales tax equivalent to the extra sales tax paid by the State's population. This will be a case of full compensation.

10.24 In order to have a balanced inter-State distribution of the total amount of tax revenue proposed to be transferred from the Centre to the States, the redistribution criterion may be applied to the distribution of States' share in the Divisible Pool of Central taxes. At the same time, it is necessary to encourage the States to greater fiscal efforts, particularly towards increasing their revenue from State Taxes by imposing new taxes and more efficient enforcement of the existing taxes. Finally, the States may be spurred on, and given financial incentive, for more vigorous efforts towards tackling some of the major national problems. Keeping in view the above considerations, the suggested criteria for distribution and their relative weights are given in Table 10·2.

TABLE 10.2

Suggested Criteria for Distribution of the States' Share in the Divisible Pool of Central Taxes

Criterion	Relative weights in the Inter-State Distribution(%)
1	2
1. Population	50.0
2. Per Capita SDP below the all-States' average	20.0
3. Tax effort	10.0
4. Selected special Problems	20.0
1. Development of Scheduled Castes . .	4.0
2. Development of Scheduled Tribes . .	2.5
3. Development of Hill/Remote Areas .	3.0
4. Development of Border Areas . .	2.5
5. Coordinated Development of the North-East	2.5
6. Housing for Landless Workers . .	3.0
7. Improvement of Urban Slums . .	2.5

Population :

10.25 Distribution according to population substantially incorporates the redistribution criterion. For instance, the burden of excise duties falls on the consumer of commodities the consumer price of which includes an element of these duties. The population of higher income States, because of their relatively larger consumption of such commodities, contribute to the tax revenue from their duties more than proportionately to their number. On the other hand, the population of lower income States, because of their relatively smaller per capita consumption of these commodities, contribute to excise revenue less than proportionately to their number. Distribution of the divisible portion of the Union excise revenue according to population of the States determines the shares of higher income States at less than proportionately, and that of lower income States at more proportionately, to their respective contribution to this revenue. This criterion is obviously redistributive in character.

10.26 The distribution of the divisible portion of the revenue from income tax on personal and corporate incomes according to the population of different States has an even more pronounced redistributive impact. The low income States get much more and higher income States get much less than their respective contribution to the revenue from this tax. *If the gross revenue from this tax is developed to its full potential so that its contribution to the* Divisible Pool significantly improves relatively to the contribution of Union Excise Duties, the redistributive effect of distribution according to population will become even stronger.

Per Capita SDP Below the all-States' Average :

10.27 Under this criterion, an eligible State's share in the total amount divisible in accordance with this criterion will depend upon (i) how far its per capita SDP lags behind the all-States' average and (ii) the size of its population. The entire benefit of distribution under this criterion will go to the lower income States. The lower is the per capita SDP of a State, the greater will be the weightage it will get on account of low income. The relatively higher income States which contribute to the Centre's revenue from divisible taxes more than proportionately to the size of their population will get just nothing under this criterion. Clearly, this criterion has a very strong redistributive impact.

Tax Effort :

10.28 Under this criterion the share of a State in the amount divisible under this criterion depends upon its tax ratio, that is, the ratio of its total or per capita tax revenue to its total or per capita SDP. If there were a strong and unalterable correlation between a State's per capita SDP and its tax ratio, this criterion would be essentially compensatory in

character, that is each State will be receiving its share more or less in proportion to the contribution of its people to the Centre's gross revenue from the divisible taxes. But, as seen in Chapter 9, the correlation between States' per capita SDP and their ratio is very weak and insignificant. This means that it is very much possible for a low income State to have a relatively high tax ratio, and for a high income State to have relatively low tax ratio. *Several instances of this were given in Chapter 9. It follows that it is surely possible, within a very wide range, for a low income State to raise its tax ratio to a high enough level if it exercises the necessary fiscal discipline and undertakes adequate resources mobilisation. Tamil Nadu ranks number nine from the top in terms of per capita SDP but ranks number one in terms of tax ratio.* On the other hand, Himachal Pradesh which ranks number 6 in terms of per capita SDP is as low as number 16 in terms of tax ratio. If the relatively low income States emulate T.N. and achieve a high enough tax ratio, even the tax effort criterion may have a substantial redistributive effect in that low income States, which contribute to revenue from divisible taxes generally less than proportionately to their population, might also be claiming a share comparable to that of the higher income States, which contribute to Central tax revenue generally more than proportionately to their population. It is necessary to retain this criterion to provide due incentive to States to improve their tax ratio. The real possibility that even under this criterion the low income States may claim a high enough share in the amount divisible under it makes the case of its retention all the stronger..

Special Problems :

10.29 It is suggested that the amount allocated under this criterion may be distributed among the concerned States with reference to the extent and gravity of the problem in each State. Thus need and not contribution to the divisible tax revenue is the determining factor of a State's share. The various problems listed under this criterion are all major national problems which demand serious attention of the affected States. In order to ensure that the States in receipt of allocation under this criterion actually spend the amount received with reference to a particular special problem on remedying it, this amount may be earmarked for the particular purpose. Any portion of this amount which remains unutilised for the purpose at the end of a year may be reallocated by the NDC (or its relevant Committee) to such other States as have made good progress in overcoming this problem.

10.30 The amount allocated for development of Scheduled Castes may be distributed among the States in proportion to their respective Scheduled Castes Population. The allocation for development of Scheduled Tribes may be distributed to the extent of 50% in accordance with the tribal population of each State and 50% with respect to the predominantly tribal areas in the different states. The justification for the second sub-criterion is that if the tribal population is dispersed over a much larger areas, its development becomes all the more difficult. Unlike the Scheduled Castes who are generally not predominant in any large area, the Scheduled Tribes do have areas where they constitute the predominant element of the population. The amount allocated to the hill and remote areas, and the border areas, may also be distributed 50% according to the extent of these areas and 50% according to their population in different States. The amount allocated for the coordinated development of the North East may be put at disposal of the North East Council for implementation of its development programmes. The allocation for improvement of urban slums and for housing for the landless may be distributed among the States in accordance with the population of these categories in different States.

10.31 Taking all the criteria together, the suggested distribution scheme will have a strong redistributive impact. It could be confidently expected to contributed to gradual evening out of inter-State disparities in the level of development.

Ensuring the States a Due Share in Capital Receipts :

10.32 The very unequal distribution of capital receipts between the Centre and the States has been brought out in Chapter 7. This puts the States at a serious handicap with regard to resources for financing their investment requirements for balanced development of the sectors of the economy which are within their Constitutional jurisdiction. For this purpose the States are obliged to depend heavily on the Centre. In this section measures for ensuring the States their due share in capital receipts have been put forth.

Equal Share in Market Borrowings :

10.33 Apart form the Reserve Bank, the principal subscribers to Market Borrowings are (i) the commercial banks, (ii) the non-Government Provident Funds and (iii) the Life Insurance Corporation. At the end of March 1984, the Central and State Government Securities (representing the outstanding Government market borrowings, on that date) were held by the various subscribers as follows : RBI, 25·3%; commercial banks, 41·1%; non-Government Provident Funds, 13%; LIC, 11%; and other 9.6%.* The RBI's holdings of (Central) Government securities are a component of the deficit financing undertaken by the Centre. Assessment of the Scope for market borrowings in a given year of five year period excludes RBI investment in Central Government securities and instead counts it under the projected deficit financing. Likely investment by the commercial banks is related to the estimated increase in their deposits and the prescribed statutory liquidity ratio. The investment by the non-Government Provident Funds and the LIC is related to the estimated increment in their investible resources and the likely investment pattern of this increment taking into account also any statutory obligations of these institutions. Out of the total estimated scope for market borrowing, a portion is first set aside for market borrowings by the financial institutions. In the Seventh Plan out of the estimated net market borrowings of Rs. 36108 crores over the 5-year period 1985-90, Rs. 5546 crores (15·4% of the total (have been set aside for the financial institutions. If the Central and State public enterprises are to be encouraged to tap the financial

*RBI, Report on Currency and Finance 1984-85, Vol. II, Statement 90, PP 120-121. The discrepancy between the total and the components has been adjusted under "others".

institutions rather than excessively depending on Government for funds (which policy reorientation is necessary to impose adequate financial discipline on these enterprises as well on Governments which own them), and if the requirements of the private sector for long term finance are to be met adequately, the share of financial institutions in market borrowings must be greatly raised, say, to 30%. The balance 70% of the anticipated borrowings may be shared equally by the Centre and the States, each getting 35% of the total. On this basis the States share in the Seventh Plan market borrowings would have work out to Rs. 12638 (35% of 36108) crores as against Rs. 9942 crores actually allocated to them, that is, Rs. 2696 crores more over a 5-year period. The share of the States will include any market borrowings allocated by the State Governments to S.E.Bs. and other State enterprises and bodies. The same should apply to the Centre, if it begins to allocate some market borrowings to the Central enterprises.

Allocation of market Borrowings Among the States:

10.34 There must be a principled allocation of market borrowings among the States on the basis of a combination of the compensation and the redistribution criteria. As at present the States' share may be divided into parts : the normal and the special. The distribution among the two parts may be in the ratio of 75:25 as against the Seventh Plan Ratio of 70·5:29.5 so that the States like Punjab which were treated very unfairly in the Seventh Plan in the allocation of market borrowing could be given a more reasonable allocation.

10.35 The normal portion of market borrowing may be distributed among all the States on the compensation criterion by relating each States' allocation to the estimated contribution of its population to market borrowing. This contribution may be measured as the sum of :

(i) accertain to commercial bank deposits in the State multiplied by the prescribed statutory liquidity ratio of banks;

(ii) accretion in the LIC's Life Fund attributable to the State multiplied by the ratio of LIC's incremental investment in market borrowing to its total incremental investment; and

(iii) increment in the investible reasources of non-Government Provident Funds attributable to the State multiplied by the ratio of PFs' incremental investment in market borrowing to their total incremental investment.

If not better way of estimating the individual State's contribution to the increase in LIC's investible resources is possible, the premium income of the LIC in the State may be taken as the indicator. Likewise the net increase in the subscriber's balances with the non-Government Provident Funds in the State may be taken as the indicator of its contribution to the accretion to P.F.'s investible resources. Any shortfall in a State's entitlement to bank credit compared to its entitlement on the basis of the accepted national norm for credit deposit ratio may be added to the State's contribution to market borrowing to compensate it for the shortfall in this ratio. By allocating normal market borrowings among the States in proportion to their estimate respective contribution to total market borrowings, a reasonably principled distribution may be secured.

10.36 The special portion of market borrowing may be allocated on the redistribution criterion only to States with a per capita SDP below the all State's average. The distribution among the eligible States may be in accordance with the shortfall in per capita SDP comparable to the all States, average multiplied by the State's population. The share of a State will depend upon the ratio which this product bears to the total corresponding product of all the eligible States. This allocation will be strongly on the redistribution criterion. The higher income States which generally contribute to market borrowings more than proportionately to their population will be simply denied any allocation from this portion of market borrowings.

Small Savings :

10.37 It was explained in Chapter 8 that since only the net collections of Small Savings are shareable with the States and that withdrawals are met out of gross collections, the States' repayments of Small Savings loans to the Centre are fully available to the latter for financing its capital outlays. In other words, these repayments represent a perverse resources transfer from the States to the Centre which further accentuates the imbalance between the two. To minimise this resources transfer and to increase the States' share in net collections, the following suggestions are made :

(1) A State with a per capita SDP higher than the all States' average may be given small Savings loans equal to four-fifth of the net collections of these. States with a per capita SDP not higher than the all States' average may be allowed Small Savings equal to 95%of net collections.

(2) The maturity period for small savings loans may be increased from the present 25 years to 50 years and the grace period on these loans from 5 years to 10 years.

Disincentives to diviersion of Institutional Funds to special deposits with the Government of India :

10.38 As explained in Chapter 8, the investment by the non-Government Provident Funds of their funds in Special Deposits with the Central Government is almost entirely a diversion from Market Borrowings and small Savings. The investment in these Deposits by the Insurance Corporation is partially so. Since Market Borrowings and small Savings are shared by the States while Special Deposits are not, the Special Deposits Scheme instituted by the Centre divert funds to it at the expense of the States. In order to compensate the States for reduced capital receipts by way of share in Market Borrowings and Small Savings, it is suggested that the Centre may give additional Small Savings loans to States equal to one-half of the net increments in the outstanding special deposits. The allocations among the States may be in proportion to their respective total share in Market Borrowings and Small Savings.

Share in Net Collections under the Public Provident Fund and the National Deposits Scheme :

10.39 Each State may be given a 15-Year loan, with a grace period of 5 years, at the usual rate of interest (that is, at the average cost of borrowing incurred by the Centre) equivalent to one-half of the net Public Provident Fund collections in the State in the particular year. Like wise each State may be given a 10-year loan equivalent to net collections of National Deposits in that State in the year.

Encouragement to Bond Issues by the State Undertakings :

10.40 The State autonomous enterprises may be permitted and encouraged to tap the domestic capital market by issue of Bonds secured against the fixed assets of these borrowings enterprises in the manner it is now being increasingly done by the Central enterprises.

Incentive to States for Externally Aided Projects :

10.41 An incentive is presently being given to the States for undertaking externally aided projects in the form of extra Central Assistance to States equivalent to 70% of aid disbursements. This amount may be treated as a normal incentive to the States, and not a extra Central Assistance, to undertake these projects so that the utilisation of available external aid is expedited and the country secures more free foreign exchange in the process in the form of aid disbursements as well as augments its total investible resources. This amount may even be treated as States' share in the external assistance initially secured by the Centre. The extra funds given to the States on this account must not cut into the Central Assistance available for distribution under the accepted Formula. The Centre may encourage individual States, or groups of States to undertake major irrigation and power projects with external aid so that more effective use may be made of the available aid. Such States or state groups as lack the competence to undertake large irrigation and power projects may be helped by the relevant Central organisation and undertakings to plan and undertake these projects, if need be, by themselves planning and undertaking these projects on turn key basis on behalf of the States on agreed terms. In this manner external aid may be effectively utilised to promote irrigation and power development in the States as well as to make extra resources available to the States under the incentive scheme for externally aided projects.

Treatment of State Enterprises at Par with the Central Enterprises in the Matter of External Commercial Borrowings :

10.42 As mentioned in Chapter 9, the Central Enterprises are now going in for a substantial commercial borrowing from abroad. This source of funds has remained more or less closed to the State enterprises so far. The Centre may now begin to provide equal access and encouragement to State enterprises to undertake beneficial commercial borrowing from abroad on reasonable terms.

Share in Deficit Financing :

10.43 In an economy, like the Indian economy, which is growing and getting increasingly monopolised, a certain amount of deficit financing may be possible without disturbing the general price stability. Indeed, some amount of deficit financing may be even necessary for ensuring the general price stability. This is because in such an economy there is a growing demand for money or monetary resources denoted as M3, to perform the various functions of money. To bring about a commensurate increase in M3 it is necessary to extend the so called reserve money for the monetary liabilities of the Reserve Bank of India which constitutes the base for monetary expansion. How much increase in reserve money is required to bring about a given increase in the economy's monetary resources is related to the incremental money multiplier defined as the increase in monetary resources per unit of increase in reserve money. For instance, if the money multiplier is 3, in order to expand M3 by Rs. 300 crores, reserve money will need to be increased by Rs. 100 crores. Government deficit financing has been traditionally by far the most important factor in India for increase in revenue money. A certain amount of deficit financing thus is necessary for, and compatible with, preservation of general price stability.

10.44 Under the arrangements in force since 1985-86, the scope for permissible deficit financing will be appropriated entirely by the Centre. It is only fair that the States may be given share in this. This may be done in the two ways mentioned below :

(i) Ceiling for authorised overdrafts by States may be progressively raised.

(ii) The States may each be given a 15-year loan equal to 50% of the deficit financing undertaken by the Centre in that year. The rate of interest on these loans may be current rate of discount of Treasury Bill as deficit financing by the Centre primarily means its borrowing from the R.B.I. against *ad hoc* Treasury Bills. The *inter-se* distribution of these loans among the States may be in proportion to the increase in their respective total S.D.P. at constant prices. The justification for this is that the growth of the economy, that is, the increase in GDP in real terms is the primary factor which creates the scope for permissible deficit financing. Since there is generally a delay in the availability of the SDP estimates of States, initially a tentative allocation of loans to States may be made. The necessary adjustments may be made in the loan entitlement of different States in subsequent years on receipt of the SDP data from the C.S.O.

Share in Deposits of the Surplus Funds of the Oil and other Central Undertakings :

10.45 If the Centre undertakes price adjustment with respect to commodities/service sold by the Central enterprises in excess of what is needed to meet the accepted norm for a sector reasonable return on the net worth of these enterprises solely to generate surpluses which could then be deposited with the Central Government to augment its capital receipts, the Centre may give adiditional grants to the States equal to the same percentage of the additional deposits thus secured by the centre as the States' percentage share in Union Excise Duties. This is because an equivalent inceresase in prices could also have been effected by appropriate adjustment in the

Union Excise Duties which would have yielded extra revenue to the States as their share of Union Excise Duties. The inter-State allocation of these grants may be in proportion to the States' respective share in the divisible amount of Central taxes.

Expending Utilisation of Institutional Credit for Financing the State Sector Investments :

10.46 At present, apart from the limited amount of institutional credit availed of primarily by the S.E. Bs, there is little utilisation of institutional credit for financing the State sector investments. One very important way to improve the States' financial position will be to make much larger use of institutional credit to finance development activities in the State sector. The financial institutions will insist on proper project preparation and are expected also to undertake adequate appraisal of these projects themselves before agreeing to finance these. This should result in a marked improvement on project preparation and appraisal. The financial institutions will also insist on proper financial performance of the borrowing institutions. This will oblige the State Governments and enterprises to adopt professional management and commercial operating criteria.

10.47 For use of institutional credit on a massive scale for financing State sector investments it will be necessary to take the following steps :—

(i) State's commercial activities may be increasingly entrusted to non-Departmental undertakings. The activities suitable for such transfer are : commercial irrigation power, forestry, fishing, road transport, urban development, urban water supply and sewerage, housing, dairy development, large and medium industries and mining.

(ii) State Government may limit themselves largely to providing the equity investment in the non-Departmental undertakings. These enterprises may draw their long-term loan capital to the maximum extent by borrowing from the financial institutions and by bond issues.

(iii) Bureaucratic (mis) management and excessive political interference are at present the biggest factors for the poor physical and financial performance of State enterprises. For a basic improvement in their credit-worthiness there will need to be a visible improvement in their financial performance. This will call for effective de-bureaucratisation and depoliticisation of these enterprises. A clear distinction must be made between the public accountability of these enterprises and undue political interference in their working. The former does not justify the latter. These enterprises will need to be provided with professional management and opportunity and ability to operate on commercial criteria and must no longer be treated as veritable fiefs of bureaucrats and politicians.

(iv) There must be a full compliment of financial institutions to provide development finance to the Central and State enterprises as well as the private business undertaking for all types of activities. The Centre is already well on the way towards creating or promoting such a term-financing institutional structure. It includes the Industrial Development Bank of India, the Industrial Finance Corporation, the Industrial Credit and Investment Corporation of India, and the Industrial Reconstruction Bank of India, the National Bank for Agricultural and Rural Development, the Rural Electrification Corporation, the Shipping Development Fund Committee, and the Housing and Urban Development Corporation. The Power Finance Corporation the National Housing Bank and the Urban Development and Urban Water Supply Financing Corporation are being set up in the current year (1986-87). Several gaps in the term-financing institutional structure still remain un-filled. There is need for independent term-financing institutions for the following activities : transport, communication, forestry, fishing, major and medium irrigation, dairynig and warehouses and commercial buildings. The communications have been included in this list because with the setting up in 1986-87 of the Mahanagar Telephone Nigam to run and develop the telephone services in Bombay and Delhi, and the conversion in the same year of the Indian Overseas Communication Service into the Indian Overseas Communication Corporation the communications have also begun to be organised as non-Departmenal enterprises.

(v) The biggest remaining lacuna in the term-financing institutional structure, however, is the lack of an apex term-financing institution to pool the country's investible funds and channel these into public (Centre, State and local), cooperative and private enterprises in accordance with national development priorities. To fill this lacuna it is suggested that an Investment Bank of India (IBI) may be set up at the earliest to serve as the apex institution for the term-financing institutional structure. Apart from its paid-up capital, reserves, unutilised provisions and unallocated surplus, it will draw its investible funds from the following :

(a) bond and debenture issues in the domestic market (which will be by far the most important source of funds);

(b) borrowings from the Government of India against external assistance or other-wise;

(c) borrowings from the RBI against National Industrial Credit (Long-term Operations) Fund;

(d) term deposits from the public;

(e) repayments by term-financing institutions and deposits of their surplus funds; and

(f) commercial borrowings from abroad.

The IBI may deal directly only with the term-financing institutions and not with the public. The maximum possible of funds may be channelled into the IBI. The Central Government must leave the IBI and other term-financing institutions to operate without political or

bureaucratic interference, on the basis of the guidelines approved by the National Development Council (NDC). It may be an important responsibility of the NDC to review the working of the term-financing structure annually or as often as may be necessary. Preferably the equity capital of these institutions may be held in due course jointly by the Centre and the States so that increasingly these may become truly national and not exclusively Central institutions.

(vi) In order to enable the public enterprises to claim their due share in the vast and rapidly expanding investible funds of the term-financing institutional structure, it will be necessary, apart from bringing about a radical improvement in the financial performance of these enterprises to extend the sphere of indicative planning in the public sector so that the development initiative of public enterprises in unshackled.

10.48 Implementation of the suggestions (i) to (vi) should put the State sector in a position to undertake much greater development activity in the sphere of its responsibility with less financial strain on the State Budgets. Adequately enlarged access to institutional credit will be a very effective instrument to free the States from their existing very heavy dependence on the Centre for investible funds.

Debt Relief :

10.49 Since the Sixth Finance Commission, the successive Finance Commissions have been providing the States a rather limited measure of debt-relief by cancellation (that is, write off of repayment) and rescheduling of some outstanding debts to the Centre. Since the States' debt to the Centre has grown to a huge amount (expected at Rs. 42739 crores at the end of 1986-87) and many States find the burden of debt service payments to the Centre extremely onerous and a major factor for their poor resources position for development, it is necessary for creating balanced Centre-State relations to provide the States a rather large dose of Debt relief mainly on the form of debt cancellation. The objective should be to enable the States to write off the greater part of such of their investments and loan and advances as are unlikely to yield them any significant return, and where there is also little chance of undertaking disinvestment of capital or securing repayment of loans. An adequate once-for-all dose of debt relief will improve the financial position of States by reducing their interest and repayments liabilities to the Centre to more manageable proportions.

Modification of the Loan-Grant Ratio to Central Assistance :

10.50 The current loan-grant ratio of 70:30 in Central Assistance inevitably leads to mounting States debts to the Centre. A large proportion of the State Plan outlay consists of current development outlay which creates no assets for the State Government. Another substantial proportion of Plan outlay does create assets but such as yield no direct return which might be available for servicing the debts to the Centre. Such assets include school and hospital buildings, roads, Government administrative building and the like. It is true that by promoting general economic development this outlay results in larger tax and non-tax revenues. But this indirect impact on States' revenues is seldom large enough to finance the additional debt service burden arising from the loan component of Central Assistance. Besides, there are other growing demands on the additional State revenue. In order to bring the loan-grant ratio in Central Assistance to nearer the directly remunerative-unremunerated ratio in State Plan Outlay, the loan-grant composition of Central Assistance may be revised to 50:50.

(6) Implications of the Resources Transfer Packages :

10.51 The various elements of the resources transfer package have been put forth above in rather general terms. Their quantitative implications need to be worked out as precisely as possible. It may then be necessary to make some adjustments in the suggested measures to work out an internally consistent, balanced and effective overall package that may be reasonably expected to lead to the desired balance in Centre-State financial relations. This package may be tried for a few years and some further adjustments may be made in the light of experience. When a satisfactory package has been thus evolved, legislative action may be taken to put it on a firm legal or even constitutional basis. Whatever Constitutional amendments are considered necessary for the purpose, these may be carried out.

10.52 The implementation of the above package will greatly reduce the role of the Devolution and the Central Assistance for State Plans in determining the quantum of the Centre-State resources transfer and its distribution among the States. Purely discretionary transfers, that is, those outside of Devolution and Central Assistance and also not bound by any formula with respect to their quantum and inter-State distribution, will be limited largely to Central assistance to States afflicted by natural calamities. No longer will five members of the Finance Commission and half a dozen members of the Planning Commission, who are usually there only for a while, supposedly determine and distribute a Centre-State resources transfer of over Rs. 70 thousand crores among the States over a 5-year period and thus shape their financial destiny. Instead the main bases of this transfer and of its distribution among the States would have been rationally determined and formed in a long-term comprehensive system of resources transfer. The usual terms of reference of the Finance Commission will then needed to be amended to reflect the new marginal role of this institution. This role will now better accord with what seems to have been Constitution makers' concept of it. Likewise, the National Development Council will need to modify the Central Assistance formula so as to adjust it to the marginal role envisaged for such assistance in financing the States' development activities. In general, the criteria for *inter se* distribution of any additional resources transfer that the Finance Commission or the NDC may recommend/approve may be as close as possible to the criteria recommended above with respect to the inter-State distribution of States' share in Central taxes except that a possible different package of special problems may be identified in each case. It is hoped that after the envisaged system of Centre-State resources transfer is implemented, the Centre

will be in no mood to undertake Central and Centrally-Sponsored Plan Schemes other than those related to crucial national objectives.

10.53. A view strongly supported by the Centre, possibly even floated by it, is that the Centre needs to be in command of vast resources which it could distributed among the States partly under a suitably designed formula, but also substantially at its discretion, to give heavy weightage to the relatively lower income States in the Centre-State resources transfer. This way, it is argued, it could provide a greater stimulus to the development of these States to enable them to catch up with relatively more developed States. The experience of the last 35 years does not substantiate this view. All through this period, the Centre had much larger own resources at its disposal than the States had, primarily because of its much wider tax base under the Constitution and its increasingly tightened grip on capital receipts. The Devolution and the Central Assistance formula for inter-State distribution of the resources transfers from the Centre were on the whole strongly and increasingly weighted in favour of the lower income States. Discretionary transfers were a substantial proportion of the total resources transfer. But the predicted consequences of these features of the Centre-State resources transfer generally did not follow. This is brought out in Table 10.3.

TABLE 10.3

Ranking of States According to Per Capita State Domestic Product at Current Prices*

	1960-61		1980-81		Improvement in Rank 1960-61 to 1980-81
	Per Capita SDP(Rs.)	Rank	Per Capita SDP(Rs.)	Rank	
Maharashtra	409	1	2,232	3	—2
West Bengal	390	2	1,573	5	—3
Punjab	366	3	2,760	1	2
Gujarat	362	4	1,944	4	..
Himachal Pradesh	359	5	1,515	6	—1
Tamil Nadu	334	6	1,336	11	—5
Haryana	327	7	2,331	2	5
Assam	315	8	1,201	15	—7
Karnataka	296	9	1,453	8	1
Rajasthan	284	10	1,222	13	—3
Andhra Pradesh	275	11	1,358	10	1
J. & K.	269	12	1,455	7	5
Madhya Pradesh	260	13	1,149	16	—3
Kerala	257	14	1,421	9	5
U.P.	252	15	1,272	12	3
Tripura	249	16	1,206	14	—2
Orissa	216	17	1,101	16	..
Bihar	215	18	929	18	..

*Excludes the four mini States of Manipur, Meghalaya, Nagaland and Sikkim formed after 1960-61. An added reason for their exclusion is that in their case the statistical informaion is likely to be even more unreliable than it is with respect to the generality of States.

SOURCE : Compiled from Indian Economic Statistic—Public Finance, op. cit. Table 11.3 P. 102.

10.54 Table 10.3 brings out the following position with regard to changes in the relative ranking of States according to per capita SDP over the period 1960-61 to 1980-81 :

(1) There is no change in the ranking of Bihar and Orissa. They remain the poorest States in India inspite of the heavy resources transfer from the Centre to these States under both Finance Commission and Planning Commission formula for inter-State distribution of Devolution and Central Assistance from the Centre.

(2) The maximum improvement in rank (by 5 positions) has been in the case of Haryana, Kerala and J. & K. In the case of neither, Haryana nor Kerala, this improvement is attributable to heavy resources transfer from the Centre. Haryana owes this improvement principally to the spread of the Green Revolution. Indeed, Haryana and Punjab are the two States which have been treated most harshly by the Finance Commission and the Planning Commission with regard to their entitlement to Devolution and Central Assistance. A major factor for the improvement in Karala's ranking has been the large inflow of remittances, mainly from the Gulf countries. Other contributory factors have been that plantation, agriculture has made a relatively good showing and several large Central and other industrial units have come up lin the State. Only in case of J & K , very heavy flow of Central Assistance and Devolution has been the major factor for improvement in the ranking.

(3) There has been an improvement in U.P.'s ranking by 3 positions. It is primarily attributable to the spread of the Green Revolution to western U. P. The heavy transfers from the Centre have played, if at all, only a secondary role in this improvement.

(4) Punjab has improved its ranking by two positions. This is primarily attributable to the Green Revolution which was, indeed, pioneered by Punjab.

(5) There has been only a marginal improvement in ranking (by one position) in the case of Andhra Pradesh and Karnataka. In the case of Karnataka, the sitting of several large Central industrial units and institutions at Bangalore has been a contributory factor. This State has not been among the favoured ones in the matter of Devolution and Central Assistance transfers.

(6) There has been a dramatic deterioration (by 7 positions) in Assam's ranking. This has not been due to any disadvantage in the matter of share of Devolution and Central Assistance. Indeed, as a special category State, it enjoys a very favourable treatment in the matter of inter-State distribution of Central Assistance. The Devolution criteria have also been favourable to it. The principal causes of its decline have been political instability, the uncontrolled annual floods in the Brahmaputra and its tributories and the severe disadvantages inherent in the States' remoteness.

(7) There has been a large decline in T.N.'s ranking (by five positions). This is only partially attributable to unfavourable treatment in the inter-State distribution of Devolution and the Central Assistance. The State's poor water and energy resources are a major constraint on its development.

(8) West Bengal has suffered a decline of 3 positions in ranking. This is attributable to a considerable extent to political factors which are responsible for the State's low key efforts at resource mobilisation, its rather low efficiency in resource use and inadequate private investment and enterprise. The inadequate flow of resources from the Centre is only one factor, perhaps not the most important factor, for the deterioration in its ranking.

(9) Rajasthan and Madhya Pradesh have also suffered a decline of 3 positions in their ranking. This has happened in spite of the fact that both are favoured States in the matter of resources transfer from the Centre.

(10) Tripura has suffered a decline of 2 positions. As a special category State it received a favourable treatment with regard to distribution of Central Assistance. The Devolution criteria are also favourable to it. Neverthelses, it has suffered a deterioration in ranking primarily because of (i) the disadvantages of remoteness and (ii) the conflict between its tribal and non-tribal population.

(11) Himachal has suffered a deterioration of one position in its ranking. This is surely not due to unfavourable treatment with respect to resources transfer. As a special category State it receives a very favourable treatment in the distribution of Central Assistance. The Devolution criteria also worked to the States' advantage.

(12) There has been a deterioration of one position in Maharashtra's rank. The decline relatively to Punjab and Haryana is due primarily to its failure to stage a Green Revolution comparable to that which swept the latter two States. This failure is primarily attributable to its poor water resources and a very low ratio of irrigated to cultivated area. Maharashtra's relative lack of progress in agricultural development (in areas other than sugar cane cultivation) has substantially neutralised the impact of its good industrial progress.

10.55 Among the top nine States in 1960-61, seven have remained in this group. Only two went out of this Group, namely, Assam and Tamil Nadu. In neither case the primary factor for the deterioration in ranking has been the low resources transfer from the Centre. Among the bottom nine States in 1960-61, only two rose above the Group, namely, Kerala and J. & K. The heavy resources flow from the Centre was a major factor for improvement only in the case of the latter. All the above evidence provides little support for the argument that the command of large financial resources by the Centre and its exercise of discretion with respect to a substantial proportion of the transfers to the States have been major factor for evening out inter-State development disparities.

10.56. Even if it is granted, for the sake of this analysis, that the Centre did intend to contribute to moderation of Inter-State inequalities, it failed to make any significant progress in that direction because of a number of reasons that have been mentioned below.

10.57 Firstly, the Centre utilised a substantial proportion of its very large resources for purposes largely unrelated to moderation of inter-State inequalities. It will not do to cite, as is often done the location of the Rourkela Steel Plant in Orissa, the Bhialai Steel Plant in M.P. and the Bokaro Steel Plant in Bihar in refutation of this observation. The location of all these steel plants was determined primarily because of the economy in costs of raw material assembly and despatch of products which the three sites provided. In case of any doubt on this point, reference may be made to the project reports of these plants. This is, indeed always the first consideration in the choice of location of a weight-losing industry which involves assembly of 5-6 million tonnes of raw materials for every million tonne of products despatched. To site a steel plant primarily as a device to help even out regional inequalities would be like using an electric hammer to kill a fly. Equal investment on other programmes and project better suited to promoting development of backward regions would have had an incomparably more powerful impact on the development of the concerned regions than what the steel plants have had. One does not have to go very many miles from these plants to see largely as bleak and backward human existence as it was before the steel plants were built.

10.58. A substantial amount of Centre's vast resources has been absorbed in providing the country a much more expensive administration than what the generality of States have in terms of the proliferation of staff, employee emoluments and perquisites, the facilities enjoyed by the ruling or even the opposition politicians and the generally expensive work style. With regard to the costliness of administration, the Centre, because of its much larger resources, has often set the pace, in the process creating severe unanticipated financial problems for the States. Again, as explained in Chapter 9, the Centre has used large amounts of its resources to encroach on the States' jurisdiction. Still again, the Centre has undertaken very large investments in all manner of activities ranging from manufacture of cycles to that of metallurgical and mining equipment. These investments, with some notable exceptions, have yielded meagre physical and financial results. Instead of serving as growth poles for the development of the regions of their location, many of the Central undetakings have become a problem to themselves, the Centre and the country. In all these activities the claimed consuming concern for uplift of backward States is not much in evidence.

10.59 As brought out in Chapter 9, irrational criteria for transfer of the Centre's surplus resources to the States have been adopted. The gap filling approach has encouraged the many of the low income States, who receive relatively much more liberal resources transfer, to undertake wasteful and extravagant expenditure. They have had a poor motivation to carefully husband their resources

and made efficient use of resource transfer and their own resources to catch up with the relatively more developed States.

10.60 The ruling strata in the relatively backward States, while they have claimed in the name of the poor and the backward of these States, a highly favourable treatment for their States with respect to distribution of resources transfer from the Centre, have actually used these transfers substantially for their own economic and political benefit. Another important use of these transfers by the ruling strata has been to avoid adequate additional taxation the burden of which will fall on them more heavily because of their larger capacity to pay. In other words, the resources transfers from the Centre have often substituted and not reinforced the resource mobilisation efforts of the concerned States.

10.61 The Industrial projects undertaken by the Centre in the relatively backward States have generally have had a poor linkage with the economy of the States where these projects are located. A large proportion of the better paid personnel have been imported from other States. In general these projects have had very weak spread effects. Very often these projects have turned out to be more a device to exploit natural resources of the region than a means of uplifting and boosting the State economy.

10.62 In many of the relatively backward States, the primary constraint on growth has been not so much the paucity of funds as other adverse factors such as political instability, poor administration, institutional weaknesses or extremely unfavourable natural environment. Finance is not a universal panacea for all ills. There are some development problems which do not respond to exclusively financial treatment. In these circumstanccs, the intended stimulus to growth has to begin with measures to overcome these adverse factors till the environment for growth is favourable enough and a reasonable response to stepped-up outlay is assured. In serveral States the persistence of non-financial constraints on growth has rendered largely ineffective the enlarged flow of resources from the Centre. The States of Bihar, Orissa and Assam readily come to mind in this context.

10.63 Any rational system of Centre-State resources transfer must be duly redistributive. The package of measures for resources transfer suggested above has very much kept this consideration in view. It is ardently hoped that the required complementary measures to create more favourable conditions for growth will be undertaken by the concerned states and encouraged by the Centre so that these State can put the financial flows to good effect. There is, however, no rational argument for the extreme, one-sided adoption of redistribution as the only valid criterion for inter-State distribution of the resources transfer. Such a stance will be positively inimical to national unity and co-operative federalism. It will also hamper efficient resource use. It will very probably level down some of the present relatively developed States but it is most unlikely to level up the relatively backward States. This process is already at work to a certain extent, though perhaps it is not yet visible enough. It is time to do basic re thinking on the subject. The above is an effort in this direction.

An Irrational View :

10.64 There is a videly held belief in the inherent fairness of per capita equality of benefits and other desired quantities, whereas per capita inequality in this respect is considered unfair and undesirable. In accordance with this belief an allocation of Devolution or Central Assistance or Plan outlay is unfair if its per capita amount is lower in the case of lower income States. As a typical double-think, which is a characteristic of this belief, this criterion of fairness is never applied to allocation of costs or efforts. It is not considered unfair if the lower income States show a lower amount of per capita tax revenue or own resources for the plan. If this inequality were also to be considered unfair, the irrationality of this belief would be immediately exposed.

10.65 An allocation of Devolution, Central Assistance or Plan finance is not inherently unfair simply because it leads to unequal per capita plan outlay among the lower and higher income States. What the backward States or countries need in order to eventually catch up with the more advanced States or countries is not equal or higher per capita amount of development or investment outlay but, assuming an equally efficient resource use, a higher ratio of development or investment outlay to gross domestic product (GDP). An example would clarify. According to the World Bank Report 1985, the per capita GDP of India and Germany (FRG), in terms of US dollars, was $1,229 and $ 10,636, and their per capita gross domestic capital formation (investment for short) was $ 57 and 2234, respectively. For every 100 dollers invested by FRG, India invested only 2.6 dollars, a very unfair situation according to the above belief. Acutally it was not at all unfair. Rather was a very satisfactory performance by India. India had a higher investment ratio or rate of capital formation in that year, 25 per cent as against FRG's 21 per cent. And this is all that is needed, as far as the investment outlay is concerned, for India to narrow in the end hopefully to close the income and development gap with Germany. India was in fact actually doing this. According to the same World Bank Report, over the 10-year period, India's GDP had been growing at the rate of 4 per cent per annum while Germany's was growing at only 2.5 per cent. Naturally India was narrowing the per capita income gap vis-a-vis Germany, even if yet rather inperceptibly. India's per capita GDP had risen from 1.9 per cent of Germany's in 1973 to 2.2 per cent in 1983. A very slow progress indeed, but progress nonetheless. The extreme inequality (of 1:38) between India and Germany in the matter of per capita investment outlay did not prevent India from growing faster than Germany. This was because India's per capita investment, though a much lower per capita amount, represented a considerably higher ratio or rate of investement. This was surely not too unfair.

10.66 Suppose a votary of per capita equality had insisted that Germany's per capita investment outlay must be brought down to the Indian level of $57, and that he was able to enforce this, this would have brought down Germany's rate of capital formation to a mere 0.5 percent. Any economist worth his salt will tell that, in this event, there will be a complete collapse of the German economy. This is what per capita equality of development and investment outlay between economies with very different levels of

per capita income will inevitably imply. On the same analogy, if per capita equality of development or investment outlay were to be enforced between Punjab, Haryana, Maharashtra and Gujarat, on the one hand, and Bihar and Orissa, on the other hand the economies of the former States may not collapse, because the per capita income difference between above two categories of States is not as large as between Germany and India so that there would not be as disastrous a decline in the rate of development or investment outlay of the former group of States, but undoubtedlly their economies will be forced into near stagnation while Bihar and Orissa will not be able to make an efficient use of the greatly enlarged resources transfer to them. What this belief then implies is inter-State equality by levelling down the presently more developed States, and not by levelling up the States that are relatively backward to day.

10.67 For levelling up of the present relatively less developed States what is required is to ensure them a rate or ratio of development of investment outlay comparable or even appropriately higher than the corresponding rate or ratio shown by the relatively developed States. It is also at least as important to encourage and support the former States to overcome their present constraints on adequate efficiency of resource use. The quantum of resources transfer from the Centre to the States, and the criteria for determining its inter-State distribution, must be such as conform to this approach to greater equality among the States.

10.68 The forgoing discussion must not be taken to lead to the conclusion that the balanced Centre-State financial relations are a matter of only a large enough resources transfer from the Centre and its distribution among the States on a fair combination of the compensation and redistribution criteria. The States have to secure this balance primarily by their own efforts at resource raising, economy in non-development expenditure and efficient use of development outlays. In the absence of such efforts, there is a real danger that the contemplated additional resources transfer will substitute and not supplement the States own efforts at resource mobilisation, there already exist several examples of this. A glance at the State's financial data will show that in the case of several of them there is no reasonable relationship between (i) the Central Assistance received by them and their own resources (including Devolution) for the plan, (ii) their revenue from State taxes and their State Domestic Product, and (iii) their own tax and non-tax revenues and their non-plan expenditure. If the additional resources transfer merely substitutes for the States' own resource raising efforts it will be a distressing anti-climax to all the efforts at reconstruction of Centre-State financial relations towards a fair balance between the two. States, on their part, must perform their due role in securing such a balance.

States and The Planning Process

11.1 The Planning organisation and procedures must accord with the envisaged role and content of planning in the economic and social development of the country. In other words, it must be conditioned by (i) the particular institutional context of planning; (ii) the accepted development goals and strategy; and (iii) the chosen pattern of development. These crueial elements of the existing contex of Indian planning are discussed below towards identifying its proper role and content.

(1) The Planning Context

A. Large Private Sector :

11.2 At the end of over three decades of planning, in 1983-84, the latest year for which relevant data are available, the public sector generated 21 per cent of the Gross Domestic Product (GDP) and used 48 per cent of the Gross Domestic Capital Formation (GDCF). The respective share of the public administration, the public enterprises and the private sector in these is given in Table 11.1.

TABLE 11.1

Origin of GOP and the use of GDCF by Institutional Sectors

Sector	Origin of GDP				Use of GDCF			
	1970-71		1983-84		1970-71		1983-84	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
1	2	3	4	5	6	7	8	9
1. Pubic Sector	5,456	13.6	40,678	21.0	27,773	38.6	21,773	48.0
2.1 Public Administration	2,401	6.0	13,511	7.0	581	8.1	4,848	10.7
2.2 Public Enterprises	3,055	7.6	27,167	14.0	21,92	30.5	16,925	37.3
(i) Departmental	1,453	3.6	6,701	3.5	843	11.7	5,322	11.7
(ii) Non-Departmental	1,602	4.0	20,466	10.5	1,349	18.8	11,603	25.6
2. Private Sector	34,807	86.4	153,163	79.0	4,404	61.4	23,575	52.0
3. Total (1+2)	40,263	100.0	193,841	100.0	7,177	100.0	45,348	100.0

SOURCE : CSO National Accounts Statistics 1970-71 to 1983-84, Jan, 1986. Statements 18 and 25.1 and Appendix A1, PP 52, 72 and 156-157.

11.3 Table 11.1 shows that as late as 1983-84, the private sector generated 79% of the GDP and used 52% of the GDCF. The data on inter-sectoral distribution of GDCF given in the Plan documents in the past which usually suggested that the larger part of investment was being allocated to the public sector were just phoney. The subsequent CSO estimates of this distribution did not support this claim. The Seventh Five Year Plan projections which allocate 47.8% of the envisaged investment to the public sector and 52.2% to the private sector* for the first time put forth more realistic anticipations in this respect. The larger share of the public sector in gross capital formation than in the generation of GDP is largely accounted for by the generally higher capital intensity and longer gestation period of public sector projects compared to the private sector investment, and the generally much higher capital costs and lower capacity utilisation in that sector. As a result, to secure a given increase in GDP generated, the public sector has to undertake much larger investment.

11.4 The fact that the private sector still accounts for the larger part of the economy both in terms of origin of GDP and use of GDCF as important implications for the charactar of Indian planning. This fact is particularly relevant for deciding on an appropriate mix of mandatory and indicative planning.

An Extensive Unorganised Sector :

11.5 The second important element of the planning context is that within the private sector the unorganised or household sector still remains predominant and the organised or corporate sector, though growing at a higher rate still remains by far the smaller segment of this (the private) sector. The relevent data are presented in Table 11.2.

TABLE 11.2

Origin of NDP† and use of GDCF in the Private Sector by Organised and Unorganised Sub-Sectors

	Origin of NDP				Use of GDCF			
	1970-71		1983-84		1970-71		1983-84	
	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent	Rs. Crore	Per cent
1	2	3	4	5	6	7	8	9
1. Organised Sector	4,476	15.2	20,518	16.8	1,030	23.4	6,510	27.6
1. Joint Stock Companies	..	..	..	..	963	21.9	6;037	25.6
2. Cooperatives	..	..	..	..	67	1.5	473	2.0
2. Unorganised Sector	25,036	84.8	1,01,615	83.2	3,501	79.5	17,904	75.9
3. Total	29,512	100.0	1,22,133	100.0	4,531	102.9	24,414	103.5
4. Errors	..	..	..	..	(—)127	(—)2.9	(—)839	(—)3.5
5. Total	29,512	100.0	1,22,133	100.0	4,404	100.0	23,575	100.0

* Seventh Five-Year Plan, 1985-90, Vol. I, Table 4,3, p. 48.

SOURCE : National Accounts Statistics 1970-71 to 1983-84, op. cit Statements 9 and 56 and Appendix A1, pp. 32, 146 and 156-157.

†The breakdown of GDP is not available.

11.6. Table 11.2 shows that the share of the organised private sector is rising both in generation of Net Domestic Product at Factor Cost (NDP) and in use of GDCF but at a very slow pace. In 1983-84, the unorganised sector accounted for 83·2% of NDP and 73·3% of GDCF. This characteristic of the Indian economy is of importance for the purpose of deciding on appropriate planning techniques. Effective planning requires that undesirable developments in the economy must be prevented and the preferred developments must be promoted. Physical controls such as industrial licensing, licensing of imports, control of capital issues and foreign exchange control as a means of preventing undesirable development are feasible (though not necessarily advisable) only in the organised private sector. In the unorganised sector, it is necessary to use indirect methods for the purpose. With regard to promotion of preferred development, in the entire private sector comprising both its organised and unorganised segment, there is no choice but to use indirect methods.

A quasi-Federal State Structure :

11.7. The country has a quasi-federal state structure. The two basic levels of Govennment are the Union and the States. This necessitates multi-level planning.

(2) The Development Goals

11.8. Planning must derive its orientation from the country's accepted development goals, otherwise it will lack a firm direction. The question "How to go ?" assumes that a decision has been taken with respect of "Where to go?". The country did take such a decision 30 years ago.

11.9. Since the mid-1950s, the professed basic development goals and strategy have included accelerated growth, social justice, economic self-reliance, stability and preservation of a democratic framework. The emphasis as between the different elements of the development philosophy has no doubt varied

from time to time but these goals have been affirmed again and again by the ruling party at the Centre and neither of these goals has yet been repudiated formally. Of course, actual practice is another matter.

Growth with Social Justice :

11.10. The goal of poverty removal which in the early 1970s gripped the imagination of the people is a concrete expression of social justice. It requires accelerated growth together with reduced inequality of income and wealth. It is not feasible to rid the country of mass poverty in the foreseable future by moving only in one of these directions.

11.11. An aspect of the prevailing economic inequality is the existence of unacceptable inter-State and intra-State differences in the level of development. These differences militate against emotional integration and fraternal feelings among the people of different regions within a State and among the people of different States. This creates problems for consolidation of national unity which alone can provide a solid assurance for the country's integrity.

Growth and Sectoral Change :

11.12. A sustained high rate of growth will necessarily involve a structural change in the economy towards the characteristic structural profile of an advanced, industrialised, self-reliant and dynamic economy. This change, if it is not engineered and steered properly, can involve a tremendous cost in terms of sacrifice of human welfare and social justice. The slum pavement dwellers in Indian cities are but one aspect of this cost. In order to harmonize the growth objective with other development objectives, the inevitable structural change will need to be accomplished at minimum cost in terms of resources, time and avoidable economic and social dislocation.

Growth and Efficiency of Resource Use :

11.13. If the country's human and material resources continue to be used as inefficiently as at present, the attempt to have an adequate rate of growth will either prove abortive or will involve too heavy a burden in terms of sacrifice of present consumption to release the required order of resources for investment. There is also the possibility that in an attempt to keep this sacrifice within acceptable limits, the country may be tempted to resort to excessive borrowing from abroad and at the end may achieve neither adequate rate of growth nor self-reliance. Indeed, the country is now passing through such a phase. Reasonable efficiency of use is an essential condition for the country to achieve the accepted growth and other development objectives.

Economic Self-Reliance :

11.14. It has all along been the common view in India that without economic self-reliance the country's political independence and State sovereignty will continue to be constrained in substance. It has generally been held that financial self-reliance is an essential pre-requisite for India to secure its due place among the nations of the world and an effective role in world affairs. Financial self-reliance has been defined since the Third Plan as the elemination of external assistance outside of the normal flow of foreign Capital while maintaining a satisfactory pace of development. It is the height of sophistry to interpret this statement of the self-reliance goal to mean that it is compatible with large scale inflow of foreign funds on normal commercial terms. A glance at the long-term balance of payments projections worked out at that time and for many years thereafter would show that no large scale inflow of foreign funds in any form was contemplated on attainment of self-reliance. This goal never meant merely "graduating out of external assistance" as advocated by the West particularly the Reagon Administration, for India, Self-reliance understood as graduating out of large scale concessional aid into equally large, but more expensive foreign direct investment and commercial borrowing, would have been patently absurd as a development goal.

11.15. Self-reliance defined as virtual elimination of net inflow of foreign funds implies that domestic capital formation must be financed almost entirely by domestic saving. Again, since a deficit in the current account balance of payments implies an equivalent net inflow of foreign funds to finance it, the virtual elimination of a net inflow of foreign funds requires that the current account payments deficit must be wiped out. All three are equivalent definitions of the accepted self-reliance goal. This goal thus mean that while securing and maintaining an adequate rate of capital formation, any deficit in the current account balance of payments must be virtually eliminated so that no inflow of foreign funds is necessary to finance it. In this situation domestic capital formation will be necessarily financed by domestic saving. This is a major task for Indian Planning which of course, like all its other development goals as yet remains unfinished.

Economic Stability :

11.16. "Growth with Stability" is an oft repeated precept of Indian development philosophy. It implies avoidance of unacceptable inflation as well as of a widespread slack in the economy. Actually the problem most of the time is actual or apprehended inflation. Economic stability also implies maintenance of reasonable stable expectations about the future policy framework so that save's, investors and entrepreneurs can plan their activities on a long-term basis.

Consolidation of the Democratic Framework :

11.17. Preservation, consolidation and enrichment of the democratic framework is an important end in itself. It is also an indispensable means to orderly and irreversible economic and social progress. It is ardently hoped that progress towards accelerated growth, social justice, self-reliance and economic stability will facilitate consolidation of the democratic framework.

(3) The Pattern of development

11.18. Notwithstanding all the claims and declarations with respect to the adoption of a socialist pattern of development, the country has been pursuing all along a capitalist pattern of development. In the private sector which is the source of 85% of GDP (excluding GDP generated in Public Administration). Capitalist production relations are spreading though the pace varies with activities and regions and is, on the whole, rather slow. The private corporate sector

which is now the source of 16·8% of total factor incomes generated in the private sector represents the highest level of capitalist development. That capitalist production relations are also spreading in the household or unorganized segment of the private sector is shown by the fact that the compensation of empioyees accounts for about a quarter of the aggregate factor incomes generaged in this segment.

11.19. The public enterprises are not a socialist but a state-capitalist formation. They represent capitalist enterprises by the State. Their essential role is to promote overall capitalist development by filling the gaps in the development process resulting from the fact that certain activities (for example, infrastructural development) are unattractive to private enterprise or are beyond their competence (because these involve very heavy, longestation or risky investment). The public sector undertakings are financed by borrowing private funds and not by public saving generated by tax and non-tax measures. The growth of the public sector is therefore, associated with private wealth formation in the same manner as is the growth of the private capitalist enterprise. Any surplus generated by them is largely, often wholly, used up in servicing the public sector debts incurred in financing these enterprises and is not a resource for financing further public sector development of other social needs.* Their management is very largely drawn from upper class bureaucrats and technocrats and not from public sector trained and promoted former workers. Indeed the workers have as little real say in running those enterprises as in the private capitalist sector. The management structure and ethos is very much bureaucratic and capitalistic and not socialistic. They are marked-oriented just as private undertakings are. The privatisation of these enterprises is a shift within the capitalist formation and not from one system to another and hence can be undertaken rather smoothly. The relationship between the public sector and the private sector is fundamentally complementary and not antagonistic.

11.20 Out side of infrastructural activities, the state capitalist sector is engaged only in a transitional role. It must in course of time largely fade away from the activities which come within the competence of private enterprise as it gains in resources and experience. The public sector was never in the light industry in a big way. It is now reducing its role even in some segments of heavy industry. For instance, its role in heavy machine building is definitely on the decline. The private sector has now been invited to enter the refining phase of the oil sector. This might prove the thin edge of the wedge. The private sector is being assigned an increasing role in the fertilizer industry. Only one out of the six new gas based plants that are being set up will be in the public sector. @The telecommuncation industry has been thrown open to the private sector. Even certain areas of infrastructural development are being thrown open to it. The private sector is now welcome into electricity generation, if it chooses to enter this activity. The public enterprises which are persistant loosers are being threatened with withdrawal of public support which will mean their liquidation. The public sector is losing interest in chemicals and pharmaceuticals. All this is no doubt the beginning of a new phase. When private enterprise becomes a feasible alternative to State-capitalist enterprise, the latter usually starts yielding place to the former. As between the two, state-capitalism generally proves an inferior alternative from the standpoint of efficiency of resource use. At this stage the inherent shortcomings of state-capitalism are increasingly felt. This lends further support to the trend away from state-capitalism. India has now entered this phase.

(4) **The Role of Planning**

11.21 With the exception of a small but vocal and influential minority, it is commonly believed in India that the accepted development goals cannot be achieved together in a development process which relies on a free play of market forces and that, even in an essentially capitalist pattern of development, planning of the appropriate kind is very much needed to overcome and offset the negative features of a free market mechanism, to make up its deficiencies, and to use the positive aspect of market forces for realisation of the national goals. The planning must be efficient, judicious and one that accords with the socioeconomic context in which it is operating. Inefficient, illconceived and out of context planning might do more harm than good to the country's development activity and might turn out to be worse than no planning.

11.22 In the prevailing situation where the country is pursuing a capitalist pattern of development and no other perspective is in sight, the planning process has to seek the realisation of the accepted national objectives by promoting the creation of as dynamic, self reliant, stable and human economy as may be possible under this pattern of development. Any view that the role of planning today is to progress towords the cherished goals by promoting socialist transformation of the economy and its development on socialist basic bears no relationship to the prevailing context or a realistic perspective. The content, organisation, techniques and policy framework of Indian planning must be suited to its present task.

(5) **The Content of Planning**

A. *Combinationof Mandatory and Indicative Planning :*

11.23 In keeping with the present context and role of planning, a plan may comprise two parts : (i) the mandatory part and (ii) the indicative part. The mandatory part may include specific projects and programmes of basic development proposed to be undertaken in the public sector. In other words, it may cover core development activities of this sector which are of importance for the overall development process. The term mandatory in this case is to be undertaken to indicate firm intention of public authorities with respect to the particular developments. It does not mean that the failure to undertake these projects and progremmes, or to invest the

* The large surplus generated by some of the oil undertakings in the Central sector represent not so much profits of enterprise as gains of monopoly and are to this extent akin to indirect taxes in their economic significance.

@Seventh Five Year Plan 1985-90, Vol. II, Para 7.126, pp. 183-84.

amount provided for these, will attract any legal penalties. The entire development activity in the private sector as well as the non-core development in the public sector may figure in the indicative part. In this part of the economy public policy will seek to influence development to the extent considered necessary, only by indirect methods. Indicative here implies that the projected developments reflect the planning agency's informed judgement as to what is required and ought to be feasible. It is necessary to exclude non-core development activities of Central and State Government Departments and public enterprises from the mandatory part of the plan to leave them with due initiative for undertaking preferred development. The inclusion of the entire public sector development activity in the mandatory part, as is being done at present, seriously stifles the initiative of public sector authorities and enterprises and puts those at a considearable disadvantage compared to the private sector undertakings. Whereas the mandatory part prescribes targets, the indicative part gives projections of major directions of development to provide expert guidance to savers, investors, entrepreneurs and implementation agencies.

An Appropriate Policy Framework :

11.24 The indicative planning will cover the greater part of the economy's development activity. With growing competence of private enterprise, more development activities may be left to private initiative. Again, as the public authorities and enterprises become more adept at exercising development initiative, indicative planning may grow in coverage and importance even with respect to the public sector. This underlines the importance of an appropriate policy framework for efficient indicative planning. The fact that physical controls have a very limited reach, mainly confined to the public and private organised sector, and that these controls are an instrument for prevention of undesirable development and not for promotion of preferred development, makes such a policy framework all the more an imperative necessity.

11.25 Decision making with regard to policy issues is today the weakest aspect of the planning process in this country. Development policies are being determined increasingly by the Prime Minister's Secretariat, the Finance Ministry and the economic Ministries in the given order of importance. The Planning Commission often has to face essentially a *fait accompli.* Its association with decision making on development policies is often peripheral and formal rather than intimate and substantive. In this matter, the proper decision-making sequence ought to be that the Planning Commission takes initiative in working out policies on the basis of adequate study and research, with due regard to the accepted development goals and the internal consistency of the total policy framework. The Planning Commission proposals are then referred to the concerned Ministries and Departments for consideration and discussion and finally put up to the Union Cabinet for approval. If the particular policy affects also the States, the final step in the adoption of the policy may be reference to the States, and, in the case of very important policies, approval by the National Development Council. No such esquence is being followed those days. The Prime Minister's Secretariat and the Ministries enuciate policies which are sometimes inconsistent with the accepted development goal and the other elements of the policy framework. The Planning Commission, in many cases, after making a show of serious examination of proposed policy and expressing a few minor misgivings about it, is in the end obliged to concur with those, lest it be accused of too negative and obstructive a role in decision making. It is just not the tradition to consult the States even if the new policy is of-vital concern to them.

11.26 Apart from the widespread loss of faith in the planning process and the Planning Commission, one reason for the latter's declining role in the making of development policies, which is indeed its very legitimate function, is that the generalist bosses who head many of its Divisions are not trained for research on policy issues and are in no position to advise the Commission properly on these issues. In the prevailing work culture in the Planning Commission even the technical personnel have lost the tradition of policy oriented research. Every badу is steeped in day to day routine matters which in fact ought to be completely excluded from the purview of the Planning Commission. With regrd to association with development policy making, the Deputy Chairman, no matter how competent, is no real substitute for an effective Planning Commission.

11.27 If the policy frame is to be internally consistent, appropriate and relevant to the country's accepted development goals and strategy, it is necessary to assigned the national Planning organisation a leading role (surely not the sole responsibility) in decision making with regard to laying down and adjustment of development policies. This is necessary, among other things, for efficient indicative planning covering the greater part of the economy.

(6) The Time Horizons for Planning

11.28 The development activity oriented to the creation of an advanced, industrialised dynamic and self-reliant economy will necessarily involve planning and implementation of many long gestation projects. Its frequent changes in the scope and technology of projects, with inevitable wastage of resources and prolongation of the construction period are to be avoided, planning must be undertaken in a long enough time horizon. The Third Plan outlined a 15-year development perspective. The Fourth Plan did his in a 12-year time perspective. The Fifth Plan again chose a 15-year period for its long-term perspective. The Sixth and the Seventh plans have also done the same. It looks that at the expected pace of technological and structural change in the future 15 years may be too long a period for making out a long-term development perspective. Many of its elements may be rendered obsolete by new developments long before the completion of this period. There is therefore, a danger of taking wrong medium-term planning decisions with reference to such a perspective. The long-term perspective may be preferably worked out in a 10-year time horizon. The medium-term and short term planning may continue to have as at present a five-year and one-year time horizon.

The Long-Term Perspective

11.29 The 10-year development perspective may have no mandatory part. It may be essentially on informed, expert and fairly comprehensive projection

of the economy's profile ten years hence consistent with satisfactory progress towards realisition of the country's accepted development goals. It must be a truly scientific exercise free from the fads and fencies of the planners and the power wielders in general. It should involve a scientific projection of the country's demand and production structure taking into account the development objectivities, the technological trends, the economy's resources, capabilities and domestic and foreign market opportunities, the trends in distribution of income and wealth, and the scope and limitations of public policy for influencing the demand and production structure. There must be a financial perspective to math the physical perspective. The implied institutional change and institution building must be spelt out. Finally, there must the adequate elaboration of the envisaged policy framework.

11.30 The long-term perspective presented since the Third Five Year Plan as part of the successive Five Year Plans is a very patchy and incomplete exercise. It provides little guidance for the preparation of the Five Year Plan. The preparation of the Five Year Plan and the long-term perspective were concurrent, independent and unrelated exercises. The 10-year development perspective henceforth should be an adequate exercise. It may be undertaken concurrently with the mid-term review of the Five Year Plan. The perspective would then be available by the time the work begins on the next Five Year Plan and could provide useful giudance for it. The working out of the long term perspective should be a major undertaking of the planning organisations at different levels.

The Five Year Plan :

11.31 The five Year Plan may undertake a review of the development of the economy during the previous Five Year Plan period. This review must be an uninhibited and proper evaluation of both the successes and failures experienced during this period in economic development and Plan implementation. If any of the failures are attributable to faulty planning this must also be brought out unhesitatingly. The review must not indulge in uncritical appreciation of planning and implementation of the nature of a Government publicity material. Conclusions drawn from this review may be made use of in working out the new Five Year Plan. At present every Five Year Plan does incorporate a review of development during the previous five years or even a longer period but it is much below the requisite standard.

11.32 The Five Year Plan may, like the ten years development perspective and in line with it, spell out the envisaged demand and production structure five years hence. The Plan may work out the financial implications of the envisaged development in terms of its requirements of rupees finance and foreign exchange, and work out realistic scheme for financing these. In order to facilitate financial planning the Five Year Plan period may be made coextensive with the reference period of the Finance Commission. The fact that the 5-year period of the Seventh Plan began one year after the commencement of the reference period of the Eighth Finance Commission created several Conceptual and computational difficulties for the two Commissions.

11.33 Unlike the 10-Year perspective, the Five Year Plan may comprise two parts-the mandatory and the indicative. The line of demarcation between the two parts may be drawn up as suggested above. Briefly, the basic long-gestation projects and the key programmes to be taken up in the public sector may be included in the mandatory part. All other development activity envisaged to be undertaken during the 5-Year period may be outlined in the idicative part. Adequate attention may be given to spelling out the main elements of both the parts. At present the Plan concentrates mainly on the mandatory part which is treated as co-extensive with the public sector. Development activity in the private sector receives scant attention even though it accounts for the larger part of the total anticipated increase in GDP and of the gross capital formation expected to be undertaken. There should be a more even balance in the treatment of the mandatory and the indicative part of the Plan.

11.34 The Plan may indicate the envisaged changes in the existing policy framework and any new policy initiatives that may have been decided upon. It may also indicate the contemplated institutional change and the proposed new institution-building including improvements in the planning organisation and procedures.

The Annual Plan :

11.35 The proper role of the Annul Plan is to serve as an operational instrument for the Five-Year Plan including any adjustments that the latter might require in the light of new developments. It must, therefore, have the same scope and content as the Five-Year Plan. At present the Annual Plan almost exclusively concerns the part of economy subject to mandatory planning though it also gives some projections for the over-all economy. This is particularly true of the Annul Plans of the States. If the Annual Plan is to serve as an efficient operational device for the Five-Year Plan, it must be cast in the same mould except that in this case the time span covered is one year. The content of the Annual Plan and the procedure for its preparation call for a major everhaul.

(7) The Levels of Planning

11.36 Corresponding to the two levels of Government, there are two basic levels of planning, the Centre and the States. The State level includes planning at the local level.

The Central Sector Plan :

11.37 The Central Sector Plan comprises development activities of the Union Ministries and the Central departmental and non-departmental enterprises. It also includes Centre's outlay on Central and Centrally Sponsered Plan Schemes, mostly Central Assistance to States for implementation of these Schemes. It has been argued elsewhere that these Schemes should be cut down to the minimum. Only such shcemes may be retained as are indispensable for the realisation of crucial national objectives. All other schemes may be either wound up or transferred to the jurisdiction of the State Plans together with equivalent transfer of resources to the States. Strictly speaking the development activities of the Union

Territories are a part of the Central Sector Plan, though in this regard the Union Territories with Legislature are more akin to States.

11.38 The public sector out ly under the Central Sector Plan includes both the Budgetary outlay on Plan projects and programmes as well as the outlay financed by extra-Budgetary resources of the Central enterprises. The extra Budgetary resources include : (i) the Central enterprises, internal resources, that is, the amount available for the Plan from their depreciation provision and retained profits and (ii) the enterprises outer extra-Budgetary resources such as equity investment of parties other than the Central Government, borrowings from Indian Financial institutions, commercial borrowings from abroad, deferred payment credits from Indian companies and public deposits accepted.

11.39 The Central Assistance for State Plans is not included in the Central Sector Plan outlay as the outlay financed by such assistance is included in the State Plan outlay. To treat Central Assistance also as a component of the Central Government Plan would be double counting. Such Assistance is therefore treated as a non-Plan expenditure of the Centre.

The State Plans :

11.40 A State Plan comprises the development activities of the State Government Departments (including the departmental enterprises), the State's non-departmental enterprises, principally the State Electricity Board (SEB) and the State Road Transport undertakings (SRTU) and the local bodies. The State Plan includes the budgetary outlay on plan projects and programmes as well as the outlay financed by extra-Budgetary resources of State enterprises and local bodies. Since the Central Assistance for State Plans passes through the State Budget, it becomes a part of the State's total resources for the Plan. As in the Central Sector Plan, the extra-Budgetary resources of enterprises for the Plan include their internal resources and other extra-Budgetary resources. The latter include mainly their market borrowings (that is, the State enterprises, mostly the SEB's share in the States' quota of market borrowing), borrowings from term financing institutions (LIC, REC, IDBI, etc.) and, in the case of SEB, consumers' deposits. The Seventh Plan and the Annual Plan 1985-86 have taken some credit, even if in significant amounts, for the extra-Budgetary resources of State enterprises other than SEBs and SRTUs, but it is doubtful if many State Governments do the same. They take into account only the market borrowings passed on to these enterprises (if any) and their term loans from financial institutions. Development financed by any other extra-Budgetary resources very probably does not always get included in the State Plan outlay.

11.41 The State Government Assistance to local bodies for development purposes is included in the State Plan outlay. Development outlay of local bodies financed by any market borrowing allowed to them out of the State quota or by borrowing from financial institutions such as LIC is also included. Development activity financed by the local bodies' internal resources or any other extra-Budgetary resources generally remains excluded from the States Plan outlay. Presumably, it is considered that the local bodies are unlikely to have any significant resources for development outside of the State Government assistance, their borrowings from the market and the term loans from financial institutions.

District and Lower Level Planning :

11.42 There is as yet little genuine district or lower level planning possibly in any State. The position in Punjab is about the same as elsewhere in the country. There are District Planning Boards but no District Plans. Like-wise there are Block Planning Committees but no Block Plans. The District Planning Board (DPB) has the Deputy Commissioner as the Chairman and the District Statistical Officer as the Member-Secretary. The Block Planning Committee (BPC) is headed by the Sub-Divisional Magistrate and has the Block Development Officer as its Member-Secretary. The DPBs and BPCs undertake no planning activity. They are non-planning planners, an institution by no means confined to Punjab or even the States. Their activity is limited to some sort of review and monitoring of the States ;Plan's divisible schemes to the extent these are located in the particular District or Block. For this purpose, district-wise distribution of divisible State Plan schemes is prepared by the State Planning Department and made available to the districts.

11.43 In spite of interest shown by the Planning Commission in Planning at District and lower levels, little progress has been made in this direction because the essential prerequisites of such planning do not exist. These are :

(i) There must be a level of Government with considerable genuine autonomy with regard to its developmnt activities. These development activities will constitute the jurisdiction of that level of planning.

(ii) This level of Government must have adequate financial resources to finance its development activities.

(iii) There must be a genuine desire by this level of Government to plan its development activities.

(iv) There must be an appropriate organisation to plan and implement these development activities.

11.14 In other words, district and lower level planning is linked with democratic decentralisation and belief in planning in the States. Neither of these conditions is reasonably met at present. No wonder then that planning below the State level has not yet made a tangible beginning.

(8) The Planning Organisation

11.45 The Planning Organisation consists of a multi-level structure. At the apex of this structure is National Development Council. At the Centre, there is the Planning Commission. It serves as the secretariat of the NDC and has the key role in the entire planning structure. At the State level there are the State Planning Departments and the State Planning Boards/Commissions. At the bottom of the structure, at the district and the lower levels, there are Planning Boards, Committees and the like.

The National Development Council

11.46 The National Development Council (NDC) is a non-statutory body set up by the Centre by an executive decision. Its most important members include the Prime Minister (who is the Chairman), the Deputy Chairman and the Members of the Planning Commission, the Union Cabinet Ministers and the State Chief Ministers. The Planning Commission serves as the Secretariat and prepares its agenda papers.

11.47 The NDC has more of a symbolic than a substantive role in the planning process. It meets very frequently, not even once in some years. The agenda papers usually reach the State Capitals only a few days before the meeting when there is hardly time enough to glance through, much less properly examine these papers. Most of the two days, usually one and a half day, session is taken up by the inaugural speeches and closing remarks of the Prime Minister and the Deputy Chairman of the Planning Commission and the written and printed speeches of the State Chief Ministers, whatever the items on the Agendas, a good portion of a Chief Minister's speech is generally concerned with articulating the State's grievances and demands and has a familiaring. There is usually no discussion worth the name. Though the NDC is supposed to be the final authority for approval of the Plans, particularly the Five-Year Plans, in practice it has no choice but to approve the Document prepared by the Planning Commission. A plan is by its very nature a highly structured development programme. A major change in any part of it might disturb the entire structure. The NDC is usually convened for approval of the Plan when its entire structure has been given a final shape. At this stage, it is not possible for the N.D.C. to suggest basic changes in the Plan. Furthermore, the Plan document is put up to the N.D.C. only after the Union Cabinet has approved of it. The whole weight of the Central Government is therefore, thrown in its support. Even among the Chief Ministers so far the majority has always been from the ruling party at the Centre. The latter support the document even if they make a few critical comments on it. In the event approval by the N.D.C. is a pure formality and is a foregone conclusion. This approval is of great political importance for the Centre. It creates the general impression of a national consensus in support of a Plan which is essentially a handiwork of the Planning Commission and Centre in general.

11.48 The N.D.C. is in a better position to intervene in Plan preparation when the document spelling out the Approach to the Five-Year Plan under preparation is put up for its approval. This document gives the proposed broad directions and major dimensions of development and the related policy framework, and not the finished full structure of the Plan. Changes are certainly possible at this stage but the composition and procedure of the N.D.C. rules out any significant ones even on this occasion. The NDC meeting convened for the purpose proceeds much the same way as when called for approval of the fully worked out plan. This time too the Chief Ministers read printed speeches mostly unrelated to the Approach document. Once again the support of the Central Government and the Chief Ministers belonging to the ruling party the Centre ensures the approval of the document. Even if several Chief Ministers, particularly these belonging to opposition parties at the Centre, have strong reservations on several aspects of the Approach to the Plan, the NDC meeting, by its approval of the Document, puts the Planning Commission and the Centre in a position to claim national consensus in its favour. Since the press is excluded from the NDC, it just puts out the version of the proceedings given to it by the Planning Commission. In this version any criticism of the document at the meeting seldom finds adequate coverage.

11.49 The NDC, though treated as the apex organisation of the Planning structure, plays no effective role in the Planning process. Its principal role is to enable the Planning Commission and the Centre to claim national acceptance and support for their dominance of the country's development activities including those that, under the constitution, are within the jurisdiction of the State. Dominance of the Planning process has been a major instrument in the hands of the Centre to make heavy in-roads into the State autonomy.

The Planning Commission

11.50 The Planning Commission is a non-statutory body created by the Central Government by an executive decision. It exists as an institution solely at the pleasure of the Union Government which determines its composition, functions and the staffing pattern. The States have no say whatsoever in the matter. The membership of the Planning Commission includes the Prime Minister (who is the Chairman of the Commission), full-time Deputy Chairman and other Members, and several Union Ministers (who invariably include the Finance Minister) as part-time members. The Union Planning Minister, if he is of Cabinet rank, is appointed the Deputy Chairman. If he is a State Minister, he has hardly any role other than replying to Parliament questions. The normal tenure of the full-time Members is 5-years but it can be terminated at any time at the pleasure of the Union Cabinet. This is in keeping with the essentially political status of Members. The Deputy Chairman has the status of a Union Cabinet Minister while the other full-time members have the status of a Union Minister of State. The Deputy Chairman is the Executive head of the Planning Commission. The Prime Minister presides over the meetings of the Planning Commission only on a few occasions (usually not more than 2 or 3 in a year) when a "full" meeting of the Commission is held and the Minister Members are also present. Other meetings are presided over by the Deputy Chairman. There is no fixed number of full-time or part-time Members. Nor are any qualifications laid for full-time Members. In the past, the full-time membership has included distinguished experts, not so distinguished politicians, and former bureaucrats and technocrats. The senior staff of the Commission is drawn from the All-India and Central Services (the Indian Administrative Service, the Indian Economic Service, the

Indian Statistical Service etc.) or consists of non-cadre professional and technical personnel. Occasionally an influential free lancer is also provided a cosy berth. The Administrators appointed to senior planning posts usually look upon the Planning Commission as a waiting parlour for worth-while assignments elsewhere. The turn-over among them is fairly high. This further affects the planning efficiency. There is as high an incidence of well-paid idleness and uncoordinated wasted effort at all levels in the Planning Commission as in other Government Departments.

11.51 The Union Ministries have become increasingly autonomous of the Planning Commission. The role of the Planning Commission vis-a-vis the Union Ministries has been reduced over time to recording rather than making development decisions and palming off these as the Central Sector Plan presumably to the sheer delight at the latter. A Union Ministry usually comes to the Planning Commission for consultation and approval only when it needs the latter's support against the Finance or some other Ministry or seeks to ensure approval of its proposal by the Cabinet. Otherwise it resents any interference by the Planning Commission. With respect to the preparation of State Plans the Planning Commission remains an effective control and supervisory agency of the Central Government. It is this role which creates a lot of work for the Planning Commission staff and makes this institution indispensable for the Central Government.

11.52 Much of the technical work of the Planning Commission is held back from the public gaze under the very convenient label of "confidential" or "secret'. 'This label, as the veil in real life, is very often intended to hide ugliness and shoddiness and not beauty and excellence. This results in the improvements in planning concepts and techniques becoming all the slower. After all, it took the Planning Commission 20 years to change over from net to gross capital formation in its investment planning.

The State Planning Boards:

11.53 At the State level whatever planning is being undertaken is by the Planning and other Departments. The State Planning Boards exist in name rather than as an effective operational agency. Their "neither among the living nor among the dead" existence is often attributed by the State Bureaucracies to the fact that the Planning Commission completely dominates the Planning process in the States and leaves little initiative to the Planning Boards. This, indeed, is one factor for the State Planning Boards being more of a fiction than a living reality. But surely this is far from being the whole truth. Whatever planning initiative still remains with the States is equally unavailable to the Planning Boards. There are also other weighty factors responsible for the Boards' present state of insignificance and inactivity with respect to the Planning process at the State level. These are mentioned below.

(1) The Finance Department monopolises all financial planning at the State level. It keeps even the Planning Department completely out of the picture. All discussions with the Planning Commission about the State's resources for the Plan are the responsibility of the Finance Department. The State's estimates of resources for these discussions are prepared exclusively by the Finance Department with no participation by, or association of, even the Planning Department. At the discussions, the Planning Board is represented generally by a middly level officer with more or less an observer status. He is in no position to contribute to the discussion. The Planning Board has no knowledge, of what is being discussed and what has been the outcome till, and if, the minutes of these discussions are shown to them. Any discussions with the financial institutions are also the exclusive responsibility of the Finance Department. Nor is the Planning Board, or even the Planning Department, kept informed of any other developments with regard to the financial aspect of the State Plans. It is not surprising then that, for instance in Punjab, the State's Annual Plan just makes no reference to the financial resources for the Plan. This information is available only in a very skeleton form in a Budget Document. A very important aspect of State Planning is thus altogether excluded from the purview of the Planning Board, or even of the Planning Department.

(2) The Planning Board is more a Committee of Ministers and Secretaries than a specialised planning agency. The Chief Minister is rightly the Chairman of the Board, but it also usually includes some of the following: the Finance Minister, the Planning Minister, some other Ministers, the Chief Secretary, the Development Commissioner, the Finance Secretary, the Planning Secretary and even some other Secretaries. Thus, unlike the Planning Commission, the Board membership includes several serving administrators. Some-times a defeated, ousted or potentially inconvenient politician is also accommodated as Deputy/Vice-Chairman of the Board. There are generally also a few non-official part-time-members. There is no accepted tradition of having any full-time members with a professional background. In Punjab, the Akali Government has for the first time provided for a full-time Vice-Chairman and three full-time members of the Board. It is too early yet to assess the results of this innovation. The involvement of the part-time members in the Planning process is minimum more or less limited to attending the few meetings of the Board held in a year and of course receiving the sitting fee for this.

(3) The Departments, for obvious reasons, like to communicate with the Planning Department and not with the Planning Board. The so called bilateral discussions with the Department on their Plan proposals are taken by the Planning Department and not by the Board even when it has full-time members. It is the Planning Department which is invited to inter-Departmental meetings even on important development matters and no any representative of the Planning Board. It is not unusual for the Planning Secretary to attend several such meetings every day on a variety of development issues without any reference to the Members of the Board. The role of the Board staff is limited to preparing briefs for the Planning Secretary for these meetings, if and when required to do so (which is not often).

(4) The Planning Commission communicates with the Planning Department and not with the Planning Board. It gives financial assistance to the States for establishing and strengthening the Planning Boards but itself prefers not to deal with them. It is the Planning Department which is invited for Working Group discussions for the States' Plan proposals. It is the Department which organises and participates in these discussions without any reference to the Board. The Planning Board remains all this while isolated from the Planning process.

(5) The Administrators who know the real (as distinguished from the formal) status of non-official members of the Board, whether part-time or full-time, just cold shoulder them and resent any comments by them as unnecessary interference with their work and attach little weight to these.

(6) During Plan preparation, the Board is usually brought into the picture when the work on the State Plan has been completed. As a bit of a force, the Board is asked to approve a Plan which has been printed already and is ready for issue, and no changes are possible to take care of any views expressed by the Members at the meeting. In the event, approval by the Board is a pure ritual.

(7) An oft adopted stratagem to exclude the Board from any substantive role in planning is to entrust it with the task of working out a long-term development perspective for the State. Not many non-official members of the Board are taken in by this very transparent move.

(8) Generally the Ministers do not take kindly to the Planning Board. The Planning culture has not yet percolated adequately to the State level. Towards building up their own image, the Ministers tend to hold out all sorts of promises to the public, sometimes even over-stepping the bound of Plan policies and provisions. It is natural for them to look upon all planning agencies as an unnecessary encumbrance. They cannot touch the Planning Department as it is now a part of the normal administrative establishment. The Planning Board is not so invulnerable. It has to bear the brunt of the Ministers' ire.

11.54 Since 1972-73, there has been a Centrally Sponsored Scheme for strengthening the State Planning machinery. Under this scheme, two-thirds of the expenditure incurred by the States for strengthening their Planning Boards and Planning Departments is reimbursed by the Centre within the approved ceiling. At the end of a Five-Year Plan, the expenditure on the maintenance of the additional staff appointed under the Scheme becomes a committed liability of the State. Supposedly encouraged by this scheme, the State Planning Boards/Commissions have been set up as the "apex planning bodies" (sic) in all the States except Sikkim. Their true status and effectiveness has been brought out above. One reason for this is that the Centre's guidelines on the subject are inadequate, inappropriate and betray blissful ignorance of the constraints on planning at the State and lower levels. The Centre will be well advised to leave the strengthening of the Planning machinery to the States themselves according to their needs and understanding. After all its contribution over the five years of the Sixth Plan has been only Rs. 2.68 crores for all the 22 States* and after the end of the Plan period, the entire committed expenditure arising from this assistance has to be borne in any case by the State Government. This is not a task beyond the State's means if they attach any importance to it.

11.55 The fact that the State Planning Boards are not in most cases a specialised planning agency and are largely ineffective has had several undesirable consequences for the State level planning. These are mentioned below :

(i) The State Plan tends to be a mere aggregation of public sector projects and programmes and not an organic development concept covering the entire State economy, a part of it by mandatory planning and the rest of it by judicious indicative planning.

(ii) The financial planning remains but an adjunct of normal Budget making process. It excludes any financial thinking or arrangements with respect to that part of the State economy which ought to be covered by indicative planning.

(iii) The inter-Departmental and inter-project allocation of funds often tends to be related more to the relative seniortiy and status of the Department Secretaries, the political weight of the Ministers and the state of relations of various Departments with the Planning Department rather than to the intrinsic merit of projects and programmes put forth by the different Departments in relation to the States' development priorities.

(iv) When requests are made by Departments for reappropriation of funds or for a additional funds for their projects and programmes, the Finance Department does not always insist on prior clearance of the Departmental proposal by the Planning agencies. The final inter-Departmental and inter-project allocation of these funds may thus turn out to be substantially different from that originally agreed to, and the Planning agency may get to know of these changes only *ex-post*.

(v) The Plan concentrates on projects and programmes that is, the physical aspect of public sector development. Little attention is paid by the Planning process towards evolving an adequate, appropriate, realistic and internally consistent development policy framework. Policy decisions are taken by the State Government throughout the Plan period more or less on *ad-hoc* basis.

(vi) The conceptual framework and methodology of planning at the State level shows little innovation and improvement over the successive plan periods.

(vii) The data base for proper State level planning, monitoring and evaluation remains weak because the planning agencies make no demand for more comprehensive and

* Seventh five Year Plan 1985-90, Vol. II, Para 20.15, p. 405.

uptodate data. Both the Planning and the statistical organisations generally move in the traditional rut from year to year and from plan to plan.

(viii) The technical and professional personnel working in various State Departments, public and private enterprises, and the academic institutions are denied any opportunities to contribute to improvements in the Planning and implementation process. In consequences, Planning at the State level remains a largely bureaucratic exercise.

(9) **Monitoring and Evaluation**

11.56 Monitoring is essentially an aspect of implementation. Every implementation agency must have an adequate monitoring organisation and procedures. The flow of informations must be timely and in a form as to enable speedy corrective action for any lapses in implementation. The fact that the corrective action is seldom prompt and effective with the result that few public sector programmes are implemented in time, within the original cost estimates and with the expected results suggests that the Central and State implementation agencies do not generally have efficient and effective monitoring arrangements. The fact that the public sector projects and programmes are often sanctioned inadequate funds for uninterrupted implementation, or face supply bottlenecks with respect to their requirements of men and materials, is attributable to, *inter alia*, the very many procedural constraints under which the public sector agencies operate, in any case rules out prompt remedial action. This greatly reduces the value of efficient monitoring. There is an imperative need to avoid dispersal of resources over too many projects and programmes and to streamline procedures if effective monitoring is to make its due contribution to implementation efficiency.

11.57 Monitoring is of importance for planning agencies for two reasons. Timely information on development of any imbalances in the economy on account of delayed implementation of some Plan projects and programmes facilities corrective or countervailing measures to ensure uninterrupted growth and operation of the economy. Secondly, these agencies would need to have the latest anticipation of the base year position in different sectors towards preparation of the next plan. They usually receive the information on progress of the plan projects and programmes form the implementation agencies but sometimes see things for themselves with the cooperation of these agencies.

11.58 *Ex-ante* evaluation, commonly termed appraisal of projects and programmes for inclusion in the plan is an aspect of the planning process, since peculiar appraisal problems arise in each sector, this function should be undertaken by the Division dealing with the particular sector. It is impossible for any so called project Appraisal Division to do this work for the totality of projects. The various subject Divisions may be provided with training in basic appraisal criteria and techniques by the Economic Division.

11.59 The utility of *ex-ante* evaluation depends on how far projects and programmes are approved on objective criteria. If political and other extra-economic considerations or some rules of the thumb play the dominant part in the selection, the utility of objective appraisal is correspondingly reduced. This is one major reason why project appraisal remains at a fairly under-developed state in the Planning agencies. Another major reasons for this is that the pure Administrators who often head several sectoral Divisions are not conversant with scientific appraisal criteria and techniques.

11.60 *Ex-post* evaluation is important for drawing proper lessons for the future. The subject Division usually have no inclination for this. There is a specialised evaluation organisation (the Programme Evaluation Organisation or PEO) at the Centre. There are also evaluation organisations in the State (usually a part of the Planning Department or the Statistical Organisation). Their effectiveness is very limited. Firstly, the organisations generally evaluate only programmes in the agricultural, rural development and social services sectors but no industrial and other non-agricultural projects. Secondly, these organisations are usually/ wary of trading on the toes of the implementation Departments. Their evaluation reports are mostly prosaic, vague and a superficial affairs, lacking in any depth or incisiveness. The reports are normally available after a long delay and by then might have lost whatever utility they could have possessed. There is inadequate co-ordination and co-operation between the State evaluation organisations and the P.E.O. staff operating in the State.

11.61 There is some chance of securing more adequate, uninhibited and timely evaluation reports on selected Plan projects and programmes if this task is framed out to one of the reputable research institutions that have come up. Effective evaluation by an organisation which is an adjunct of the Planning organisation does not seem to be feasible. This is particularly so when efficient implementation has been hampered by faulty planning of the particular project or programme. Proper evaluation must bring out whether it is the un-implementability or poor implementation that has been the main factor for obliging the country to go without the results which it could legitimately except from the expenditure incurred.

(10) **Reorganisation of the Planning Process**

11.62 The planning process needs to be reorganised to ensure that the States have due autonomy within their jurisdiction to determine their development activities and policy and that they have the opportunity to contribute to determination of national priorities and basic directions of development on an equal footing with the Centre. An essential pre-condition for this is that the States' present serious financial dependence on the Centre is brought to an end and they are put in a position to raise sufficient resources of their own to finance their development activities. The Central Assistance for State Plans may then have only marginal significance except for some financially very weak States. The suggestions made in chapter 10 were

aimed at fulfilling this pre-condition. The implementation of these suggestions will make the reorganisation of the planning process towards a greater balance between the Centre and States a feasible proposition. This section makes suggestions for such a reorganisation.

Reorganisation of the National Development Council

11.63 The reorganisation of the National Development Council (NDC) may aim at making it an effective, instead of a mere symbolic, apex organisation of the planning process. It may be entrusted with the following functions:

(i) To approve the guidelines for preparation of the Ten Year Development Perspective, the Five Year Plan and the Annual Plan.

(ii) To approve the Approach to the Five Year Plan.

(iii) To approve the Draft/Final Documents of the Ten Year Development Perspective, the Five Year Plan and the Annual Plan.

(iv) To approve the quantum and distribution of Central Assistance for State Plans.

11.64 A new organisation, which may be called the National Development Organisation (NDO) may be set up to service the NDC. The NDO may be staffed with high level planning and development experts in different subjects with supporting research and ministerial staff. It may be under the administrative control of a committee appointed by the NDC. The cost of maintaining the NDC may be apportioned among the Centre and the States in an agreed manner. The NDO may be made responsible for preparing the overall documents with respect to the national economy of the Ten Year Development Perspective, the Five Year Plan and the Annual Plan for approval by the NDC. In doing this, it will take into account the Plan prepared by the Planning Commission for the Central sector and by the State Planning Boards for their respective State sectors as well as any other material relevant to the subject in hand prepared and forwarded by these organisations. Any departures from the approved guidelines noticed by the NDO in the Sectoral Plans will be referred back to these organisations with its comments. While the Planning Organisation concerned will give due consideration to these comments, its action on these will be entirely its own. The NDC may set up a Standing Committee to thrash out, to the extent possible, an agreed view on all over-all Plan documents before the NDC meets to consider and approve these. The Standing Committee or the NDO may report any remaining disagreements about the Document to the NDC so that the full weight of the assembled political leadership of the country is brought to bear on resolution of these differences.

11.65 The composition and functioning of the NDC may be reorganised to suit its new, greatly enhanced, role in the Planning process. The membership of the Council may consist of the Prime Minister (Chairman) and Finance Minister, not more than 8 other Union Cabinet Ministers in charge of economic ministries and all the Chief Ministers. The Chairman of the NDO may be the Member-Secretary of the NDC. If new States are created, for every 2 new States, the NDC may include one additional Union Minister.

11.66 The NDC may meet more often, generally once every quarter. The meeting may normally cover two full days. Special meetings may be held as and when the need arises. The Chairman may regulate the discussion so as to focus it on the issues under discussion. The Council may preferably seek to arrive at a genuine consensus on the matters on the agenda. Whenever this is not possible the Council may take a decision by a two-thirds majority.

Reorganisation of the Planning Commission

11.67 The responsibility of the Planning Commission may be limited to the Central Sector of the economy. For efficient discharge of its new role as an essentially specialised planning agency for the Central sector, the Planning Commission may need to be re-organised on the following lines:

1. Apart from the Prime Minister (the Chairman of the Commission) and the Finance Minister, there must be no other ex-officio member of the Commission. The present position with regard to the role and status of the Planning Minister may remain unchanged.

2. The Commission may have fixed five full-time Members. Their respective portfolios may be (i) economic and financial aspects of planning; (ii) agriculture and rural development (iii) industry; (iv) infrastructural sectors; and social services.

Some adjustment in portfolios may be in order depending on the respective specialisation of the Members. The Deputy Chairman, in his capacity as executive head of the Commission, may have an essentially coordinating role. The members may be specialists in their respective areas but not narrow specialists. They may have an adequate public stature, a broad vision and a firm commitment to the accepted development objectives. They may not normally be disturbed before the expiry of their five-year term. The senior positions in the technical Divisions may be normally manned by specialists, both cadre and non-cadre persons. The Commission will no longer perform a coordinating role with regard to State Sector Plans. There may no longer be any Resources or Working Group discussions with the States. The Planning Commission Divisions will now have more time for improvements in their technical work. Each subject Division may undertake all aspects of the Planning work relating to that sector including project and programme appraisal, monitoring, ex-post evaluation and policy formulation There may be need to be no special Divisions on these aspects covering the whole economy.

State Planning Boards:

11.68 All aspects of planning with respect to the State sector may be the responsibility of the State Planning Boards. Towards upgrading the

Boards to a worthy agency for State level planning, these may be broadly patterned after the Planning Commission Specially (i) The Boards may comprise the Chief Minister (as Chairman), Planning Boards full-time Deputy Chairman and three full-time Members. These members (including the Deputy Chairman) may each deal with one of the following subjects depending on their specialisation, experience and interest; (1) economic and financial aspects of the State Plan; (2) agriculture and rural development; (3) industry, power and transport; and (4) social services. The Finance Minister and the Planning Minister may be ex-officio Members of the Board. No serving official of the State Government may be a Members of the Board. The Planning Secretary may be the Secretary (but not Member-Secretary) of the Board. The full-time Members may be specialists in their respective areas but with a broad vision and a firm commitment to the development objectives. They may normally have a five year term which may not be cut short except under exceptional circumstances. The Deputy Chairman may have the status of a Cabinet Minister and the other full-time members that of Minister of State.

(ii) The technical staff of the Planning Board may be organised into four wings corresponding to the subjects assigned to the four full-time Members. Each wing may comprise several independent Divisions/sections. There may be an independent Plan Coordination Division.

(iii) The Planning Boards may be adequately involved in the financial aspects of planning at the State level.

(iv) At the meetings of the State Cabinet on development matters the Deputy Chairman of the member concerned may be present as a special invitee. At inter-Departmental meetings on development matters, the Planning Board may be represented at the appropriate level.

(v) The Planning Board may communicate with the National Development Organisation, the Planning Commission and the other State Planning Boards.

11.69 The scope of the State Plan may be enlarged to cover the entire State economy comprising a mandatory and an indicative part.

11.70 The State Planning Board may determine the size of the State Plans. Its estimate of own resources may be taken as final. The entitlement to Central Assistance for the State Plan may be determined by the NDO by applying the criteria approved by the NDC. The sum of the two will give the size of the State Plan. Any overstatement by the State of its own resources will be penalised by underfulfilment of the State Plan as it is no longer open to it to resort to deficit financing to make up the deficiency in resources.

11.71 The State Planning Board will itself decide on the allocation of State Plan outlay for different sectors, subsectors and individual projects and programmes. The Board will, however, pay due regard to any departures from the Guidelines approved by the NDC which may be pointed out to it by the NDO, but the final decision in this matter will be with the Board.

11.72 The State Plan prepared by the Planning Board must be put to the State Cabinet for approval. It will become an authentic document only on receipt of such approval.

District Level Planning Organisation

11.73 District Plans may cover, to begin with, the development activities of the Panchayati Raj institutions. In other words, planning at the District level may cover the development activities pertaining to the subjects within the purview of the Zila Parishad. Likewise, planning at the Block or village level may cover the development activities pertaining to the subjects within the purview of the Block Samiti and the Panchayat, respectively.

11.74 The Panchayati Raj institutions at all levels may be enabled to have adequate own resources for their respective Plans. Financial decentralisation is an essential counterpart of decentralisation of Planning. There shall also need to be a substantial State Government assistance to the Zila Parishads for their District Plans. This assistance will be a legitimate non-Plan revenue expenditure of the State Government. Likewise there may be a substantial Zila Parishad assistance for the Block Plans, and Block assistance for Panchayat Plans. Such assistance will be a non-Plan expenditure of the Zila Parishad and the Block Samiti.

11.75 The District Plan will be at this stage an aggregate of the Zila Parishad, Block Samiti and Panchayat Plans. At an appropriate stage, the scope of the District Plan may be expanded to include the development Plans of the Municipal Corporation and Committees in the District and the divisible schemes of the State Departments located in the District. At a still later stage, the scope of the District Plan may be expanded still further to include the development activities of the private sector. Thus the District Plan may grow in scope, step by step, into a comprehensive programme covering the development activities in the District. There will have to be a corresponding adjustment of the Planning organisation at the District level.

11.76 At the first stage, the District Planning Board may comprise the following: (i) Chairman Zila Parishad, who may be the Chairman of the Board; (ii) three full-time members, one of whom may be designated as the Vice-Chairman, of the status of the District Statistical Officer (the Vice-Chairman may be given a higher status); and (iii) the District Statistical Officer. The Block Planning Committee may comprise: (i) the Chairman Block Samiti as the Chairman of the Committee; (ii) Block Development Officer; and (iii) One full-time member with specialisation in agriculture but with wider interests. The Panchayat Planning Committee may comprise the Chairman of the Panchayat and two part-time members elected by the Panchayat.

11.77 The changes in the Planning organisation at different levels suggested above are meant to promote cooperative federalism and democratic

decentralisation with a view to anchoring national unity and integrity on the firm and unshakeable commitment of all the Indian peoples to it, and to create more favourable conditions for the realisation of the country's development goals which have so far eluded it. Their appeal and success will naturally depend upon how genuine, firm and widespread is the acceptance of the democratic, as opposed to the authoritarian, approach to national unity, integrity and development.

Summary

In order to facilitate quick reference to the various issues discussed in this draft Memorandum, the contents of the various Chapters have been very briefly mentioned below together with reference to the relevant paragraph(s).

States as the Homelands of Distinct Peoples

(Ch. 1).

In the second half of the 19th Century, alongside expanding patriotic unity of the country's diverse peoples, there was, on account of several factors, a growing sense of distinct identity and an urge for territorial consolidation among people sharing the common language.

(Paragraph 1.1 to 1.2).

The sense of distinct identity however showed uneven progress among different linguistic groups because of diverse factors.

(Para 1.3).

The growth of the sense of distinct identity was accelerated in the post-independence period by several new or more favourable factors. This has led to the emergence of a multi-national society in India.

(Para 1.5).

At the same time powerful social forces have emerged which are working for a highly centralised *de facto* unitary State under their own domination. They are increasingly tending to base themselves on the hegemonistic forces of Hindu-Hindi-Hind Chauvinism.

(Para 1.6).

Under the pressure of the linguistic and ethnic groups who are increasingly conscious of their distinct identity, many States have been reorganised on a linguistic basis. In several cases, the grudging, half-hearted and unprincipled application of the linguistic criterion created serious problem areas in the country, several of which still pose serious problems.

(Para 1.7).

With the linguistic reorganisation of States, these have become the homelands of various linguistic or ethnic groups. These groups are in fact growing into distinct nationalities.

(Para 1.8).

The emergence of India as a multi-national society does not by itself pose any threat to the country's unity and integrity.

A multi-national State is a very feasible proposition. There are several multi-national States in the World. A genuinely federal state structure provides an effective device to base the unity and integrity of a multi-national State on the solid foundation of the peoples' will for it.

(Para 1.9).

The Constitution in Retrospect and Prospect.

(Ch. 2).

The concept of a federal state structure came to be discussed in the early years of this century in the context of reconciling the increasingly assertive Muslim minority to the goal of a united free India:

(Para 2.1).

(1) *Evolution of the Federal Concept*

Muslim apprehensions about the concept of a united and highly centralised free India.

(Para 2.2).

The Lucknow Pact 1916 and the subsequent negotiations between the Congress and the Muslim League were based on the federal concept.

(Para 2.3).

The federal concept appeared an obvious approach to bring the Princely States into association with the rest of India. The federal concept was endorsed at the Round Table Conference (1930-32) and adopted by the Government of India Act, 1935.

(Para 2.4).

The Federation envisaged in the Act of 1935 could not be implemented due to Second World War (1939-45).

(Para 2.5).

The Cabinet Mission Plan on the basis of which the Constituent Assembly was set up in 1946, accepted the federal concept with residuary powers to the constituent units.

(Para 2.6).

Mr. Nehru Introduced the objective Resolution in the Constituent Assembly in December, 1945 envisaging a union of India with residuary powers to the autonomous constituent units.

(Para 2.7).

A Basic change in situation after the acceptance of Partition. A swing in the Constituent Assembly in favour of a powerful union and a strong Centre. The Constitution as framed provided for a basic federal structure but with important unitary features.

(Paras 2.8 to 2.10).

The antagonistic developments in the period since Independence: on the one hand several States were reorganised on linguistic basis and became homelands of distinct peoples; on the other hand, the original unitary features are being accentuated by a Centralisation drive by the Centre. Hence the Centre-State problems.

(Para 2.11).

(2) *Character of the Constitution*

Is the Constitution at all federal?

(Para 2.12).

Essential Characteristics of a federal Constitution.

(Para 2.13).

It is a Federation with a strong Centre. It has a basic federal structure but with several unitary features including:

(i) Parliament's power to alter the name, territory and boundary of States;

(ii) legislative and administrative constraints on the States' autonomy; and

(iii) an inherent Centre-State financial imbalance.

(Paras 2.14 to 2.19).

Comments of Dr. Ambedkar and some Honourable Judges of the Supreme Court on the character of the Constitution.

(Para 2.20).

Conclusion: It is essentially a federal Constitution but has several features more appropriate to a unitary Constitution.

(Paras 2.21 to 2.22).

At present the main threat to India's unity and integrity is that the relentless Centralisation drive may alienate many nationalities and ethnic groups and sap their will for a United India. To set at rest all doubts about the character of the Constitution, the expression 'FEDERAL' may be added after, the expression "DEMOCRATIC" in the Preamble.

(Para 2.23).

(3) *Case for Greater State Autonomy*

This case is based not on any "traditional" notion of federalism but on the fact that only a genuinely federal state structure can provide an enduring basis for the country's unity and integrity in a society which has increasingly acquired a multi-national profile.

(Para 2.24).

The linguistic reorganisation of States has been an act of great foresight. This process must be taken to a principled and logical conclusion.

(Paras 2.25 to 2.26).

The only realistic way to contain a multinational society within a single state is to have a genuinely federal form of Government. Other consideration also call for this approach.

(Paras 2.27 to 2.28).

The claim that the Centre's domination of the Indian polity gives it a more progressive, patriotic and enlightened orientation is not supported by facts.

(Para 2.29).

Towards ensuring greater autonomy to States comprehensive proposals have been made in the Memorandum. Several of these proposals shall require Constitutional amendments.

(Paras 2.30 to 2.31).

(4) *Safeguards for the Country's Unity and Integrity.*

No two opinions about safeguarding the country's unity and integrity. The Constitution contains many provisions for the purpose. Some of these are not necessary or appropriate.

(Paras 2.32 to 2.33).

Need for economic and political measures to reinforce the Constitutional provisions for safeguarding the country's unity and integrity.

(Paras 2.34 to 2.35).

The federal concept is being viewed in a different role than what the British envisaged for it. Federalism is now being viewed as a conceptual frame to accommodate the legitimate claims of new forms of diversity that have emerged and thus to consolidate the unity and integrity of the country by basing it on the solid foundation of the united peoples' will for it.

(Paras 2.36 to 2.38).

Legislative Lists

(Ch. 3).

Changes in the Legislative Lists have been suggested with the following motivation:

(i) To restore to the States the subjects that have been unreasonably shifted out of List II (State List) to other Lists;

(ii) To minimise the scope for expanding the Centre's jurisdiction at the expense of the States by declaring a matter to be of national importance, or on grounds of public interest; and

(iii) To transfer such matters to the States as may best be handled by the States.

Changes in List I, II and III are suggested in Annexures I, II and III to Chapter 3. The rationale of each change is given in the write-up on the particular List.

(1) *Changes in List I*

Changes in List I have been suggested for the purpose mentioned below against the concerned Entry. A reference to the relevant write-up which gives the rationale for the change is also given:

(i) To provide that the Centre's armed, paramilitary and police forces shall be deployed in a State only at request of, or with the concurrence of, this State.

(Entry 2-A, Para 3.2).

(ii) To limit Centre's control on shipping and navigation in States' internal waterways to only inter-State rivers.

(Entry 24, Para 3.3).

(iii) To substitute "inland waterways" by "inter-State river" in Entry 30.

(Para 3.4).

(iv) To shift telephones, broadcasting and television to List III (Concurrent List).

(Entry 31, Para 3.5).

(v) To shift lotteries organised by the States to List II (State List).

(Entry 40, Para 3.6).

(vi) To shift banking to List III.
(Entry 45, Para 3.9).

(vii) To shift futures markets to List II.
(Entry 48, Para 3.10).

(viii) To limit Centre's jurisdiction with respect to industries to those specified in the suggested Appendix A to List I.
(Entry 52, Para 3.11).

(ix) To shift wholesale marketing of petroleum products and LPG to List III and retail marketing of these to List II.
(Entry 53, Para 3.12).

(x) To limit Centre's jurisdiction with respect to minerals to those specified in the suggested Appendix B to List I.
(Entry 53, Para 3.13).

(xi) To limit Centre's jurisdiction with respect to labour and safety in mines and minerals specified in Appendix B of List I.
(Entry 55, Para 3.14).

(xii) "To prevent the Union Parliament to take over the regulation and development of inter-State Rivers and river-valleys ".
(Entry 56, Para 3.15).

(xiii) To shift certification of cinematographic films for exhibition to List II.
(Entry 60, Para 3.16).

(xiv) To limit the scope of Entry 62 to only such new institution as are financed by the Centre to the extent of at least 75 per cent.
(Entry 62, Para 3.17).

(xv) To prevent the Centre from setting up new Central Universities.
(Entry 63, Para 3.18).

(xvi) To shift to List II the Coordination and determination of standards in States' higher educational institutions.
(Entry 66, Para 3.20).

(xvii) To shift audit of State accounts to List II.
(Entry 76, Para 3.21).

(xviii) To shift excise duty on small industrial units to List II.
(Entry 84, Para 3.22).

(xix) To shift taxes on transactions in futures markets to List II.
(Entry 90, Para 3.24).

(xx) To shift residuary powers to List III.
(Entry 97, Para 3.25).

(2) *Changes in List III*

The suggested changes in List III seek to :

(i) shift appropriat subjects to List II;

(ii) delete unnecessary provisions; and

(iii) accommodate subjects shifted from List I.

Suggestions for shifting various matters to List II include the following :

(i) Preventive detention connected with security of a State or the maintenance of public order.
(Entry 3).

(ii) Family law.
(Entry 4).

(iii) Vagrancy, nomadic and migratory tribes.
(Entry 15).

(iv) Lunacy and mental deficiency; places for reception and treatment of lunatics and mental deficients.
(Entry 16).

(v) Prevention of cruelty to animals.
(Entry 17).

(vi) Forests.
(Entry 17-A).

(vii) Protection of Wild animals and birds.
(Entry 17-B).

(viii) Adulteration of foodstuffs and other goods.
(Entry 18).

(ix) Drugs and poisons.
(Entry 19).

(x) Population Control and family planning.
(Entry 20-A).

(xi) Trade unions, industrial and labour disputes.
(Entry 22).

(xii) Social security and social insurance; employment and unemployment.
(Entry 23).

(xiii) Welfare of labour.
(Entry 24).

(xiv) Education.
(Entry 25).

(xv) Charities and charitable institutions, charitable and religious endowments and religious institutions.
(Entry 28).

(xvi) Vital statistics.
(Entry 30).

(xvii) Minor ports.
(Entry 31).

(xviii) Shipping and navigation in internal waterways other than inter-State rivers.
(Entry 32).

(xix) Trade in and productions, supply and distribution of specified products.
(Entry 33).

(xx) Weights and measures except establishment of standards.
(Entry 33-A).

(xxi) Mechanised propelled vehicles including principles of taxes on these vehicles.
(Entry 35).

(xxii) Factories and boilers.
(Entry 36 & 37).

(xxiii) Low voltage transmission, distribution and captive power plants.

(Entry 39).

(xxiv) Archaeological sites and services.

(Entry 40).

(xxv) Acquisition and requisitioning of property for State purposes.

(Entry 42).

(xxvi) Enquiries and statistics for purposes of matters specified in List II.

(Entry 45).

A suggestion has been made for deletion of Entry 54 relating to removal of prisoners, accused persons and detainees from one State to another.

(Para 3.71).

The proposed additions to List III cover the following matters :

(i) Broadcasting and television.
(Entry 25-A, Para 3.72).

(ii) Displaced persons from other countries (besides Pakistan) and from other Indian States.
(Entry 27, Para 3.73).

(iii) Banking.
(Entry 32-A, Para 3.74).

(iv) Wholesale marketing of petroleum products and LPG.
(Entry 32-B, Para 3.75).

(v) Residuary powers.
(Entry 48, Para 3.76).

(3) *Changes in List II*

Changes in List II are those consequential to the changes in List I and III suggested above. The rationale of these changes is also given in the write-up relating to this List.

Constraints on States' Legislative Autonomy.

(Chapter 4).

The following constraints on the legislative autonomy of States within their spheres of legislative competence have been discussed and remedies for these have been suggested :—

(i) Inability of the State Legislative Assembly by itself to create or abolish the Legislative Council.
(Paras 4.2 & 4.18).

(ii) Governor's power to summon and prorogue the House(s) of State Legislature and to dissolve the Legislative Assembly.
(Paras 4.3 & 4.19).

(iii) Over-riding jurisdiction of the Union with regards to matters in the Concurrent List.
(Paras 4.4 & 4.19-A, 4.20 & 4.21).

(iv) Parliament's power to enlarge the legislative competence of the Union at the expense of the States' competence by making prescribed declarations.
(Paras 4.5 & 4.22).

(v) Enlargement of Legislative competence of the Union by Constitutional Amendments which Parliament is competent to enact by itself.
(Paras 4.6 & 4.7; 4.23 & 4.36).

(vi) Parliament's power to legislate with respect to matters in the State List.
(Paras 4.8 to 4.11; 4.24 & 4.25).

(vii) Governor's powers in relation to the Bills passed by the House(s) of State Legislature.
(Paras 4.12 to 4.14; 4.28 & 4.29).

(viii) President's powers in relation to the State bills reserved for his assent.
(Paras 4.15; 4.30 to 4.33).

(ix) The requirement in some cases of previous sanction of President for introduction of a Bill in the State Legislature.
(Paras 4.16; 4.34).

(x) Power of Parliament to provide for additional courts for better administration of laws made by Parliament.
(Paras 4.16-A; 4.35).

Role of the Governor

(Ch. 5).

The primary role of the Governor ought to be to function as the Constitutional head of the State.

(Paras 5.1 to 5.3).

As the Constitutional head, the Governor should play a completely non-partisan role but this has often not been the case in practice.

(Paras 5.4 & 5.5).

The allegations of partisan conduct usually pertain to; appointment of Chief Minister when no single party has a majority in the Legislative Assembly, verification of majority support, dismissal of Council of Ministers, dissolution of the Legislative Assembly, reservation of bills for President's assent, imposition of President's rule, conduct of State Administration under President's rule and appointment of Vice-Chancellors. Need for ensuring a non-partisan role by the Governor.

(Paras 5.6 & 5.7).

Suggestions towards securing a non-partisan role by the Governor :

(i) appropriate provisions for appointment and tenure of the Governor;
(Paras 5.8 to 5.14).

(ii) safeguards for State's autonomy and responsible Governments against misuse of discretionary powers by the Governor;
(Paras 5.14 to 5.19).

(iii) the procedure that may be laid down under Article 164 for appointment of Chief Minister;
(Paras 5.20 to 5.21).

(iv) no dismissal of Council of Ministers under Article 164 except when loss of majority support is actually established on the floor of the Legislative Assembly;
(Paras 5.22 to 5.23).

(v) application of the principles of natural justice to the dismissal of Council of Ministers under Article 356(1);
(Paras 5.24 to 5.27).

(vi) need to provide that the Governor's fortnightly report to the President shall be made available to the Chief Minister;
(Para 5.28).

(vii) importance of, and measures for, non-partisan conduct of State Administration under President's rule; and
(Para 5.29).

(viii) the need to carry along the State Government in the matter of appointment of Vice-Chancellors.
(Para 5.30).

The Administrative Issues
(Ch. 6).

The major administrative issues in Centre-State relations.
(Para 6.1).

Towards safeguarding States' autonomy within their specific sphere of responsibility, suggestions are made with respect to:

(i) imposition of President's rule in a State;
(Paras 6.2 to 6.22).

(ii) the All-India Services; deployment of the Union's armed, para military and police forces in the States; and
(Paras 6.23 to 6.27).
(Paras 6.28 to 6.32).

(iii) the activities of Central Government Agencies, namely:—
(Paras 6.33 to 6.35).

the Food Corporation of India,
(Paras 6.36 to 6.45).

the Bureau of Industrial Costs and Prices,
(Paras 6.46 to 6.47).

the Monopolies and Restrictive Trade Practices Commission,
(Paras 6.48 to 6.49).

the Director General of Technical Development.
(Para 6.50).

the Employees Provident Fund Organisation,
(Paras 6.51 to 6.52).

the Employees State Insurance Corporation,
(Para 6.53).

the National Savings Organisation,
(Paras 6.54 to 6.56).

the Central Water Commission and the Central Electricity Authority.
(Paras 6.57 to 6.58).

the Bhakra Beas Management Board, and
(Para 6.59).

the University Grants Commission.
(Paras 6.60 to 6.62).

Towards adequate institutional arrangements for Inter-State Coordination, the suggestions for establishment of the Inter-State Council and activation of the Zonal Councils.
(Paras 6.63 to 6.67).

Power of the Union to issue Directions to the States under Articles 256, 257, 339 and 350(A) is an avoidable irritant and needs to be omitted from the Constitution.
(Paras 6.68 to 6.70).

Financial Dependence of the States on the Centre
(Ch. 7).

States' heavy financial dependence on the Centre has increasingly undermined their role and status under the Constitution.
(Para 7.1).

States now finance about 45 per cent of their total revenue and capital expenditure by resource transfers from the Centre.
(Paras 7.2 to 7.4).

The States' dependence on resource transfers from the Centre is about 40 per cent with respect to their revenue expenditure.
(Paras 7.5 to 7.6).

Devolution under the recommendations of the Finance Commission accounts for about 60 per cent of the total resources transfer. The balance is accounted for by discretionary transfers including Central Assistance.
(Para 7.8).

In the case of Punjab, Devolution finances only about 11.7 per cent of its revenue expenditure as against 24 per cent for all the States.
(Paras 7.9 to 7.10).

States depend on the Centre for financing around 70 per cent of their capital expenditure.
(Paras 7.11 to 7.12).

All loans and advances from the Centre to the States are discretionary, including the loan portion of the Central Assistance for State Plan, States' dependence on the Centre for financing their capital outlay is near total.
(Paras 7.13 to 7.15).

Factors for Financial Dependence of States
(Ch. 8).

Factors for States financial dependence on the Centre include:

(i) growth of States' non-development and development expenditure inherent in their responsibilities under the Constitution;
(Paras 8.2 to 8.8).

(ii) States' narrow tax base and constraints on additional taxation (but not so much the commonly alleged relative inelasticity of their revenue from State Taxes);
(Paras 8.9 to 8.29).

(iii) low returns on State investments and enterprise; and
(Paras 8.30 to 8.40).

(iv) the Central Government's relentless drive to maximise its own capital receipts, *inter alia*, at the expense of the States.
(Paras 8.41 to 8.77).

Insufficient appreciation, even by the States, of the gravity and significance of their very low capital receipt in relation to the requirements inherent in the States' Constitutional responsibilities.
(Para 8.78).

Impact of States' Financial Dependence on the Centre
(Ch. 9).

The impact of States' financial dependence on the Centre includes the following major consequences :

(i) The diminishing share of States in total plan outlay and its undesirable consequences for the economy;
(Paras 9.3 to 9.6).

(ii) Centre's encroachment on the States' jurisdiction in the form of growing Central outlay on State subjects and proliferation of Central and Centrally sponsored Plan Schemes;
(Paras 9.7 to 9.30).

(iii) Centre's tight control over the Planning process in the States;
(Paras 9.31 to 9.38).

(iv) Imposition of an irrational structure and ill-conceived criteria of Central-State resources transfer including those for :—
(Paras 9.39 to 9.56).

(a) Devolution; and
(Paras 9.57 to 9.74).

(b) Central Assistance for State Plans.
(Paras 9.75 to 9.104).

(v) Growing political subordination of the States to the Centre.
(Paras 9.105 to 9.106).

Towards Balanced Centre-State Financial Relations
(Ch. 10).

Characteristics of an appropriate Centre-State Financial Balance.
(Para 10.1).

Measures for widening the States' tax basis :—

(i) additional sales tax in lieu of Union Excise Duties on petroleum products, processed vegetable oil, vanaspati, tyres, cement, glass sheets, iron and steel, motor vehicles and tractors;
(Paras 10.4 to 10.7)

(ii) reimposition of sales tax on sugar, textiles and tobacco;
(Para 10.8).

(iii) reimposition of tax on railway fares;
(Para 10.10).

(iv) imposition of a terminal tax on passenger arrivals by air; .
(Para 10.12).

(v) imposition of a tax on advertisements published in newspapers, broadcast on radio, and telecast on television;
(Para 10.13).

(vi) increase in the ceiling on tax on professions, trades, callings and employments; and
(Para 10.14).

(vii) restricted use of the power of Parliament to impose restrictions under Article 286(3) on sale or purchase taxes on goods.
(Para 10.15).

No indiscriminate enlargement of the Divisible Pool of Central taxes.
(Para 10.16).

Custom Duties may remain outside the Divisible Pool to fully take care of the Defence expenditure with a considerable margin to spare.
(Para 10.17).

Towards enlargement of the States' share of Central taxes, they may be allowed 50 per cent share in Income tax, Corporation Tax and Union Excise Duties. To prevent misuse of earmarked cesses, the yield of cess in excess of Rs. 10 crores may be treated as Union Excise Duty and form part of the Divisible Pool.
(Paras 10.18 to 10.21).

Two basic criteria for inter-State distribution of the Divisible Pool :

the compensation criterion and the redistribution criterion.
(Para 10.22).

The criteria suggested, as a balanced package of compensation and redistribution criteria :

(i) Population, 50 per cent;

(ii) per capita SDP below the all States' average 20 per cent;

(iii) the tax effort, 10 per cent;

(iv) Selected special problems, namely :
development of Scheduled Castes, 4 per cent;

development of Scheduled Tribes, 2.5 per cent;

development of hill and remote areas, 3 per cent;

development of border areas, 2.5 per cent;

co-ordinated development of the North-East, 2.5 per cent;

housing for landless workers, 3 per cent; and improvement of urban slums, 2.5 per cent.
(Paras 10.22 to 10.31).

Measures for ensuring the States a due share in capital receipts :

(i) equal share in market borrowings; allocation of States' share of market borrowings on the compensation criteria;

(Para 10.36).

(ii) increase in States' share in Small Savings to 80 per cent for the higher income and 95 per cent for the lower income States, and increase in the maturity period of Small Savings loans from the Centre to 50 years with a grace period of 10 years;

(Para 10.37).

(iii) additional small savings loans to States equal to 50 per cent of the increase in non-Government Provident Funds' and others' special deposits with the Central Government;

(Para 10.38).

(iv) States' share in net collections under Public Provident Fund and National Deposits Scheme;

(Para 10.39).

(v) encouragement to State enterprises to go in for bond issues;

(Para 10.40).

(vi) finance of State irrigation and power projects under external aid;

(Para 10.41).

(vii) treatment of State enterprises at par with Central enterprises in the matter of external commercial borrowing;

(Para 10.42).

(viii) States' share in the amount raised by deficit financing;

(Paras 10.43 to 10.44).

(ix) States' share in special deposits of the surplus funds of oil and other Central undertakings;

(Para 10.45).

(x) Expanding utilisation of institutional credit for financing State enterprises; and

(Paras 10.46 to 10.48).

(xi) adequate debt relief.

(Para 10.49).

Modification of the loan-grant ratio of Central Assistance to 50 : 50.

(Para 10.50).

Implications of the resources transfer package :

(i) need to evolve a balanced package out of the above measures after examining their quantitative implications and actual experience of operation of these measures;

need eventually for a legal or Constitutional basis for this package; and

(Para 10.51).

(ii) reduced role of Devolution and Central Assistance in resources transfer;

these transfers may also be distributed among the States more or less on the same criteria as suggested for inter-State distribution of the States' share in the Divisible Pool.

(Para 10.52).

Lack of substance in the view that for greater inter-State equality, the Centre needs to be in command of vast resources, a substantial proportion of which may be used by it at its discretion.

(Paras 10.53 to 10.63).

The irrationality of the widely held belief in the inherent fairness of per capita equality of development or investment outlays. To narrow the gap with the higher income States, what the lower income States need to have is an equal or even a higher ratio of their development outlay to SDP.

(Paras 10.64 to 10.68).

States and the Planning Process

(Ch. 11).

The Planning Organisation and procedures must accord with the envisaged role and content of planning in economic and social development of the country. These must be conditioned by:

(i) the particular institutional context of planning;

(ii) the accepted development goals; and

(iii) the chosen pattern of development.

(Para 11.1).

(1) *The planning Context :*

The main elements of the institutional context are :

(i) a large private sector;

(ii) an extensive unorganized sector; and

(iii) a quasi-federal state structure.

(Paras 11.2 to 11.7).

(2) *The Development Goals :*

Planning must derive its orientation from the country's accepted development goals. These are :

(i) growth with social justice;

(ii) economic self-reliance;

(iii) economic stability; and

(iv) consolidation of the democratic framework.

Growth with social justice implies;

(a) putting through the inevitable structural change at a minimum cost, and

(Paras 11.8 to 11.17).

(b) efficiency of resource use.

(3) *The Pattern of Development :*

The country has been pursuing all along a capitalist pattern of development.

(Paras 11.18 to 11.20).

(4) *The Role of Planning :*

The accepted development goals cannot be achieved together in a development process which

relies on free play of market forces. Even in an essentially capitalist pattern of development, planning of the appropriate kind is very much needed.

(Para 11.21).

(5) *The Content of Planning*:

In the prevailing context, the planning process has to seek the realisation of the accepted national objectives by promoting the creation of as dynamic, self-reliant, stable and human an economy as may be possible under the capitalist pattern of development. The context, organisation, techniques and policy framework of Indian Planning must be suited to this task.

(Para 11.22).

The Planning in India must be an appropriate combination of mandatory and indicative planning.

(Para 11.23).

The perspective of a growing coverage of the economy by indicative (rather than mandatory) planning underlines the importance of an appropriate policy-framework for efficient conduct of such planning.

(Para 11.24).

Decision making with respect to the policy issues is today the weakest aspect of the planning process in the country.

(Paras 11.25 to 11.27).

(6) *The time Horizons of Planning*:

The long-term perspective may be preferably worked out in a 10-Year time horizon. The medium-term and short-term planning may continue to have as at present a five-year and one-year time horizon.

(Para 11.28).

The 10-Year perspective may have no mandatory part. It may give a scientific projection of the country's demand and production structure, a financial perspective to match the physical perspective, the implied institutional change and innovation, and the envisaged policy framework.

(Para 11.29).

The planning of the 10-year perspective may be undertaken concurrently with the mid-term review of the Five Year Plan.

(Para 11.30).

The Five Year Plan may include a proper review of development during the previous 5-year period, a projection of the demand and production structure 5 years hence, a realistic scheme for financing the rupee finance and foreign exchange requirements of the Plan, the envisaged changes in the policy framework of new policy initiatives, and the contemplated changes in the policy framework. The Five Year Plan period and the reference period of the Finance Commission must be made co-extensive. The Plan may have a mandatory and an indicative part and both must be adequately spelt out.

(Paras 11.31 to 11.34).

The Annual Plan is the operational instrument of the Five Year Plan and must have the same scope and content.

(Para 11.35).

(7) *The Levels of Planning*:

Corresponding to the two levels of Government, there must be two basic planning levels, the Centre and the States. The State level includes the District and lower levels.

(Para 11.36).

The Central Sector Plan may comprise the development activities of the Union Ministries and the Central Departmental and non-Departmental enterprises. Centres outlay on Central and Centrally Sponsored Plan Schemes must be cut down to the minimum with equivalent transfer of resources to the States.

(Para 11.37).

The Public Sector Outlay at a given planning level must include the Plan Outlay financed by Budgetary resources and by extra-budgetary resources of the public enterprises but must exclude the assistance to a lower planning level for financing the latter's Plan. The State Plans do not strictly observe these rules.

(Paras 11.38 to 11.41).

There is as yet little genuine district or lower level planning in any State. Essential pre-requisites for this do not exist yet.

(Paras 11.42 and 11.43).

District and lower level planning in the States.

(Para 11.44).

(8) *The Planning Organisation*:

The Planning Organisation consists of multi-level structure; National Development Council at the apex; the Planning Commission at the Centre; the Planning Department and the Planning Boards/Commissions in the States; and the Planning Boards/Commissions at the District and lower levels.

(Para 11.45).

The National Development Council is a non-statutory body set up by the Centre. It has a symbolic rather than a substantive role in planning.

(Paras 11.46 to 11.49).

The Planning Commission is a non-statutory body created by the Central Government. The States have no say in determining its composition, functions and the staffing pattern.

(Para 11.50).

The Union Ministries have become increasingly autonomous of the Planning Commission. With respect to the preparation of State Plans the Commission remains an effective control and supervisory agency of the Central Government.

(Para 11.51).

Excessive secrecy shrouding the Planning Commission's technical work results in slowing down improvements in planning concepts and techniques.

(Para 11.52).

At the State level whatever planning is being undertaken is by the Planning and other Departments. The State Planning Boards/Commissions

exist in name rather than as an effective planning agency. One reason for this is that the Planning Commission dominates the planning process in the States and leaves little initiative to them. There are also other weighty factors for this.

(Para 11.53).

The Centrally Sponsored Scheme for strengthening the State Planning machinery has not been much of a success. The Centre may well leave this task to the States themselves.

(Para 11.54).

The ineffectiveness of Planning Boards as a planning agency has had several undesirable consequences for State level planning.

(Para 11.55).

(9) *Monitoring and Evaluation :*

Monitoring is essentially an aspect of implementation and is necessary for speedy and effective corrective action for any lapses in implementation. Inefficient implementation of public sector projects and programmes suggests unsatisfactory monitoring.

(Para 11.56).

Monitoring is of importance to Planning agencies for (i) avoiding development of serious imbalances in the economy and (ii) securing realistic anticipations of the base year position in various sectors towards preparation of the next Plan. They are normally provided with the needed information by the implementation agencies.

(Para 11.57).

Ex-ante appraisal of projects is an aspect of the Planning Process and may be entrusted to the Divisions dealing with different sectors. Economic Division may provide training in basic appraisal criteria and techniques to these Divisions.

(Para 11.58).

The utility of ex-ante evaluation depends on how far projects and programmes are approved on objective criteria.

(Para 11.59).

There are specialised agencies for ex-post evaluation both at the Centre and in the States, but these are ineffective.

(Para 11.60).

There is some chance of securing more adequate, uninhibited and timely evaluation reports on Plan projects and programmes if the task is framed out to a reputable research institution.

(Para 11.61).

(10) *Reorganisation of the Planning Process :*

The planning process needs to be reorganised to ensure that the State level planning is duly autonomous and the States have equal opportunity with the Centre for determining national priorities and basic directions of development.

(Para 11.62).

Reorganisation of the National Development Council (NDC) as the effective apex planning organisation.

(Para 11.63).

Creation of National Development Organisation (NDO) as a common Centre-State specialised planning institution to serve as the permanent secretariat to the NDO and to coordinate the Central Sector and State Sector Plans.

(Para 11.64).

Reorganisation of the Planning Commission as the specialised planning agency exclusively for the Central sector.

(Paras 11.65 to 11.67).

Reorganisation of the State Planning Boards as a specialised planning agency for the State sector.

(Paras 11.68 to 11.72).

Reorganisation of District and lower level planning agencies.

(Paras 11.73 to 11.76).

The above changes in the Planning organisation at different levels are meant to promote cooperative federalism and democratic decentralisation.

(Para 11.77).

ALL INDIA TRIBES AND MINORITIES FEDERATION

Memorandum seeking autonomous status within the Constitutional frame-work for the areas/States predominantly inhabited by Tribal and minority communities

In any Democratic set-up of Government, ordinarily, the rule dominance of majority prevails upon almost in every walk of life ranging from individual to social, economic, religious, cultural freedom and ethenic identity. The racial, religious and linguistic diversification have no doubt, enriched our culture and added to its beauty multiple colours, but at the same time have posed threat to its distinctive identity and even existence, particularly of minorities and tribals.

The framers of Constitution, in this back-drops, have provided some special provisions for the protection of minorities and tribals so that they may develop and progress without destroying their social fabric and identity but inspite of constitutional safeguards, the under current discontentment and dissatisfaction are browing amongst them surfacing insurgency and insurrection.

The excessive centralization and unitary character have almost destroyed the Federal feature of our Constitution, the process has given rise to the feeling of insecurity amongst the minorities and tribals.

The Constitutional provisions for their protection provided forty years back, with the process of time and advancement in their way of life, are being felt insufficient and inadequate. With a view to meet their aspirations and in the interest of national solidarity All India Tribes & Minorities Federation submit their demand as under :—

1. The areas which are backward and compact and predominantly inhabited by Tribals be declared Autonomous Region/Districts within the cosntitutional provision Article 244(2) throughout the country so that uniform policy towards tribals be adopted any may not be only for some Districts/areas in Northern Eastern States, Assam, Tripura and Mizoram. Some of these areas are Jharkhand in Bihar, Madhu Ben in Orissa, Baster Areas in Madhya Pradesh and Kinnaur and Lahaul Spiti Districts in Himachal Pradesh etc. This will remove the feelings and apprehensions of disparity and partiality amongst the tribals throughout the country.
2. Likewise there are some areas/States predominently inhabited by minority communities like Punjab, and J & K and by one minority community i.e. Gorkhas in Hill Districts of Darjeeling of West Bengal which are reverbrating and echoing with the slogans of autonomy with a view to maintaining their identity including their religion, culture and social life. These areas/states may be granted autonomous status within the four cornors of Constitution and for this purpose suitable amendment of the relevant articles of the Constitution may be made without further loss of time so that the matter may not get complicated and out of hand also foreign hands be kept off.
3. Article 370 of the Constitution under "Instrument of Accession" give sufficient autonomy to J & K State. This Article may be amended in such a way that its amended form be applicable to Punjab, and other such states areas predominantly inhabited by minority communities that it may not signify J & K only and the J & K should not enjoy this exclusive privilege.
4. All subjects under concurrent list be divided between the states and the centre. There should not be any concurrent list under fifth Schedule of the Constitution.
5. The States should be given sufficient powers to deal with administrative measure concerning All India Services, and Financial powers too. Article 245 to Article 251 for this purpose may be amended accordingly. The residuary power may also be specified for the state and the centre.

The above demand may kindly be considered in the larger interest of the nation so that the unabated communal conflicts, agitations, and discontentment among the minorities, tribals and states may be eliminated for ever.

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